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Presidential Documents

Title 3—

The President

Proclamation 9212 of November 19, 2014

National Child's Day, 2014

By the President of the United States of America

A Proclamation

In the faces of today's children we see tomorrow's leaders and innovators. Like their parents and grandparents before them, they have the potential to unearth new discoveries, pioneer bold inventions, and unlock groundbreaking solutions to longstanding problems. Every generation has sought to reach beyond the limits of the known world and push the boundaries of human imagination. But to realize what we know is possible for our daughters and sons, we must harness their talents and abilities. On National Child's Day, we recognize that success is built on a foundation of opportunity, and we continue our work to build a society where every child can seize his or her future.

Early education is one of the best investments we can make in a child's life, and my Administration is committed to expanding access to preschool and high-quality early learning across America. We are investing in programs that enhance and expand infant and toddler care in high-need communities, and next month, we will host the White House Summit on Early Education, bringing together a broad coalition of partners dedicated to ensuring girls and boys can learn and grow, regardless of who they are or where they come from. In districts throughout our Nation, we are strengthening our public schools and working to make sure every child has the opportunity to reach higher.

To succeed in the classroom and thrive in their communities, all children deserve a healthy start in life. That is why First Lady Michelle Obama's *Let's Move!* initiative is working to make it easier for parents and children to make healthy choices by increasing the availability of nutritious foods and the opportunities for physical activity. And I continue to fight to provide the freedom and security of quality, affordable health care to children and their families. The Affordable Care Act prohibits insurance companies from denying coverage to children with pre-existing conditions and requires that most health plans cover recommended preventive services for kids without copays, including immunizations and developmental screenings. Families who do not have health insurance can visit *www.HealthCare.gov* to find coverage that fits their needs and their budget.

A world-class education and a robust health system are essential pillars of a society devoted to ensuring children can pursue their full measure of happiness—and we all must work together to lift up the next group of thinkers and doers. As we celebrate the limitless potential of a generation born in an era of tremendous possibility, let us join with parents, professionals, and community members and renew our commitment to supporting the dreams of all our daughters and sons.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 20, 2014, as National Child's Day. I call upon all citizens to observe this day with appropriate activities, programs, and ceremonies, and to rededicate ourselves to creating the bright future we want for our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of November, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2014–27927
Filed 11–21–14; 8:45 am]
Billing code 3295–F5

Rules and Regulations

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

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DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 111201710–4976–01]

RIN 0691–AA82

Direct Investment Surveys: BE–13, Survey of New Foreign Direct Investment in the United States; Announcing OMB Approval of Information Collection

AGENCY: Bureau of Economic Analysis (BEA), Commerce.

ACTION: Final rule; approval of collection-of-information requirements and effective date of OMB control numbers.

SUMMARY: This rule provides notice of the approval by the Office of Management and Budget (OMB) and resulting effectiveness of the collection-of-information requirements published by BEA on August 14, 2014.

DATES: The collection-of-information requirements in §§ 801.3, 801.4 and 801.7, published on August 14, 2014 (79 FR 47573–47575), are effective November 24, 2014. OMB approved the collection-of-information requirements in §§ 801.3, 801.4 and 801.7, as of October 29, 2014.

FOR FURTHER INFORMATION CONTACT: Patricia Abaroa, Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9591.

SUPPLEMENTARY INFORMATION: BEA published a final rule on August 14, 2014 (79 FR 47573–75), that amended its regulations to reinstate the reporting requirements for the BE–13, Survey of New Foreign Direct Investment in the United States, which was discontinued in 2009. On September 9, 2014, BEA published a correction to that final rule stating that the Office of Management and Budget (OMB) had not yet approved the information collection requirements pursuant to the Paperwork Reduction Act, and therefore the effective date of the BE–13 is delayed (see 79 FR 53291). The correction also stated that BEA would announce the effective date of that final rule after OMB approved BEA's information collection request for the BE–13.

This final rule announces OMB approval and effectiveness of the collection-of-information associated with the BE–13. OMB approved the collection-of-information requirements on October 29, 2014, under OMB control number 0608–0035. The expiration date for this control number is October 31, 2017.

Classification

Paperwork Reduction Act

This rule makes effective a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0608–0035. This survey collects information on the acquisition or establishment of U.S. business enterprises by foreign investors, which was collected on the previous BE–13 survey, and information on expansions by existing U.S. affiliates of foreign companies, which was not previously collected. This mandatory survey will be conducted under the authority of the International Investment and Trade in Services Survey Act (the Act). Unlike other BEA surveys conducted pursuant to the Act, a response is required from persons subject to the reporting requirements of the BE–13, Survey of New Foreign Direct Investment in the United States, whether or not they are contacted by BEA, in order to ensure that respondents subject to the requirements for foreign direct investments in the United States are identified. The BE–13 survey is expected to result in the filing of reports from approximately 1,350 U.S. affiliates each year. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 1.6 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden for this survey is estimated at 2,160 hours, compared to 900 hours for the previous BE–13 survey. The increase in burden hours is due to the increase in the number of respondents expected to file.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and opportunity for public comment for this action because notice and comment would be unnecessary and contrary to the public interest. This action simply provides notice of OMB's approval of the reporting requirements at issue, which has already occurred, and renders those requirements effective. Thus, this action does not involve any further exercise of agency discretion and no comment received at this time would impact any decision by BEA or OMB. In addition, the public has had the opportunity to comment on both the substance of the reporting requirements, at the time BEA adopted them, and on BEA's request to OMB for renewal of the information collection. The reporting requirements at issue were detailed in proposed rules on which BEA accepted public comment. The reporting provisions in 15 CFR 801.3, 801.4 and 801.7, were initially published at 79 FR 30503–06 on May 28, 2014, with comments accepted until July 28, 2014, and published as a final rule at 79 FR 47573–75 on August 14, 2014. An additional opportunity for public comment at this point would not be meaningful, and would be duplicative.

Regulatory Flexibility Act

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.

Executive Order 12866

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

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign investment in the United States, International transactions, Penalties, Reporting and recordkeeping requirements.

Dated: November 17, 2014.

Brent Moulton,

Acting Director, Bureau of Economic Analysis.

[FR Doc. 2014–27771 Filed 11–21–14; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0988]

Drawbridge Operation Regulation; Three Mile Creek, Mobile, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the CSX Transportation Railroad Swing Span Bridge across Three Mile Creek, mile 0.3, at Mobile, Baldwin County, Alabama. This deviation is necessary to conduct maintenance to the bridge. This deviation allows the bridge to remain temporarily closed to navigation for twelve hours during one day and then operate during daylight hours only for eight consecutive days within a span of nine days.

DATES: This deviation is effective from 7:00 a.m. on Thursday, November 27, 2014, through 6:00 p.m. on Friday, December 5, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0988] is available at *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 deviation. 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 temporary deviation, call or email Geri Robinson, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, email *Geri.A.Robinson@uscg.mil.* If you have questions on viewing the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: CSX Transportation requested a temporary deviation to repair the center bearing and rack circle, which affects the opening and closing of the swing span bridge across Three Mile Creek at mile 0.3 at Mobile, Baldwin County, Alabama. This maintenance is essential for the continued operation of the bridge and is expected to guard against frequent breakdowns resulting in emergency bridge closures. The bridge owner plans to replace the center bearing and rehabilitate the rack circle. To accomplish the necessary repairs, the bridge owner requested that the bridge be allowed to remain closed to navigation for twelve consecutive hours on Thursday, November 27, 2014 from 7 a.m. until 7 p.m. to replace the center bearing. Immediately following this closure, the bridge owner will open the bridge to allow all vessels to clear the queue. After clearing the queue, the bridge will be closed to navigation until Friday, November 28, at 8 a.m. At that time, the bridge will open on signal from 8 a.m. until 6 p.m. for eight consecutive days. During evening and nighttime hours, between 6 p.m. and 8 a.m., the bridge will open at midnight for the passage of vessels if at least two hours advanced notice is given. During this temporary deviation, the bridge owner will rehabilitate and reinstall the rack circle. During this time period, the bridge will be opened by use of an assist tug and operations may take longer than normal. At 6 p.m. on Friday, December 5, 2014, the bridge will return to normal operation.

The swing span bridge has a vertical clearance of 10 feet above mean high water and 12 feet above mean low water in the closed-to-navigation position. Navigation on the waterway is primarily commercial, consisting of tugs with tows and fishing vessels. There is no recreational boat traffic at the bridge site. These closures have been discussed with waterway users and facilities and no objections to the closure have been expressed. In accordance with 33 CFR 117.5, the draw of the bridge opens on signal. No alternate routes are available.

In accordance with 33 CFR 117.35(e), this bridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 10, 2014.

David M. Frank,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2014–27811 Filed 11–21–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0990]

Drawbridge Operation Regulation; Trent River, New Bern, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Norfolk Southern Railroad Drawbridge, across Trent River, mile 0.2, at New Bern, NC, to facilitate a rehabilitation project. This bridge presently opens on demand for navigation and is usually left in the open position only to close twice a day for train crossings. This deviation allows the bridge to remain closed to navigation from 8 a.m. Monday, December 15, 2014 until 7 p.m. Friday, December 19, 2014, so that necessary maintenance may be made. The deviation is necessary to facilitate removal and replacement of the rail lift joints.

DATES: This deviation is effective from 8 a.m. on Monday, December 15, 2014 to 7 p.m. on Friday, December 19, 2014.

ADDRESSES: The docket for this deviation [USCG–2014–0990] is available at *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 deviation. 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 temporary deviation, call or email Terrance Knowles, Environmental Protection Specialist, Coast Guard; telephone 757–398–6587, email *Terrance.A.Knowles@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, at 202–366–9826.

SUPPLEMENTARY INFORMATION: The Norfolk Southern Railway operates this swing-type railroad drawbridge and has requested a temporary deviation from the current operating regulations to facilitate the rehabilitation work on the structure. The Norfolk Southern

Railroad Bridge, at mile 0.2, across Trent River in Bern, NC, has a vertical clearance in the closed to navigation position of 0 feet above mean high water.

Under the current operating schedule set out in 33 CFR 117.5, the draw must open promptly and fully for the passage of vessels when a request or signal to open is given.

Under this temporary deviation, the bridge will be closed-to-navigation for maintenance and would allow the bridge to remain closed from 8 a.m. Monday, December 15, 2014 to 7 p.m. Friday, December 19, 2014, so necessary repairs may be made. Vessels will not be able to pass through when the bridge is in the closed position. The bridge will not be able to open for emergencies and there is no alternate route for vessels.

The Coast Guard will inform the users of the waterway through Local and Broadcast Notice to Mariners of the temporary deviation in operating schedule for the bridge so that vessels can arrange their transit plans accordingly. Waterway traffic consists of fishing boats, recreational boats, and occasional tugs and barges.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 12, 2014.

James L Rousseau,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2014–27832 Filed 11–21–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0980]

RIN 1625–AA00

Safety Zone; Salvage Operations, Lake Michigan, Navy Pier, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Michigan north of Navy Pier, Chicago, IL. This safety zone is intended to restrict vessels from a designated portion of Lake Michigan for salvage operations of a sunken barge. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with salvage operations.

DATES: This rule is effective without actual notice from November 24, 2014 until December 5, 2014. For the purposes of enforcement, actual notice will be used from November 4, 2014, until November 24, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2014–0980. 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, contact or email MST2 Stacy Smith, U.S. Coast Guard Marine Safety Unit Chicago, at (630) 986–2155 or *Stacy.D.Smith@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

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(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Specifically, this safety zone is needed for salvage operations of a barge that unexpectedly sank on Lake Michigan on October 31, 2014. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public and vessels from the hazards associated with the salvage operations discussed below.

Under 5 U.S.C. 553(d)(3), The Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register.** For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

From November 4, through December 5, 2014, salvage operations will take place on Lake Michigan in response to a sunken barge north of Navy Pier, within the Chicago Harbor. The Captain of the Port Lake Michigan has determined that the salvage operations will pose a significant risk to public safety and property. This safety zone is necessary to protect emergency responders and transiting mariners from associated hazards, which include vessel collisions in a congested harbor.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port Lake Michigan has determined that this temporary safety zone is necessary to ensure the safety of vessels during salvage operations on Lake Michigan. This safety zone will be in effect from November 4, through December 5, 2014. It will be enforced intermittently on an as-needed basis during this time. Additionally, advanced notice of enforcement times will be provided through Broadcast Notice to Mariners. This zone will encompass all waters of Lake Michigan within the arc of a circle with a 500-foot radius, with its center located on the north side of Navy Pier, approximate position 41°53′33″ N, 087°36′07″ W; (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative. The Captain of the Port or a designated on-scene representative may be contacted via VHF Channel 16.

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 conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced on an as needed basis for about a month. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this temporary rule on small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit Lake Michigan, within the Chicago Harbor, in the vicinity north of Navy Pier, from November 4, through December 5, 2014.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the zone, we would issue local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this 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 INTFORMATION 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 determined that 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 the establishment of a safety zone and, therefore it 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, 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. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 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 § 165.T09–0980 to read as follows:

§ 165.T09–0980 Safety Zone; Salvage Operations, Lake Michigan, Navy Pier, Chicago, IL.

(a) *Location.* All waters of Lake Michigan within the arc of a circle with a 500-foot radius, with its center located on the north side of Navy Pier, approximate position 41°53′33″ N, 087°36′07″ W; (NAD 83).

(b) *Effective and Enforcement Period.* This rule is effective without actual notice from November 24, 2014 until December 5, 2014. For the purposes of enforcement, actual notice will be used from November 4, 2014, until November 24, 2014. This rule will be enforced intermittently on an as-needed basis.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or a designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or an on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or an on-scene representative.

Dated: November 4, 2014.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2014–27828 Filed 11–21–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–1036]

Safety Zone; Connectquot River Fall Fireworks; Connectquot River; Oakdale, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for Connectquot River Fall Fireworks on Connectquot River in Oakdale, NY from 6:30 p.m. to 7:30 p.m. on November 29, 2014. In the event of inclement weather the safety zone will be enforced from 6:30 p.m. to 7:30 p.m. on November 30, 2014. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after the fireworks event. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after the fireworks event. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port.

DATES: The regulations in 33 CFR 165.151 Table 1, 11.3 listed below will be enforced from 6:30 p.m. to 7:30 p.m. on November 29, 2014 with a rain date of November 30, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer Ian Fallon, Waterways Management Division, U.S. Coast Guard Sector Long Island Sound; telephone 203–468–4565, email *Ian.M.Fallon@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Connectquot River Fall Fireworks; Connectquot River; Oakdale, NY. The safety zone listed in 33 CFR 165.151 Table 1, 11.3 will be enforced from 6:30 p.m. to 7:30 p.m. on November 29, 2014. In the event of inclement weather the safety zone will be enforced from 6:30 p.m. to 7:30 p.m. on November 30, 2014.

Under the provisions of 33 CFR 165.151, the fireworks display listed above is established as a safety zone. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within the safety zone unless they receive permission from the COTP or designated representative.

This notice is issued under authority of 33 CFR 165 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners or marine information broadcasts. If the COTP determines that the safety zone need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: November 6, 2014.

E.J. Cubanski, III,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2014–27827 Filed 11–21–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R10–OAR–2012–0557: FRL–9917–07–Region 10]

Approval and Promulgation of Implementation Plans; Swinomish Indian Tribal Community; Tribal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a Tribal implementation plan (TIP) submitted by the Swinomish Indian Tribal Community (SITC or the Tribe). The SITC TIP regulates open burning practices and establishes a Tribal regulatory program applicable to all persons within the exterior boundaries of the Swinomish Reservation (Reservation). The SITC TIP was submitted to the EPA on June 28, 2012, and supplementary submittals were received on September 24, 2013, November 18, 2013, and January 28, 2014. This action makes the approved portions of the SITC TIP federally enforceable under the Clean Air Act (CAA). Upon the effective date of this action, the SITC TIP will replace the Federal Implementation Plan (FIP) provisions that regulate open burning within the exterior boundaries of the Reservation.

DATES: This final rule is effective on December 24, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2012–0557. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–150, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Claudia Vergnani Vaupel at (206) 553–6121, *vaupel.claudia@epa.gov,* or the above EPA, Region 10 address.

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

I. Summary of the Proposed Action

On May 2, 2014 (79 FR 25049), the EPA proposed to approve a TIP submitted by the SITC on June 28, 2012, and supplementary submittals received on September 24, 2013, November 18, 2013, and January 28, 2014. The SITC TIP regulates open burning and establishes a Tribal regulatory program to maintain or improve ambient air quality related to open burning. The SITC TIP applies to all persons within the exterior boundaries of the Swinomish Reservation and includes regulations governing prohibited materials, burn bans, open burning permit requirements and fees, and provisions related to enforcement of the TIP. For a more detailed description of our evaluation of the SITC TIP and our rationale for the proposed action, please see the May 2, 2014, proposed rule which can be found in the docket for today's action. No public comments were received on the proposed rule.

II. Final Action

Under CAA sections 110(o), 110(k)(3) and 301(d), the EPA is taking final action to approve the TIP submission as discussed in our May 2, 2014 proposal. Upon the effective date of this action, the SITC TIP for open burning will apply to all persons within the exterior boundaries of the Reservation and will replace the existing open burning provisions in the FIP for the Swinomish Reservation (40 CFR 49.10956(g) and 49.10960(g)). As discussed in the proposed rule, the EPA is approving, but not incorporating by reference into the CFR, the enforcement-related authorities in the SITC TIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves laws of an eligible Indian Tribe as meeting Federal requirements and imposes no additional requirements beyond those imposed by Tribal law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). Because this rule approves pre-existing requirements under Tribal law and does not impose any additional enforceable duty beyond that required by Tribal law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The EPA has concluded that this rule will have Tribal implications in that it will have substantial direct effects on the SITC. However, it will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. The EPA is approving the SITC's TIP at the request of the Tribe. Tribal law will not be preempted as the SITC has already incorporated the TIP into Tribal Law on March 9, 2012. The Tribe has applied for, and fully supports, the approval of the TIP. This approval makes the TIP federally enforceable.

The EPA worked with Tribal air program staff early in the process of developing the TIP to allow for meaningful and timely input into its development. To administer an approved TIP, Indian Tribes must be determined eligible (40 CFR part 49) for TAS for the purpose of administering a TIP. During the TAS eligibility process, the Tribe and the EPA worked together to ensure that the appropriate information was submitted to the EPA. The SITC and the EPA also worked together throughout the process of development and Tribal adoption of the TIP.

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a TIP covering areas within the exterior boundaries of the Swinomish Reservation, and does not alter the relationship or the distribution of power and responsibilities between States and the Federal government established in the Clean Air Act. This action does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16,

1994). This action also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing TIP submissions, the EPA's role is to approve an eligible Indian Tribe's submission, provided that it meets the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the Indian Tribe to use voluntary consensus standards (VCS), the EPA has no authority to disapprove a TIP submission for failure to use VCS. It would thus be inconsistent with applicable law for the EPA, when it reviews a TIP submission, to use VCS in place of a TIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272 note) do not apply to this action.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 2015. Only an objection to this final action that was raised with reasonable specificity during the public comment period can be raised during judicial review. Upon request, adequately supported, the Administrator may convene a proceeding for reconsideration of this final action. Filing a petition requesting that the Administrator reconsider this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. (*See* CAA section 307(b)(1).) This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Indians, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 8, 2014.

Dennis J. Mclerran,

Regional Administrator, Region 10.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 49 as follows:

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

■ 1. The authority citation for Part 49 continues to read as follows:

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

■ 2. Section 49.10952 is revised to read as follows:

§ 49.10952 Approval status.

The implementation plan for the Swinomish Reservation includes the EPA-approved Tribal rules and measures identified in § 49.10957.

■ 3. Section 49.10956 is amended by removing and reserving paragraph (g) and by adding new paragraph (l) to read as follows:

§ 49.10956 Contents of implementation plan.

* * * * *

(g) [Reserved]

* * * * *

(l) The EPA-approved Tribal open burning rules and measures approved in § 49.10957.

(1) Title, authority, jurisdiction, definitions.

(2) Open burning.

(3) Public involvement.

(4) Appeals.

(5) Repealer, severability and effective date.

(6) Enforcement.

(7) Hearings, appeals, computation of time and law applicable.

■ 4. Section 49.10957 is added to read as follows:

§ 49.10957 EPA-approved Tribal rules and plans.

(a) *Purpose and scope.* This section contains the EPA-approved Tribal rules and measures in the open burning tribal implementation plan (TIP) for the Swinomish Indians. The open burning TIP consists of a program, procedures, and regulations that cover prohibited materials, burn bans, open burning permit requirements and fees, and enforcement.

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) of this section was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material is incorporated as it exists on the date of the approval and notice of any change in the material will be published in the **Federal Register**.

(2) The EPA Region 10 certifies that the rules/regulations provided by the EPA in the Tribal implementation plan (TIP) compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated Tribal rules/regulations which have been approved as part of the TIP as of August 4, 2014.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region 10 Office at 1200 Sixth Avenue, Seattle WA, 98101; the EPA, Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave. NW., Washington, DC; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(c) *EPA-approved regulations.*

EPA–APPROVED SWINOMISH INDIANS OF THE SWINOMISH RESERVATION WASHINGTON REGULATIONS

Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
Swinomish Tribal Code Title 19 Environmental Protection, Chapter 2—Clean Air Act (Swinomish TIP for Open Burning Part II)				
19–02.020	Title Authority	3/9/12	11/24/14, [Insert **Federal Register** citation].	
19–02.030	Jurisdiction	3/9/12	11/24/14, [Insert **Federal Register** citation].	
19–02.040	Definitions	3/9/12	11/24/14, [Insert **Federal Register** citation].	
Subchapter II—Open Burning				
19–02.080	Applicability of Subchapter	3/9/12	11/24/14, [Insert **Federal Register** citation].	
19–02.090	General Rules for Open Burning	3/9/12	11/24/14, [Insert **Federal Register** citation].	Except D
19–02.100	Burn Bans	3/9/12	11/24/14, [Insert **Federal Register** citation].	
19–02.110	Open Burn Permits	3/9/12	11/24/14, [Insert **Federal Register** citation].	
19–02.120	Special Use Permits	3/9/12	11/24/14, [Insert **Federal Register** citation].	
19–02.130	Open Burn and Special Use Permit Fees.	3/9/12	11/24/14, [Insert **Federal Register** citation].	Except B.
19–02.140	Standard Permit Conditions	3/9/12	11/24/14, [Insert **Federal Register** citation].	
19–02.150	Additional Permit Conditions	3/9/12	11/24/14, [Insert **Federal Register** citation].	
19–02.160	Burn Notification and Inspection	3/9/12	11/24/14, [Insert **Federal Register** citation].	
Subchapter III—Public Involvement				
19–02.170	Public Information	3/9/12	11/24/14, [Insert **Federal Register** citation].	
19–02.180	Public Hearings	3/9/12	11/24/14, [Insert **Federal Register** citation].	
Subchapter V—Appeals				
19–02.240	Sovereign Immunity	3/9/12	11/24/14, [Insert **Federal Register** citation].	
Subchapter VI—Repealer, Severability and Effective Date				
19–02.250	Repealer	3/9/12	11/24/14, [Insert **Federal Register** citation].	
19–02.260	Severability	3/9/12	11/24/14, [Insert **Federal Register** citation].	
19–02.270	Effective Date	3/9/12	11/24/14, [Insert **Federal Register** citation].	

(d) *[Reserved]*

(e) *EPA-approved nonregulatory provisions and quasi-regulatory measures.*

EPA-Approved Swinomish Indians of the Swinomish Reservation Washington Nonregulatory Provisions and Quasi-Regulatory Measures

TABLE 1—AIR QUALITY PLANS

Name of plan	Tribal submittal date	EPA approval date	Explanations
Swinomish Tribal Implementation Plan for Open Burning (Swinomish TIP, Part I).	11/18/13	11/24/14, [Insert **Federal Register** citation].	Except the section on ''Adoption Process and Procedure''.

TABLE 2—SWINOMISH TRIBAL CODE APPROVED BUT NOT INCORPORATED BY REFERENCE

Tribal citation	Title/subject	Tribal effective date	EPA approval date	Explanations
Swinomish Tribal Code Title 19 Environmental Protection, Chapter 2—Clean Air Act (Swinomish TIP for Open Burning Part II)				
Subchapter IV—Enforcement				
19–02.190	Enforcement	3/9/12	11/24/14, [Insert **Federal Register** citation].	
19–02.200	Penalties	3/9/12	11/24/14, [Insert **Federal Register** citation].	
19–02.210	Damages	3/9/12	11/24/14, [Insert **Federal Register** citation].	
Subchapter V—Appeals				
19–02.220	Appeals of Department Decisions	3/9/12	11/24/14, [Insert **Federal Register** citation].	
19–02.230	Tribal Administrative Remedies and Tribal Court.	3/9/12	11/24/14, [Insert **Federal Register** citation].	
Title 19—Environmental Protection, Chapter 4—Shorelines and Sensitive Areas Act				
Subchapter IX—Hearings, Appeals, Computation of Time and Law Applicable				
19–04.560	Request for Hearing Before the Planning Commission.	8/18/05	11/24/14, [Insert **Federal Register** citation].	
19–04.570	Hearings by the Planning Commission.	8/18/05	11/24/14, [Insert **Federal Register** citation].	
19–04.580	Appeals of Planning Commission Decisions.	8/18/05	11/24/14, [Insert **Federal Register** citation].	
19–04.590	Appeals of Senate Decisions	8/18/05	11/24/14, [Insert **Federal Register** citation].	
19–04.600	Time and Finality	8/18/05	11/24/14, [Insert **Federal Register** citation].	

■ 5. Section 49.10960 is amended by removing and reserving paragraph (g) to read as follows:

§ 49.10960 Federally-promulgated regulations and Federal implementation plans.

* * * * *

(g) [Reserved]

* * * * *

[FR Doc. 2014–27634 Filed 11–21–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2010–1071; FRL–9919–38–Region 10]

Approval and Promulgation of Implementation Plans; State of Washington; Regional Haze State Implementation Plan; Federal Implementation Plan for Best Available Retrofit Technology for Alcoa Intalco Operations, Tesoro Refining and Marketing, and Alcoa Wenatchee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In a final action published on June 11, 2014, the Environmental Protection Agency (EPA) published a final rule in the **Federal Register** concerning, in part, the promulgation of a Federal Implementation Plan (FIP) provision for regional haze in the State of Washington. This action identifies and corrects an error in that action by adding the factor to convert tons of sulfur dioxide (SO_2) to pounds of SO_2 that was inadvertently left out of the rule language for the FIP for the Alcoa Inc. Wenatchee Works.

DATES: This rule is effective on January 23, 2015, without further notice, unless the EPA receives adverse comment December 24, 2014. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–1071, by any of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: body.steve@epa.gov.*
- *Mail:* Steve Body, EPA Region 10, Office of Air, Waste and Toxics, AWT–150, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Steve Body, Office of Air, Waste and Toxics, AWT–150. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2010–1071. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Steve Body at telephone number: (206) 553–0782, email address: *body.steve@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, we mean the EPA.

This action corrects an inadvertent error in a final rule (79 FR 33438, June 11, 2014) related to the FIP requiring Best Available Retrofit Technology on Potline 5 at the Alcoa Inc. Wenatchee Works primary aluminum smelter (Alcoa Wenatchee Works) located in Malaga, Washington. The factor to convert tons of SO_2 to pounds of SO_2 was inadvertently left out of the rule language included in 40 CFR 52.2502(b)(1)(i). Today's action corrects the formula Alcoa Wenatchee Works must use to demonstrate compliance with the SO_2 emission limitation for Potline 5, on a calendar month basis, by adding the factor '' x (2000 pounds per ton)''. As corrected, the formula in 40 CFR 52.5202(b)(1)(i) now reads as set forth in the regulatory text of this final rule.

Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Where a SIP provision does not meet Federal requirements and is disapproved by the EPA, it has the authority to promulgate FIP provisions that meet the Federal requirements. This action merely corrects an inadvertent error in a previous FIP promulgation and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

This rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000) because it merely corrects an inadvertent error in a formula that applies to a single facility, the Alcoa, Inc. Wenatchee Works, and therefore does not have direct and substantial effects on Tribal governments. Thus Executive Order 13175 does not apply.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 27, 2014.

Michelle Pirzadeh,

Acting Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart WW—Washington

■ 2. Section 52.2502(b)(1)(i) is revised to read as follows:

§ 52.2502 Best available retrofit technology requirements for the Alcoa Inc.—Wenatchee Works primary aluminum smelter.

* * * * *

(b) * * *

(1) * * *

(i) *Compliance demonstration.* Alcoa must determine SO_2 emissions, on a

calendar month basis using the following formulas:

SO_2 emissions in pounds = (carbon ratio) × (tons of aluminum produced during the calendar month) × (% sulfur in baked anodes/100) × (% sulfur converted to SO_2/100) × (2 pounds of SO_2 per pound of sulfur) × (2000 pounds per ton)

SO_2 emissions in pounds per ton of aluminum produced = (SO_2 emissions in pounds during the calendar month)/(tons of aluminum produced during the calendar month)

(A) The carbon ratio is the calendar month average of tons of baked anodes consumed per ton of aluminum produced as determined using the baked anode consumption and aluminum production records required in paragraph (h)(2) of this section.

(B) The % sulfur in baked anodes is the calendar month average sulfur content as determined in paragraph (b)(1)(ii) of this section.

(C) The % sulfur converted to SO_2 is 90%.

* * * * *

[FR Doc. 2014–27502 Filed 11–21–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2014–0337; FRL–9919–67–OAR]

RIN 2060–AS33

Findings of Failure To Submit a Complete State Implementation Plan for Section 110(a) Pertaining to the 2010 Nitrogen Oxide (NO_2) Primary National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action finding that the District of Columbia and seven states (Alaska, Arkansas, Hawaii, Minnesota, New Jersey, Vermont and Washington) have not submitted complete infrastructure State Implementation Plans (SIPs) that provide the basic Clean Air Act (CAA) program elements necessary to implement the 2010 nitrogen dioxide (NO_2) primary national ambient air quality standard (NAAQS). Three out of the seven states (Alaska, Arkansas and Vermont) have not made any submittals. The District of Columbia and the remaining four out of the seven states (Hawaii, Minnesota, New Jersey and Washington) have made submittals that are partially incomplete due to the lack of complete SIP approved Prevention of Significant Deterioration (PSD) permit programs. The purpose of an infrastructure SIP submission is to assure that a state, local or tribal air agency's SIP contains the necessary structural requirements for any new or revised NAAQS. The remaining 43 states have made complete submissions. Each finding of failure to submit a complete infrastructure SIP establishes a 24-month deadline for the EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding SIP elements unless, prior to the EPA promulgating a FIP, the affected air agency submits, and the EPA approves, a revised SIP that corrects the deficiency. In those areas without a state-adopted PSD permit program, the FIP obligation has already been met through federal regulations that govern PSD permits issued in some cases by the EPA and in other cases by state or local agencies under delegation agreements.

DATES: Effective date of this action is December 24, 2014.

FOR FURTHER INFORMATION CONTACT: General questions concerning this document should be addressed to Ms. Mia South, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C504–2, 109 TW Alexander Drive, Research Triangle Park, NC 27709; telephone (919) 541–5550; email: *south.mia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Notice and Comment Under the Administrative Procedures Act (APA)

Section 553 of the APA, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions or incomplete submissions, to meet the requirement. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

B. How can I get copies of this document and other related information?

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2014–0337. Publicly available docket materials are available either electronically through *https://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue 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 Office of Air and Radiation Docket and Information Center is (202) 566–1742.

C. How is the preamble organized?

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- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority and Low Income Populations
- K. Congressional Review Act (CRA)
- L. Judicial Review

D. Where do I go if I have specific state questions?

The table below lists the states and additional area (District of Columbia) that failed to make an infrastructure SIP submittal in whole or in part for the 2010 NO_2 NAAQS. For questions related to specific states or areas mentioned in this document, please contact the appropriate EPA Regional Office:

Regional offices	States
EPA Region 1: Dave Conroy, Air Program Branch Manager, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02203–2211. 617–918–1661.	Vermont.
EPA Region 2: Richard Ruvo, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 21st Floor, New York, NY 10007–1866. 212–637–4014.	New Jersey.
EPA Region 3: Cristina Fernandez, Air Division Director, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187. 215–814–2178.	District of Columbia.
EPA Region 5: John Mooney, Air Program Branch Manager, Air Programs Branch, EPA Region 5, 77 West Jackson Street, Chicago, IL 60604–3590. 312–886–6043.	Minnesota.
EPA Region 6: Guy Donaldson, Chief, Air Planning Section, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733. 214–665–7242.	Arkansas.
EPA Region 9: Matt Lakin, Air Program Manager, Air Planning Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. 415–972–3851.	Hawaii.
EPA Region 10: Debra Suzuki, Air Program Manager, Air Planning Unit, EPA Region X, Office of Air, Waste, and Toxics, Mail Code AWT–107, 1200 Sixth Avenue, Seattle, WA 98101. 206–553–0985.	Alaska, Washington.

II. Background and Overview

A. Infrastructure SIPs

The CAA section 110(a) imposes an obligation upon states to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years following the promulgation of the new or revised NAAQS. Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. The EPA refers to this type of SIP submission as the ''infrastructure'' SIP because the SIP ensures that states can implement, maintain and enforce the air standards. States are required to develop and maintain an air quality management program that meets various basic structural requirements, including, but not limited to: Enforceable emission limitations; an ambient air monitoring program; an enforcement program; air quality modeling capabilities; and adequate personnel, resources and legal authority.

The contents of an infrastructure SIP submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the infrastructure SIP for a new or revised NAAQS necessarily affect the content of the submission. The content of such an infrastructure SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

On January 22, 2010, the EPA strengthened the health-based primary NAAQS for NO_2. The EPA set a new 1-hour NO_2 standard at the level of 100 parts per billion (ppb). This level defines the allowable concentration in a nonattainment area. In addition to establishing an averaging time and level, the EPA set a new ''form'' for the standard. The form is the air quality statistic used to determine if an area meets the standard. The form for the 1-hour NO_2 standard is the 3-year average of the 98th percentile of the annual distribution of daily maximum 1-hour average concentrations. Finally, the EPA retained, with no change, the current annual average NO_2 standard of 53 ppb.[1] The obligation to submit an infrastructure SIP was triggered with the revision of the NO_2 NAAQS in 2010, and, because the EPA did not prescribe a shorter deadline, January 22, 2013, was the applicable deadline for such submissions. In the case of the 2010 NO_2 NAAQS, the EPA believes that many of the states have met many of the program elements identified in this document required under section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

B. Mandatory Duty Suit for the EPA's Failure To Make Findings of Failure To Submit for Areas That Did Not Submit Infrastructure SIPs by January 22, 2013

On October 9, 2013, WildEarth Guardians (WEG) filed a complaint in the U.S. District Court for the District of Colorado to enforce the EPA's mandatory duty to make findings of failure to submit with respect to NO_2 infrastructure SIPs for the following states: Colorado, Idaho, New Mexico, Oklahoma, Oregon, South Dakota, Utah, Washington and Wyoming.[2] On January 24, 2014, Alaska and Hawaii were added to the complaint. These infrastructure SIPs were due on January 22, 2013. Most states identified in the complaint have made complete submissions as of the date of this document. In response to the WEG complaint, the EPA is issuing a national finding of failure to submit certain elements of NO_2 infrastructure SIPs for the requirements of CAA sections 110(a)(2)(A), (B), (C) (but not with respect to the permitting program required by CAA title I subpart D), (D)(i)(II), (D)(ii), (E)–(H) and (J)–(M), addressing all states (and the District of Columbia) that have not made complete submissions.

C. What elements are outside the scope of infrastructure SIP actions?

Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline because SIPs incorporating necessary local nonattainment area requirements are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that that subsection refers to a nonattainment area new source review permit program for major sources as required in part D of title I of the CAA; and (ii) submissions required by section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D of title I of the CAA. Therefore, this action does not cover these specific SIP elements. Nonattainment area plans required by part D title I of the CAA for the 2010 NO_2 NAAQS are generally due 18 months after the effective date of designation of an area as nonattainment.

[1] *See* 75 FR 6474, February 9, 2010, Primary National Ambient Air Quality Standard for Nitrogen Dioxide, Final Rule.

[2] Complaint, *WildEarth Guardians* v *EPA,* USDC Colorado, October 9, 2013, Case 1:13–cv–02748–RBJ. The complaint was amended on January 24, 2014, to add Hawaii and Alaska.

However, in the case of NO_2, no area has been designated nonattainment.

III. Findings of Failure To Submit for States That Failed To Make an Infrastructure SIP Submission in Whole or in Part for the 2010 NO_2 NAAQS

Forty-three states have made complete submittals for their respective infrastructure SIPs for the 2010 NO_2 NAAQS. With respect to the remaining seven states and the District of Columbia, the EPA is making findings of failure to submit.

Alaska, Arkansas and Vermont have not made any submittal, and for these the EPA is making a finding of failure to submit with respect to CAA section 110(a)(2)(A), (B), (C) (but not with respect to the permitting program required by CAA title I subpart D), (D)(i)(II), (D)(ii), (E)–(H) and (J)–(M).

The District of Columbia, Hawaii, New Jersey, Minnesota and Washington have made complete submissions except with respect to the PSD-related requirements of section 110, and for these states the EPA is making a finding of failure to submit with respect to the requirements of CAA sections 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) to the extent these refer to PSD permitting programs required by part C of title I of the CAA.

To summarize, the EPA is finding that seven states and the District of Columbia have not made a complete infrastructure SIP submission to meet certain requirements of section 110(a)(2) that are relevant to this action, as identified above, for the 2010 NO_2 NAAQS. The EPA is committed to working with the air agencies for these states and the District of Columbia to expedite submissions as necessary, and to working with all air agencies to review and act on their infrastructure SIP submissions in accordance with the requirements of the CAA.

These findings establish a 24-month deadline for the promulgation by the EPA of a FIP, in accordance with section 110(c)(1), for each of those states for which the EPA is making a finding unless the EPA has approved a SIP by that date. The District of Columbia, Hawaii, Minnesota and Washington are currently subject to PSD FIPs. New Jersey is currently subject to a combination of a SIP and a FIP for PSD. In these areas, the FIP for PSD is either implemented by the EPA or delegated to a state or local agency for implementation. In these areas, the PSD FIP obligation has already been met through federal regulations that govern PSD permits issued in some cases by the EPA and in other cases by state or local agencies under delegation agreements. The EPA recognizes that states may choose to continue to rely on the existing PSD FIP or a combination of SIP and FIP PSD programs, which will continue to govern the permitting of their sources without the need for further action by the state. If so, then this rulemaking does not require these areas to take further action.

These findings of failure to submit do not impose sanctions, or set deadlines for imposing sanctions as described in section 179 of the CAA, because these findings do not pertain to the elements of a part D, title I plan for nonattainment areas as required under section 110(a)(2)(I), and because these states have not failed to make submissions in response to a SIP call pursuant to section 110(k)(5).

IV. Environmental Justice Considerations

This document is making a procedural finding that certain states have failed to submit a complete SIP that provides certain basic program elements of section 110(a)(2) necessary to implement the 2010 NO_2 NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain and enforce a new or revised NAAQS which satisfy the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or such shorter period as the EPA may provide. The EPA did not conduct an environmental analysis for this rule because this rule would not directly affect the air emissions of particular sources. The EPA notes that there are no areas of the U.S. in nonattainment with the health-based NO_2 NAAQS. Because this rule will not directly affect the air emissions of particular sources, it does not affect the level of protection provided to human health or the environment. Therefore, this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

V. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This final rule does not establish any new information collection requirement apart from what is already required by law.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the agency has invoked the APA ''good cause'' exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action implements mandates specifically and explicitly set forth in the CAA under section 110(a) without the exercise of any policy discretion by the EPA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. This rule responds to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain elements required under section 110(a)(2) of the CAA for the 2010 NO_2 NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that provide for implementation, maintenance and enforcement of a new or revised NAAQS, and which satisfy the applicable requirements of section 110(a)(2), within 3 years of promulgation of such standard, or within such shorter period as the EPA may provide. No tribe is subject to the requirement to submit an implementation plan under section 110(a) within 3 years of promulgation of a new or revised NAAQS. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. The EPA's evaluation of environmental justice considerations is contained in section IV of this document.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Judicial Review

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

The EPA has determined that this final rule consisting of findings of failure to submit certain of the required infrastructure SIP provisions is ''nationally applicable'' within the meaning of section 307(b)(1). This rule affects the District of Columbia and seven states across the country that are located in seven of the ten EPA Regions, five different federal circuits, and multiple time zones. In addition, the rule addresses a common core of knowledge and analysis involved in formulating the decision and a common interpretation of the requirements of 40 CFR part 51, Appendix V applied to determining the completeness of SIPs in states across the country.

This determination is appropriate because in the 1977 CAA Amendments that revised CAA section 307(b)(l), Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has ''scope or effect beyond a single judicial circuit.'' H.R. Rep. No. 95–294 at 323–324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this action extends to the five judicial circuits that include the states across the country affected by this action. In these circumstances, section 307(b)(1) and its legislative history authorize the Administrator to find the rule to be of ''nationwide scope or effect'' and thus to indicate that venue for challenges lies in the D.C. Circuit. Accordingly, the EPA is determining that this is a rule of nationwide scope or effect. Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**. Filing a petition for review by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action.

List of Subjects in 40 CFR Part 52

Environmental protection, Approval and promulgation of implementation plans, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 14, 2014.

Janet G. McCabe,

Acting Assistant Administrator.

[FR Doc. 2014–27679 Filed 11–21–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS–6006–F3]

Medicare Program; Surety Bond Requirement for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS); Technical Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects codification, terminology, and technical errors in the requirements for suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) at 42 CFR 424.57.

DATES: This technical amendment is effective November 24, 2014.

FOR FURTHER INFORMATION CONTACT: Frank Whelan, (410) 786–1302.

SUPPLEMENTARY INFORMATION:

I. Background

For purposes of the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) supplier standards, the term ''DMEPOS supplier'' is defined in § 424.57(a) as an entity or individual, including a physician or Part A provider, that sells or rents Part B covered DMEPOS items to Medicare beneficiaries and that meet the DMEPOS supplier standards. The term ''DMEPOS'' encompasses the types of items included in the definition of medical equipment and supplies in section 1834(j)(5) of the Act.

The term durable medical equipment is defined at section 1861(n) of the Act. Prosthetic devices are defined in section 1861(s)(8) of the Act as ''devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices, and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens.''

II. Summary of Technical Errors in the Regulations Text at § 424.57

In the January 2, 2009 **Federal Register** (74 FR 166), we published a final rule that implemented section 1834(a)(16) of the Act by requiring certain Medicare DMEPOS suppliers to furnish CMS with a surety bond. In codifying the regulatory changes included the January 2, 2009 final rule, the Office of the Federal Register (OFR) found an inaccurate amendatory instruction for the amendments to § 424.57(d) and (e). OFR therefore, added the regulatory text via an editorial note in Code of Federal Regulations (CFR). Subsequently, we published a correcting amendment in the March 27, 2009 **Federal Register** (74 FR 13345) to correct the amendatory instruction errors made in the January 2, 2009 final rule. The correcting amendment redesignated § 424.57(d) and (e) as § 424.57(e) and (g). However, the provisions of the correcting amendment were inadvertently omitted in OFR's revisions to the CFR; therefore, the editorial note was retained.

In the August 27, 2010 **Federal Register** (75 FR 52629), we published a final rule that clarified, expanded, and added to the existing enrollment requirements that DMEPOS suppliers must meet to establish and maintain billing privileges in the Medicare program. In the August 27, 2010 final rule, we included an amendment for § 424.57(e). This amendment revised the ''failure to meet standards'' provision which was redesignated as paragraph (e) in the March 27, 2009 correcting amendment. The revisions to § 424.57(e) specified the revocation and overpayment requirements associated with the failure of a supplier to meet the standards in § 424.57(b) and (c). (For more detailed information, see the August 27, 2010 final rule (75 FR 52649).) However, the amendment to paragraph (e) was inadvertently omitted from OFR's revisions to § 424.57 in the CFR.

In the February 2, 2011 **Federal Register** (76 FR 5862), we published a final rule with comment period that, among other things, stated our policy for revalidation of billing privileges. This final rule included an amendment to the provision regarding revalidation of billing privileges which is currently printed in the CFR at § 424.57(e). The revisions were incorporated for the correct provision. However, § 424.57(e) should have been redesignated as § 424.57(g) in accordance with the provision included in our March 27, 2009 correcting amendment.

As a result of the codification and technical errors for § 424.57(d) and (e) specified previously, the regulations text of this technical amendment sets forth the following:

- The surety bond requirements specified in the January 2, 2009 final rule as § 424.57(d).
- The ''failure to meet standards'' requirement specified in the August 27, 2010 final rule as § 424.57(e).
- The ''revalidation of billing privileges'' language specified in the February 2, 2011 final rule as § 424.57(g).

In our review of § 424.57(d) and (e), we also determined that there were other terminology and technical errors that needed to be addressed. Therefore, we are including the following additional changes in the regulations text of this technical amendment:

- Removal of the term ''National Supplier Clearinghouse (NSC)'' from the definitions in § 424.57(a). We are also replacing term ''NSC'' with ''CMS contractor'' in § 424.57(d). Removing the name of the contractor and using the term ''CMS contractor'' more accurately reflects the possibility that different CMS contractors may handle these issues and eliminates the need to make regulatory text changes when we make contractual changes.
- Changing the terms ''supplier'' and ''DME supplier'' to ''DMEPOS supplier.'' We note that throughout § 424.57(d), the terms ''supplier,'' ''DME supplier,'' and ''DMEPOS supplier'' are used interchangeably, though they have the same meaning for purposes of the applicability of § 424.57(d). However, we are making the change to ensure consistent terminology and accuracy. We believe that this terminology change would clarify that § 424.57(d) does not apply to all Medicare suppliers but does apply to all Medicare DMEPOS suppliers.
- Updating Office of Management and Budget (OMB) number for the Medicare enrollment application form referenced in § 424.57(d)(2)(i) from OMB number 0938–0685 to OMB control number 0938–1056. The OMB control number is out of date and at our request given a separate new control number.
- Revising the cross-references in § 424.515 (introductory text and paragraph (d)(3).

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This action merely corrects codification, terminology, and technical errors in 42 CFR 424.57. We are correcting regulatory paragraph designations, an omission, and a technical correction to previously published regulatory text as well as making terminology and cross-references changes. These revisions in no way change the policies or substantive regulatory text finalized in the January 2, 2009, August 27, 2010, and February 2, 2011 final rules. Since this technical amendment corrects codification and other technical errors and incorporates regulatory text that was inadvertently omitted, we find that both public comment and a delay in effective date of this technical amendment is unnecessary. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this action.

List of Subjects in 42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 424 as set forth below:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Amend § 424.57 by—

■ A. In paragraph (a) by removing the definition of ''National Supplier Clearinghouse'' (NSC).

■ B. Revising paragraphs (d) and (e).

■ C. Adding paragraph (g).

The revisions and addition read as follows:

§ 424.57 Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing privileges.

* * * * *

(d) *Surety bonds requirements*—(1) *Effective date of surety bond requirements*—(i) *DMEPOS suppliers seeking enrollment or with a change in ownership.* Except as provided in paragraph (d)(15) of this section, beginning May 4, 2009, DMEPOS suppliers seeking to enroll or to change the ownership of a supplier of DMEPOS must meet the requirements of paragraph (d) of this section for each assigned NPI for which the DMEPOS supplier is seeking to obtain Medicare billing privileges.

(ii) *Existing DMEPOS suppliers.* Except as provided in paragraph (d)(15) of this section, beginning October 2, 2009, each Medicare-enrolled DMEPOS supplier must meet the requirements of paragraph (d) of this section for each assigned NPI to which Medicare has granted billing privileges.

(2) *Minimum requirements for a DMEPOS supplier.* (i) A DMEPOS supplier enrolling in the Medicare program, making a change in ownership, or responding to a revalidation or reenrollment request must submit to the CMS contractor a surety bond from an authorized surety of $50,000 and, if required by the CMS contractor, an elevated bond amount as described in paragraph (d)(3) of this section with its paper or electronic Medicare enrollment application (CMS–855S, OMB number 0938–1056). The term of the initial surety bond must be effective on the date that the application is submitted to the CMS contractor.

(ii) A supplier that seeks to become an enrolled DMEPOS supplier through a purchase or transfer of assets or ownership interest must submit to the CMS contractor surety bond from an authorized surety of $50,000 and, if required by the CMS contractor, an elevated bond amount as described in paragraph (d)(3) of this section that is effective from the date of the purchase or transfer in order to exercise billing privileges as of that date. If the bond is effective at a later date, the effective date of the new DMEPOS supplier billing privileges is the effective date of the surety bond as validated by the CMS contractor.

(iii) A DMEPOS supplier enrolling a new practice location must submit to the CMS contractor a new surety bond from an authorized surety or an amendment or rider to the existing bond, showing that the new practice location is covered by an additional base surety bond of $50,000 or, as necessary, an elevated surety bond amount as described in paragraph (d)(3) of this section.

(3) *Elevated surety bond amounts.* (i) If required, a DMEPOS supplier must obtain and maintain a base surety bond in the amount of $50,000 as specified in paragraph (d)(2) of this section and an elevated surety bond in the amount prescribed by the CMS contractor as described in paragraph (d)(3)(ii) of this section.

(ii) The CMS contractor prescribes an elevated surety bond amount of $50,000 per occurrence of an adverse legal action within the 10 years preceding enrollment, revalidation, or reenrollment, as defined in paragraph (a) of this section.

(4) *Type and terms of the surety bond*—(i) *Type of bond.* A DMEPOS supplier must submit a bond that is continuous.

(ii) *Minimum requirements of liability coverage.* (A) The terms of the bond submitted by a DMEPOS supplier for the purpose of complying with this section must meet the minimum requirements of liability coverage ($50,000) and surety and DMEPOS supplier responsibility as set forth in this section.

(B) CMS requires a DMEPOS supplier to submit a bond that on its face reflects the requirements of this section. CMS revokes or denies a DMEPOS supplier's billing privileges based upon the submission of a bond that does not reflect the requirements of paragraph (d) of this section.

(5) *Specific surety bond requirements.* (i) The bond must guarantee that the surety will, within 30 days of receiving written notice from CMS containing sufficient evidence to establish the surety's liability under the bond of unpaid claims, CMPs, or assessments, pay CMS a total of up to the full penal amount of the bond in the following amounts:

(A) The amount of any unpaid claim, plus accrued interest, for which the DMEPOS supplier is responsible.

(B) The amount of any unpaid claims, CMPs, or assessments imposed by CMS or OIG on the DMEPOS supplier, plus accrued interest.

(ii) The bond must provide the following: The surety is liable for unpaid claims, CMPs, or assessments that occur during the term of the bond.

(iii) If the DMEPOS supplier fails to furnish a bond meeting the requirements of paragraph (d) of this section, fails to submit a rider when required, or if the DMEPOS supplier's billing privileges are revoked, the last bond or rider submitted by the DMEPOS supplier remains in effect until the last day of the surety bond coverage period and the surety remains liable for unpaid claims, CMPs, or assessments that—

(A) CMS or the OIG imposes or asserts against the DMEPOS supplier based on overpayments or other events that took place during the term of the bond or rider; and

(B) Were imposed or assessed by CMS or the OIG during the 2 years following the date that the DMEPOS supplier failed to submit a bond or required rider, or the date the DMEPOS supplier's billing privileges were terminated, whichever is later.

(6) *Cancellation of a bond and lapse of surety bond coverage.* (i) A DMEPOS supplier may cancel its surety bond and must provide written notice at least 30 days before the effective date of the cancellation to the CMS contractor and the surety.

(ii) Cancellation of a surety bond is grounds for revocation of the DMEPOS supplier's Medicare billing privileges unless the DMEPOS supplier provides a new bond before the effective date of the cancellation. The liability of the surety continues through the termination effective date.

(iii) If CMS receives notification of a lapse in bond coverage from the surety, the DMEPOS supplier's billing privileges are revoked. During this lapse, Medicare does not pay for items or services furnished during the gap in coverage, and the DMEPOS supplier is held liable for the items or services (that is, the DMEPOS supplier would not be permitted to charge the beneficiary for the items or services).

(iv) The surety must immediately notify the CMS contractor if there is a lapse in the surety's coverage of the DMEPOS supplier's coverage.

(7) *Actions under the surety bond.* The bond must provide that actions under the bond may be brought by CMS or by CMS contractors.

(8) *Required surety information on the surety bond.* The bond must provide the surety's name, street address or post office box number, city, state, and zip code.

(9) *Change of surety.* A DMEPOS supplier that obtains a replacement surety bond from a different surety to cover the remaining term of a previously obtained bond must submit the new surety bond to the CMS contractor at least 30 days prior to the expiration of the previous surety bond. There must be no gap in the coverage of the surety bond periods. If a gap in coverage exists, the CMS contractor revokes the DMEPOS supplier's billing privileges and does not pay for any items or services furnished by the DMEPOS supplier during the period for which no

bond coverage was available. If a DMEPOS supplier changes its surety during the term of the bond, the new surety is responsible for any overpayments, CMPs, or assessments incurred by the DMEPOS supplier beginning with the effective date of the new surety bond. The previous surety is responsible for any overpayments, CMPs, or assessments that occurred up to the date of the change of surety.

(10) *Parties to the surety bond.* The surety bond must name the DMEPOS supplier as Principal, CMS as Obligee, and the surety (and its heirs, executors, administrators, successors and assignees, jointly and severally) as surety.

(11) *Effect of DMEPOS supplier's failure to obtain, maintain, and timely file a surety bond.*

(i) CMS revokes the DMEPOS supplier's billing privileges if an enrolled DMEPOS supplier fails to obtain, file timely, or maintain a surety bond as specified in this subpart and CMS instructions. Notwithstanding paragraph (e) of this section, the revocation is effective the date the bond lapsed and any payments for items furnished on or after that date must be repaid to CMS by the DMEPOS supplier.

(ii) CMS denies billing privileges to a DMEPOS supplier if the supplier seeking to become an enrolled DMEPOS supplier fails to obtain and file timely a surety bond as specified with this subpart and CMS instructions.

(12) *Evidence of DMEPOS supplier's compliance.* CMS may at any time require a DMEPOS supplier to show compliance with the requirements of paragraph (d) of this section.

(13) *Effect of subsequent DMEPOS supplier payment.* If a surety has paid an amount to CMS on the basis of liability incurred under a bond and CMS subsequently collects from the DMEPOS supplier, in whole or in part, on the unpaid claim, CMPs, or assessment that was the basis for the surety's liability, CMS reimburses the surety the amount that it collected from the DMEPOS supplier, up to the amount paid by the surety to CMS, provided the surety has no other liability to CMS under the bond.

(14) *Effect of review reversing determination.* If a surety has paid CMS on the basis of liability incurred under a surety bond and to the extent the DMEPOS supplier that obtained the bond is subsequently successful in appealing the determination that was the basis of the unpaid claim, CMP, or assessment that caused the DMEPOS supplier to pay CMS under the bond, CMS refunds the DMEPOS supplier the amount the DMEPOS supplier paid to CMS to the extent that the amount relates to the matter that was successfully appealed, provided all review, including judicial review, has been completed on the matter.

(15) *Exception to the surety bond requirement*—(i) *Qualifying entities and requirements.* (A) Government-operated DMEPOS suppliers are provided an exception to the surety bond requirement if the DMEPOS supplier has provided CMS with a comparable surety bond under State law.

(B) State-licensed orthotic and prosthetic personnel in private practice making custom made orthotics and prosthetics are provided an exception to the surety bond requirement if—

(*1*) The business is solely-owned and operated by the orthotic and prosthetic personnel, and

(*2*) The business is only billing for orthotic, prosthetics, and supplies.

(C) Physicians and nonphysician practitioners as defined in section 1842(b)(18) of the Act are provided an exception to the surety bond requirement when items are furnished only to the physician or nonphysician practitioner's own patients as part of his or her physician service.

(D) Physical and occupational therapists in private practice are provided an exception to the surety bond requirement if—

(*1*) The business is solely-owned and operated by the physical or occupational therapist;

(*2*) The items are furnished only to the physical or occupational therapist's own patients as part of his or her professional service; and

(*3*) The business is only billing for orthotics, prosthetics, and supplies.

(ii) *Loss of a DMEPOS supplier exception.* A DMEPOS supplier that no longer qualifies for an exception as described in paragraph (d)(15)(i) of this section must submit a surety bond to the CMS contractor in accordance with requirements of paragraph (d) of this section within 60 days after it knows or has reason to know that it no longer meets the criteria for an exception.

(e) *Failure to meet standards*—(1) *Revocation.* CMS revokes a supplier's billing privileges if it is found not to meet the standards in paragraphs (b) and (c) of this section. Except as otherwise provided in this section, the revocation is effective 30 days after the entity is sent notice of the revocation, as specified in § 405.874 of this subchapter.

(2) *Overpayments associated with final adverse actions.* CMS or a CMS contractor may reopen (in accordance with § 405.980 of this chapter) all Medicare claims paid on or after the date of a final adverse action (as defined in paragraph (a) of this section) in order to establish an overpayment determination.

* * * * *

(g) *Revalidation of billing privileges.* A supplier must revalidate its application for billing privileges every 3 years after the billing privileges are first granted. (Each supplier must complete a new application for billing privileges 3 years after its last revalidation.)

§ 424.515 [Amended]

■ 3. In § 424.515, the introductory text and in paragraph (d)(3), the cross-reference ''§ 424.57(e)'' is removed and the cross-reference ''§ 424.57(g)'' is added in its place.

Dated: November 14, 2014.

C'Reda Weeden,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2014–27737 Filed 11–21–14; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 14–140; RM–11733; DA 14–1578]

Television Broadcasting Services; Kansas City, Missouri

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: A petition for rulemaking was filed by ION Media Kansas City License, Inc. (''ION Media''), the licensee of KPXE–TV, channel 51, Kansas City, Missouri, requesting the substitution of channel 30 for channel 51 at Kansas City. ION Media filed comments reaffirming its interest in the proposed channel substitution and explained that the channel substitution will allow it to serve all viewers currently receiving digital service while eliminating any potential interference with wireless operations in the Lower 700 MHZ A Block located adjacent to channel 51 in Kansas City. ION Media states that it will file an application for a construction permit for channel 30 and implement the change in accordance with the Commission's rules upon adoption of the channel substitution.

DATES: This rule is effective November 24, 2014.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, *Joyce.Bernstein@fcc.gov,* Media Bureau, (202) 418–1647.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 14–140, adopted October 30, 2014, and released October 31, 2014. The full text of this document is available for public 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 will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site, *http://www.bcpiweb.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Missouri is amended by removing channel 51 and adding channel 30 at Kansas City.

[FR Doc. 2014–27532 Filed 11–21–14; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

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

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE–2014–0001; 15XE1700DX EX1SF0000.DAQ000 EEEE500000]

RIN 1014–AA22

Oil and Gas and Sulphur Operations on the Outer Continental Shelf (OCS); Helideck and Aviation Fuel Safety for Fixed Offshore Facilities

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Extension of comment period for an advance notice of proposed rulemaking (ANPR).

SUMMARY: BSEE is extending the public comment period on the ANPR on Helideck and Aviation Fuel Safety for Fixed Offshore Facilities, which was published in the **Federal Register** on September 24, 2014 (79 FR 57008). The original public comment period would end on November 24, 2014. However, BSEE has received a request from an offshore oil and gas industry association to extend the comment period. The BSEE has reviewed the extension request and determined that a 30-day comment period extension—to December 24, 2014—is appropriate.

DATES: Written comments must be received by the extended due date of December 24, 2014. The BSEE may not fully consider comments received after this date.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1014–AA22 as an identifier in your message.

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry titled Enter Keyword or ID, enter BSEE–2014–0001 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. The BSEE may post all submitted comments.
- *Mail or hand-carry comments to the Department of the Interior (DOI); Bureau of Safety and Environmental Enforcement; Attention:* Regulations and Standards Branch; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference ''Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Helideck and Aviation Fuel Safety for Fixed Offshore Facilities, 1014–AA22'' in your comments and include your name and return address.
- Public Availability of Comments—Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Ralph Colleli, Regulations and Standards Branch, 703–787–1831, email address: *regs@bsee.gov.*

SUPPLEMENTARY INFORMATION: The BSEE published an ANPR on Helideck and Aviation Fuel Safety for Fixed Offshore Facilities on September 24, 2014 (79 FR 57008). The BSEE is seeking comments on improving safety for operations related to helicopters and helidecks on fixed offshore facilities. Specifically, BSEE invites comments on whether to incorporate in its regulations certain industry and/or international standards for design, construction, and maintenance of offshore helidecks, as well as standards for aviation fuel quality, storage and handling. The BSEE also invites comments on whether it should incorporate existing standards, with or without modifications, and/or develop and propose new government regulatory standards for safety of helidecks and aviation fuel systems on OCS facilities. The BSEE also seeks information on past accidents or other incidents involving helidecks, helicopters, or aviation fuel on or near fixed OCS facilities. After publication of the ANPR, BSEE received a request from an oil and gas industry group asking BSEE to extend the comment period on the ANPR by 60 days. Although BSEE does not agree that a 60-day extension is appropriate, BSEE is extending its original 60-day comment period by an additional 30 days to provide additional time for review of and comment on the ANPR. Accordingly, written comments must be submitted by the extended due date of December 24, 2014. The BSEE may not fully consider comments received after this date.

Dated: November 18, 2014.

David E. Haines II,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2014–27761 Filed 11–21–14; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 252

[Docket ID: DOD–2012–OS–0170]

RIN 0790–AI98

Professional U.S. Scouting Organization Operations at U.S. Military Installations Overseas

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Proposed rule.

SUMMARY: This rule updates policy and outlines fiscal and logistical support the DoD may provide to qualified scouting organizations operating on U.S. military installations overseas based on Executive Order 12715, Support of Overseas Scouting Activities for Military Dependents and appropriate statute as discussed below. It is DoD policy to cooperate with and assist qualified scouting organizations in establishing and providing facilities and services, within available resources, at locations outside the United States to support DoD personnel and their families.

DATES: Comments must be received by January 23, 2015.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

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

• Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Wright, 703–588–0172.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

This rule proposes that support provided by DoD is documented in a written agreements and signed by the appropriate regional combatant commander. Also, it would require installation-specific support and services to be based on a written agreement and signed by the installation commander or designee. These agreements will replace the need for these organizations to submit individual articles of incorporation, written constitutions, charters, or articles of agreement to gain approval from the installation commander to operate on the installation. In addition to Executive Order 12715, Title 10 of the United States Code specifies the DoD's authority to issue rules in this area.

Title 10, U.S.C., section 2606 states: The Secretary may collaborate with qualified scouting organizations in establishing and providing facilities and services for members of the armed forces and their dependents, and civilian employees of the Department of Defense and their dependents, at locations outside the United States. Qualified scouting organizations may be furnished support such as some transportation support, available office space, warehousing, utilities, supplies and a means of communication, without charge. The Secretary may reimburse a qualified scouting organizations for all or part of the pay of an employee of that organization for any period during which the employee was performing services, however any such reimbursement may not be made from appropriated funds. Employees of a qualified scouting organization will not be considered to be employees of the United States, and the term ''qualified scouting organization'' means the Girl Scouts of the United States of America and the Boy Scouts of America.

Title 10, U.S.C., section 2554 states: The Secretary of Defense is authorized to lend to the Boy Scouts of America, for the use and accommodation of Scouts, Scouters, and officials who attend any national or world Boy Scout Jamboree, items such as cots, blankets, commissary equipment, flags, refrigerators, and other equipment and without reimbursement. Additionally, expendable medical supplies and services, as may be necessary or useful to the extent that items are in stock and items or services are available, can be provided at no expense to the United States Government for the delivery, return, rehabilitation, or replacement of such items. Before delivering such property, the Secretary of Defense will take good and sufficient bond for the safe return of such property in good order and condition, and the whole without expense to the United States. The Secretary of Defense is also authorized to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Air Mobility Command for Boy Scouts, Scouters, and officials certified by the Boy Scouts of America, as representing the Boy Scouts of America at any national or world Boy Scout Jamboree to the extent that such transportation will not interfere with the requirements of military operations. The Secretary of Defense shall take from the Boy Scouts of America, a good and sufficient bond for the reimbursement to the United States, of the actual costs of transportation. If a Boy Scout Jamboree is held on a military installation, the Secretary of Defense may provide personnel services and logistical support at the military installation in addition to the support previously stated. Other departments of the Federal Government are authorized, under such regulations as may be prescribed by the Secretary thereof, to provide to the Boy Scouts of America equipment and other services under the same conditions and restrictions prescribed in the preceding subsections for the Secretary of Defense. The Secretary of Defense shall provide at least the same level of support for a national or world Boy Scout Jamboree as was provided for the preceding national or world Boy Scout Jamboree. The Secretary of Defense may waive all support if it determines that providing the support would be detrimental to the national security of the United States.

Title 10, U.S.C., section 2555 provides: The Secretary of Defense is authorized to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Air Mobility Command for Girl Scouts and officials certified by the Girl Scouts of the United States of America at any International World Friendship Event or Troops on Foreign Soil meeting which is endorsed and approved by the National Board of Directors of the Girl Scouts of the United States of America and is conducted outside of the United States. Support is also authorized for United States citizen delegates coming from outside of the United States to triennial meetings of the National Council of the Girl Scouts of the United States of America, and for the equipment and property of Girl Scouts and officials, to the extent that such transportation will not interfere with the requirements of military operations. Before furnishing any transportation, the Secretary of Defense shall take from the Girl Scouts of the United States of America a good and sufficient bond for the reimbursement to the United States by the Girl Scouts of the United States of America, of the actual costs of transportation furnished. Amounts paid to the United States to reimburse it for the actual costs of transportation furnished will be credited to the current applicable appropriations or funds to which such costs were charged and shall be available for the same purposes as such appropriations or funds.

Executive Order 12715, May 3, 1990, 55 FR 19051, discusses the cooperation and assistance authorized by section 2606(a) of title 10, and requires the Secretary of Defense to issue regulations concerning support.

II. Summary of the Major Provisions of the Regulatory Action in Question

This rule discusses the types of support DoD installation commanders are authorized to provide, ensures appropriated fund (APF) and non-appropriated fund (NAF) assets are used correctly, and requires the cost of the support provided to be shared by each of the Military Services in proportion to benefits derived by their members from overseas scouting programs.

III. Costs and Benefits

Program costs are less than $700,000 per year, consisting primarily of salaries, transportation costs, and supplies to support scouting programs that directly complement and improve quality of life programming for military families overseas.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires 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 proposed rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

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

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

DoD has determined this proposed rule would not have federalism implications under Executive Order 13132. It does not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 252

Military installations, Military personnel, Scout organizations.

Accordingly 32 CFR part 252 is proposed to be added to read as follows:

PART 252—PROFESSIONAL U.S. SCOUTING ORGANIZATION OPERATIONS AT U.S. MILITARY INSTALLATIONS OVERSEAS

Sec.
252.1 Purpose.
252.2 Applicability.
252.3 Definitions.
252.4 Policy.
252.5 Responsibilities.
252.6 Procedures.

Authority: Executive Order 12715, 10 U.S.C. 2606, 2554, and 2555.

§ 252.1 Purpose.

This part updates policy and outlines fiscal and logistical support that the DoD may provide to qualified scouting organizations operating on U.S. military installations overseas.

§ 252.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the combatant commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as ''the DoD Components'').

§ 252.3 Definitions.

These terms and their definitions are for the purposes of this part.

DoD personnel and their families. Members of the Military Services and their family members and DoD civilian employees and their family members.

Military Services. The Army, Navy, Air Force, and Marine Corps.

Qualified scouting organization. The Girl Scouts of the United States of America (GSUSA) and the Boy Scouts of America (BSA).

Sponsored organization or sponsored council. Scouting organizations or councils authorized to operate as scouting affiliates on military installations.

§ 252.4 Policy.

It is DoD policy to cooperate with and assist qualified scouting organizations in establishing and providing facilities and services, within available resources, at locations outside the United States to support DoD personnel and their families in accordance with 10 U.S.C. 2606, 2554, and 2555 and Executive Order 12715, ''Support of Overseas Scouting Activities for Military Dependents''.

§ 252.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) oversees development and implementation of this part.

(b) *DoD Component Heads.* The DoD Component heads implement this part and comply with its provisions.

(c) *Secretary of the Army.* In addition to the responsibilities in paragraph (b) of this section and acting as the DoD Executive Agent for DoD support to the BSA and GSUSA local councils and organizations in areas outside of the United States in accordance with DoD Directive 1000.26E, ''Support for Non-Federal Entities Authorized to Operate on DoD Installations'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/100026p.pdf*), the Secretary of the Army:

(1) Makes policy determinations in coordination with the other Military Department Secretaries regarding topics including, but not limited to, support that:

(i) DoD installation commanders are authorized to provide to the scouting program and personnel.

(ii) The scouting organization provides to DoD.

(2) Ensures accountability for appropriated fund (APF) and non-appropriated fund (NAF) assets used in the support of qualified scouting organizations.

(3) Provides input for and works with the scouting organizations in establishing the extent and scope of the annual scouting programs in support of DoD personnel and their families within the parameters established in this part and available resources.

(4) Ensures that the cost of the support provided is shared by each of the Military Services in proportion to benefits derived by their members from scouting programs overseas.

§ 252.6 Procedures.

(a) *General Guidance.* (1) Support provided by DoD and services provided by qualified scouting organizations is documented in a written agreement and signed by the appropriate regional combatant commander. Installation-specific support and services are documented in a written agreement and signed by the installation commander. This agreement replaces the need for qualified scouting organizations to submit individual articles of incorporation, written constitutions, charters, or articles of agreement to gain approval from the installation commander to operate on the

installation as required by DoD Instruction 1000.15, ''Procedures and Support for Non-Federal Entities Authorized to Operate on DoD Installations'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/100015p.pdf*).

(2) Overseas installation commanders may authorize DoD support for qualified scouting organizations outside the United States when:

(i) Support is permitted under international agreements with the host nation, if applicable.

(ii) Support is permitted pursuant to law and DoD issuances.

(iii) Such support is within the capabilities of their respective installations.

(iv) Providing such support will not impede fulfillment of the military mission.

(3) Committees composed of representatives of the Military Services will be formed to review annual qualified scouting organization budget requirements.

(4) Overseas scouting committees will provide the overseas scouting organizations with information on the scouting requirements of DoD personnel and will monitor and evaluate the scouting organizations' efforts to satisfy those requirements.

(5) Funds raised by the scouting organizations, as a non-Federal entity, cannot be commingled with NAF funds and will be made available for annual audits.

(6) Employees of a qualified scouting organization are not considered to be U.S. employees, nor an instrumentality of the United States for the purpose of benefits or entitlements.

(i) APF is not used to reimburse their salaries and benefits.

(ii) They are not entitled to participate in the NAF retirement fund.

(iii) Serving in those positions does not constitute NAF employment credit or produce rehire priority.

(7) These organizations generally are not covered under the terms of United States' Status of Forces or other relevant agreements with host nations.

(i) Questions regarding whether employees of the scouting organization are covered under such agreements should be referred to the legal office servicing the applicable command. Applicability of any relevant agreements would be addressed with the host nation only by the applicable command, and not the organization.

(ii) To the extent the organization is not covered under any relevant agreement, host nation laws apply. In all cases, the host nation will determine the scope and extent of the applicability of host nation laws to these employees.

(b) *Funding Guidance.* (1) Any APF and NAF support provided will be programmed and approved on an annual basis by the DoD Components. NAF support is authorized for youth activities programs in accordance with DoD Instruction 1015.15, ''Establishment, Management, and Control of Nonappropriated Fund Instrumentalities and Financial Management of Supporting Resources'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/101515p.pdf*) and for qualified scouting organizations in accordance with paragraph (b)(5) of this section.

(2) APF may be used in conjunction with overseas scouting organizations. The following services may be provided on a non-reimbursable basis:

(i) Transportation of executive personnel (to include household goods and baggage) of qualified scouting organizations:

(A) When on invitational travel orders.

(B) To and from overseas assignments.

(C) While providing scouting support to DoD personnel and their families. Transportation of supplies of qualified scouting organizations necessary to provide such support may also be provided.

(ii) Office space where regular meetings can be conducted, and space for recreational activities.

(iii) Warehousing.

(iv) Utilities.

(v) Means of communication.

(3) DoD may provide the following additional support to scouting executives assigned overseas:

(i) Pursuant to section API 3.18 of DoD 4525.6–M, ''Department of Defense Postal Manual'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/452506m.pdf*), access to use Military Services postal services is authorized.

(ii) Pursuant to section 4.3.2.2.2 of Department of Defense Education Activity Regulation 1342.13, ''Eligibility Requirements for Education of Elementary and Secondary School-age Dependents in Overseas Areas'' (available at *http://www.dodea.edu/Offices/Regulations/index.cfm*), access to DoD Dependents Schools (overseas) may be provided on a space-available, tuition-paying basis.

(iii) Pursuant to DoD Instruction 1000.11, ''Financial Institutions on DoD Installations'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/100011p.pdf*), use of military banking facilities operated under DoD contracts is authorized.

(iv) Pursuant to DoD Instruction 1015.10, ''Military Morale, Welfare, and Recreation (MWR) Programs'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/101510p.pdf*), the use of morale, welfare, and recreation programs may be provided.

(v) Pursuant to DoD Instruction 1000.13, ''Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/100013p.pdf*), medical care in uniformed services facilities on a space-available basis at rates specified in uniformed services instructions, with charges collected locally, is authorized.

(vi) Pursuant to Office of Management and Budget Circular A–45, ''Rental and Construction of Government Quarters'' (available at *http://www.whitehouse.gov/omb/circulars_a045*) and subparagraph 2.c(1)(e) of DoD 4165.63–M, ''DoD Housing Management'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/416563m.pdf*), when DoD-sponsored civilian personnel serving DoD military installations at foreign locations cannot obtain suitable housing in the vicinity of an installation, they and their families may occupy DoD housing on a rental basis. The Military Service determines the priority of such leasing actions. These civilians are required to pay the established rental rate in accordance with DoD 4165.63–M and Military Service guidance.

(vii) Pursuant to DoD Instruction 1330.17, ''Armed Forces Commissary Operations'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/133017p.pdf*), overseas installation commanders or Secretaries of the Military Departments may extend commissary access through official support agreements.

(viii) Pursuant to DoD Instruction 1330.21, ''Armed Forces Exchange Regulations'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/133021p.pdf*), the Secretaries of the Military Departments may grant Armed Forces Exchange deviations with regard to authorized patron privileges for individuals or classes and groups of persons at specific installations when based on alleviating individual hardships.

(4) NAF may be used in conjunction with qualified scouting organizations to:

(i) Reimburse for salaries and benefits of employees of those organizations for periods during which their professional scouting employees perform services in overseas areas in direct support of DoD personnel and their families.

(ii) Reimburse travel to and from official meetings of the overseas scouting committee upon approval from the appropriate combatant commander.

(5) The total amount of NAF support for the scouting program must not exceed 70 percent of the total cost of the scouting program.

Dated: November 18, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–27665 Filed 11–21–14; 8:45 am]

BILLING CODE 5001–06–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket No. RM2015–6; Order No. 2250]

Changes or Corrections to Mail Classification Schedule

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing rules addressing changes and corrections to the Mail Classification Schedule (MCS). The proposed rules establish separate procedures for material changes in services offered in connection with products and corrections to product descriptions. The primary purposes of the proposed rules are to ensure that the MCS accurately describes the current product offerings of the Postal Service and to ensure compliance with the relevant statutory provisions when material changes to product offerings are made. The Commission invites public comment on the proposals.

DATES: *Comments are due:* December 24, 2014. *Reply comments are due:* January 8, 2015.

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:

Regulatory History

72 FR 63662, November 9, 2007.

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I. Introduction

With this Notice of Proposed Rulemaking, the Commission requests comments and suggestions on proposed rules regarding requests to change or correct the Mail Classification Schedule (MCS).

The primary purposes of this rulemaking are to ensure that the MCS accurately describes the current product offerings of the Postal Service and to ensure compliance with the relevant provisions of title 39 of the United States Code when material changes to product offerings are made. The proposed rules also are intended to provide the Commission with additional flexibility to ensure that the Postal Service is filing under the appropriate subpart of part 3020 of title 39 of the Code of Federal Regulations.

After the passage of the Postal Accountability and Enhancement Act (PAEA) in 2006,[1] the Commission issued regulations to implement PAEA's modern system of rate regulation, including regulations on the procedures to follow in changing the product lists and MCS.[2] In proposing the modern system of rate regulation, the Commission cautioned that the intent is that these regulations provide a reasonable starting point and that will they evolve over time.[3]

As the Postal Service and Commission have used the current regulatory scheme to make modifications to the product lists and changes to the MCS, a procedural gap has been identified. Remedying this procedural gap should make the process operate better.

The current regulations have not satisfactorily addressed MCS changes that are more significant than minor corrections to the MCS but do not rise to the level of a product list modification. In these cases, the current regulations regarding the filing requirements sometimes do not provide the Commission with sufficient information to make the necessary determination as to whether an MCS change is appropriate. As a result, the Commission has undertaken additional questioning during the proceedings, leading to the expenditure of additional resources by the Commission, the Postal Service, and other interested persons. The use of this additional inquiry process in such cases has also complicated the Commission's review.

These regulations are designed to clarify and streamline the process by specifying that the Postal Service provide all of the necessary information for the Commission to make its determination on such requests at the outset of the proceeding.

II. Background

The Commission is charged with maintaining accurate product lists. See 39 U.S.C. 3642. In Docket No. RM2007–1, the Commission promulgated rules establishing the MCS as the vehicle for presenting the product lists with necessary descriptive content. Order No. 26 at 85. Those rules are codified at 39 CFR part 3020. Subpart A describes the contents of the MCS and provides for its publication in the **Federal Register**. Subparts B, C, and D specify the procedures whereby the Postal Service, mail users, and the Commission may seek to modify the product lists in the MCS. Subpart E specifies procedures that allow the Postal Service to update provisions of the MCS with minimal Commission review. Order No. 26 at 97. Subpart F establishes that size and weight limitations appear in the MCS and provides procedures for Postal Service updates to those limits.

This proposed rulemaking concerns subpart E. In its order proposing the rules that are codified at part 3020, the Commission explained that subpart E requires the Postal Service to ensure that product descriptions in the MCS accurately reflect the current offerings of Postal Service products and services. *Id.* The Commission accordingly proposed procedures whereby the Postal Service could submit corrections to product descriptions so that the Commission could update the MCS. *Id.* The Commission recognized that there are inherent limits in the scope or magnitude of an update allowable under subpart E. It indicated that updates that would modify the market dominant or the competitive product lists are specifically excluded from subpart E.[4] The Commission concluded that a proposed update may not change the nature of a service to such an extent that it effectively creates a new product or eliminates an existing product. *Id.*

In comments on the proposed rules, McGraw-Hill and Valpak expressed

[1] Postal Accountability and Enhancement Act (PAEA), Pub. L. 10–435, 120 Stat. 3198 (2006).

[2] Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 (Order No. 43).

[3] Docket No. RM2007–1, Order Proposing Regulations to Establish a System of Ratemaking, August 15, 2007, at 2 (Order No. 26).

[4] The Commission also observed there were implicit exclusions as well, such as updates that might be governed by other rules such as changes to rates and fees. *Id.*

concern that proceedings under subpart E would not provide for Commission review or allow for public comment. McGraw-Hill posed a hypothetical example whereby the Postal Service could use the procedures in subpart E to make major changes to the Outside County Periodicals subclass, including eventual full zoning of the editorial pound charge for Outside County Periodicals mail, without substantive review by the Commission.[5] Both commenters observed that parties adversely affected by proposed changes would not have an opportunity to raise the issue with the Commission until after the change was implemented. McGraw-Hill Comments at 3–4; Valpak Comments at 16. Valpak also expressed concern that classification changes of considerable importance could be made pursuant to subpart E and suggested that comments and Commission review of proposals should be permitted.[6] Both commenters concluded that post-implementation review would be inadequate to remedy potential abuse of the subpart E procedures. McGraw-Hill Comments at 4; Valpak Comments at 15–16.

On October 29, 2007, the Commission issued Order No. 43, adopting the current version of subpart E. Order No. 43 at 107. Acknowledging the commenters' concerns, the Commission noted that there is a continuum of possible classification changes, ranging from those that only require the Postal Service to inform the Commission to those that trigger the requirements of 39 U.S.C. 3642. *Id.* The Commission confirmed that subpart E was not intended to provide an avenue for comprehensive pre-implementation review of classification changes. *Id.* at 108. Nonetheless, so as to provide an avenue for public input and to ensure that proposals are properly filed under the correct rules, the Commission added a new provision, § 3020.92. That section provides interested persons with an opportunity to comment on whether the planned changes are inconsistent with 39 U.S.C. 3642.

Over the course of nearly seven years since the Commission adopted the rules, it has had numerous occasions to consider proposals to amend the MCS pursuant to subpart E. The Commission has found the procedures provided in subpart E to be appropriate when the Postal Service proposes minor changes to the MCS. These include, for example, the Postal Service's decision to rebrand Express Mail as Priority Mail Express, the decision to rebrand Delivery Confirmation as USPS Tracking, and the decision to add Timor-Leste to the country price lists for International Mail.[7] In each of these instances, the Commission confirmed that the proposed change was minor in nature. The streamlined procedures in subpart E enabled the Postal Service to update the MCS in an expeditious manner, subject to limited review.

However, a recurring challenge to requests made pursuant to subpart E has emerged. That challenge concerns the distinction between minor corrections and changes of a more substantial nature. Because subpart E is limited to minor corrections while subparts B, C, and D are limited to proposals to create a new product, or transfer or eliminate an existing product, a gap exists when the Postal Service proposes to change an existing product to a degree greater than what could be considered a minor correction. An examination of cases involving such gaps is instructive.

In several instances, the Commission has explicitly recognized the gap in its rules. In Docket No. MC2012–26, the Commission considered the Postal Service's proposal to offer enhanced services at competitive post office box service locations.[8] The enhanced services consisted of email notification, street addressing, and private carrier package delivery. The Postal Service, which began offering the services in early 2012, did so without instituting proceedings to change the MCS. In March 2012, competitors filed a complaint challenging the Postal Service's offering of the enhanced services. The Commission held the complaint in abeyance and invited the Postal Service to make a filing pursuant to part 3020 subpart B. In its filing, the Postal Service argued that since the service enhancements were never intended to create a new product, the procedures provided under subpart B were superfluous.[9] The Commission agreed that the enhanced services did not change the competitive post office box service as to constitute a new product, and therefore did not trigger the filing requirement under subpart B. Order No. 1657 at 20. The Commission noted that the changes were ill-suited to subpart E as well. Because the enhanced competitive post office boxes did not constitute a new product and because the changes were not minor technical corrections to an existing product, the Commission observed that such changes did not fit squarely within either set of rules. *Id.* at 23.

In Docket No. MC2011–28, the Postal Service filed notice pursuant to subpart E proposing to narrow the letter prohibition for Commercial First-Class Package Service to cover only the Commercial Base portion of the product.[10] The Public Representative argued that the proposed change was substantive in nature and therefore should have been brought pursuant to subpart B.[11] He stated that there is a void in the Commission's rules for addressing changes that fall between a scrivener's error and a required change to a product list. PR Comments at 2. The Public Representative asked the Commission to promulgate rules to address this procedural gap. *Id.* at 2, n.2. The Postal Service argued that subpart E was appropriate for the proposed changes, but acknowledged that there is some ambiguity in the rules.[12] The Commission found that the Postal Service's initial subpart E filing did not provide sufficient information for it to effectively review the proposed changes. Order No. 835 at 7. It noted that obtaining sufficient information is particularly important in cases brought pursuant to subpart E because of the short time period for interested persons to comment and the Commission to act. *Id.* at 7–8. Although subsequent information cured the information defect in that case, the Commission indicated that it would consider adding new regulations for classification

[5] Docket No. RM2007–1, Comments of the McGraw-Hill Companies, Inc. in Response to Order No. 26, Proposing Regulations to Establish a System of Ratemaking, September 24, 2007, at 2–3 (McGraw-Hill Comments).

[6] Docket No. RM2007–1, Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments on Regulations Establishing a System of Ratemaking in Response to Commission Order No. 26, September 24, 2007, at 14 (Valpak Comments).

[7] Docket No. MC2013–45, Order Approving Minor Classification Change, May 13, 2013 (Order No. 1713); Docket No. MC2013–28, Order Approving Minor Classification Changes Related to Certain Ancillary Services, January 24, 2013 (Order No. 1631); MC2012–17, Order Approving Minor Classification Change Concerning Timor-Leste, May 23, 2012 (Order No. 1351).

[8] See Docket No. MC2012–26, Order on Elective Filing Regarding Post Office Box Service Enhancements, February 14, 2013 (Order No. 1657).

[9] Docket No. MC2012–26, Response of the United States Postal Service to Order No. 1366, July 9, 2012, at 4 (Postal Service Response).

[10] Docket No. MC2011–28, Order Regarding Commercial First-Class Package Service, August 31, 2011 (Order No. 835). The Postal Service also proposed to change the name of the product from Lightweight Commercial Parcels to Commercial First-Class Package Service. *Id.* at 2.

[11] Docket No. MC2011–28, Public Representative Comments Concerning Lightweight Commercial Parcels Classification Change, August 22, 2011, at 2–3 (PR Comments).

[12] Docket No. MC2011–28, Response of the United States Postal Service to Public Representative Comments, August 24, 2011, at 2 (Postal Service Response to PR Comments).

changes that rise above the level of corrections to the MCS. *Id.* at 8.

In Docket No. MC2011–5, the Postal Service filed notice pursuant to subpart E of proposed amendments to the MCS language for the Outside County Periodicals to modify the method of calculating bundle and pallet charges for flats that are co-mailed or co-palletized with Standard Mail flats.[13] Though it approved the request, the Commission observed that no other category in the Commission's rules suited the nature of the request, which involved preparation changes and limited adjustments to postage assessment. Order No. 667 at 5.

In Docket No. MC2012–8, the Postal Service filed notice under subpart E of amendments to the MCS raising the minimum dollar amount required to qualify for a Global Expedited Package Services (GEPS) contract.[14] The Public Representative contended that the proposed change was not minor in terms of its effect on small and medium size businesses. Order No. 1225 at 2. The Commission approved the request, noting that the Public Representative did not allege that the change added, removed, or transferred a product, which would trigger the filing requirements under subpart B.

The foregoing examples illustrate the need for regulations that close the gap between modifications brought pursuant to subparts B through D and corrections to the product descriptions brought pursuant to subpart E. The rules proposed herein are designed to close that gap.

III. Proposed Rules

The rules proposed in this notice of proposed rulemaking replace current subpart E with a new subpart E. The new subpart E establishes separate procedures for: (1) Changes to services offered in connection with products, and (2) corrections to product descriptions.

Under current subpart E, every proposed alteration to the MCS is made using one of two categorical means. Alterations may be proposed either as modifications to the product lists or as corrections to the product descriptions in the MCS. The rules proposed herein create an additional third categorical means of altering the MCS—changes to the product descriptions. It is the Commission's expectation that these three categories—modifications, material changes, and minor corrections—will provide a comprehensive regime governing all alterations to the MCS.

Subparts B, C, and D will continue to provide procedures for modifications to the product lists in the MCS. The rules define modification as adding a product to a list, removing a product from a list, or moving a product from one list to the other list.[15] Proposed subpart E will provide new rules governing changes to product descriptions and modify existing rules governing corrections to product descriptions.

It is the Commission's expectation that when the Postal Service proposes to modify the MCS it will file its proposal in one of three ways, either as a modification to the product lists under subpart B, a change to a product description under subpart E, or a correction to a product description also under subpart E. In each instance, the Postal Service will need to determine into which category its proposal falls. The current rules define a modification as the addition of a product to a product list, the removal of a product from a product list, or the moving of a product from one list to the other. Thus, the rules presuppose that modifications operate at the product level and will not just involve changes to product descriptions. By contrast, a change or correction to a product description will operate at the sub-product level. Under the proposed rules, the Commission expects that the Postal Service will employ either the rules for changes to product descriptions or the rules for corrections to product descriptions whenever it seeks to alter the MCS language for existing products.

A. Changes to Product Descriptions

The proposed rules distinguish between material changes and minor corrections to product descriptions. The proposed rules that apply to changes are codified at §§ 3020.80 through 3020.83, and apply to changes that are material (*i.e.,* not minor) in nature. The Commission expects that the Postal Service will make a threshold determination in each case as to whether the proposed alteration is material or minor in nature when it seeks to alter a product description.

In determining whether a proposed alteration is a material change that is subject to the § 3020.80 rules, the most important consideration is the degree to which the proposed alteration affects the characteristics of the product. The perspectives of the Postal Service, mail users, competitors, and stakeholders will be relevant to this determination.

The post office box enhanced services at issue in Docket No. MC2012–26 provide an example of the type of alterations to a product that would require a filing under the proposed rules governing material changes to a product description. In that docket, the Commission considered the addition of email notification, street addressing, and private carrier package delivery to the existing competitive Post Office Box Service product. The MCS product description indicated that Post Office Box Service provides the customer with a locked receptacle for the receipt of mail during specified hours of access to the receptacle.[16] Under the proposed rules, the enhanced services would merit a filing to amend the MCS under § 3020.80. Relevant factors to support this conclusion are that the enhanced services significantly changed the post office box user experience—in particular by permitting customers to receive packages delivered by private carriers—and that the enhanced services could significantly impact private mail box competitors, who prior to the enhancements distinguished their services from post office box service on the basis of the similar enhancements that they offered and that the Postal Service did not. Numerous competitors submitted comments suggesting that the Postal Service would have an unfair competitive advantage if it were permitted to offer the enhanced services. Order No. 1657 at 3, 11–13.[17] Because the changes to the MCS product description that the enhanced services brought about were more than minor corrections, such changes would require a filing under the proposed rules pertaining to material changes.

The proposed rules governing changes to MCS product descriptions require the Postal Service to make a showing that is less onerous than the showing that is required for modifications to the product lists but more robust than the showing that it is required for corrections to MCS product descriptions. A recurring challenge in minor correction cases has been the Commission's need to obtain sufficient information to evaluate the proposal and determine whether it comports with title 39 and Commission regulations. Under the current rules that apply to

[13] See Docket No. MC2011–5, Order Approving Mail Classification Changes, February 8, 2011 (Order No. 667).

[14] Docket No. MC2012–8, Order Approving Mail Classification Change, February 10, 2012 (Order No. 1225).

[15] See 39 CFR 3020.30, 39 CFR 3020.50, and 39 CFR 3020.70.

[16] Mail Classification Schedule 1550.1(a).

[17] This is not to suggest that the number of comments that a proposal receives establishes whether the proposal is a material change or a minor correction. However, the existence and content of comments from interested persons will provide some evidence of the materiality of a proposal.

corrections, the Commission is required to find that the proposed corrections are not inconsistent with 39 U.S.C. 3642. 39 CFR 3020.93. Commenters have sometimes stated that the Postal Service's notice does not provide sufficient supporting justification. See, *e.g.,* PR Comments at 3. The proposed rules for material changes address this concern by requiring the Postal Service to provide supporting justification that describes the change and the rationale for it, explains why the change will not result in a violation of statutory and regulatory standards, and describes the impact that the change will have on mail users and competitors, if applicable.

Under the proposed rules, the Postal Service will be required to file requests to change the MCS no later than 30 days prior to the implementation date of the proposed change. This is a longer period than the current rules governing corrections, which require that the Postal Service provide notice of the correction 15 days prior to the effective date. See 39 CFR 3020.91. As commenters have noted, when the Postal Service proposes changes to the MCS that are more than minor corrections, the 15-day notice period runs the risk of permitting the change to occur before the Commission has completed its review. See, *e.g.,* PR Comments at 3. The problem has arisen, in part, because the Commission has needed to issue information requests to obtain sufficient information so that it could make a threshold determination as to whether a proposal was properly filed as a minor correction to the product description. The Commission anticipates that in most instances a 30-day review period for changes will give it and members of the public sufficient time to issue any necessary information requests, offer comments, and review the request. It also expects that the proposed rules, by filling the existing gap between the rules for modifications to the product lists and the rules for corrections to the MCS product descriptions, will reduce the need for the Commission to issue information requests on the threshold question of whether the request was filed under the proper rules and will streamline and reduce the time that it takes for the Commission to process requests.[18]

The proposed rules provide the Commission with a menu of options for acting on a request. While the current rules that apply to corrections do not delineate what action the Commission may take if a proposal is determined to be inconsistent with section 3642, the proposed rules indicate that the Commission may approve the proposed changes, reject the proposed changes, provide the Postal Service with an opportunity to amend the proposed changes, direct the Postal Service to file under a different subpart, institute further proceedings, or take other appropriate action. This proposed rule is based on a similar provision in the Commission's current rules governing modifications to the product lists, which provide more guidance in terms of actions that the Commission may take.[19] In addition, a new provision that is not currently part of the Commission's rules governing modifications to the product lists, but which is included here, permits the Commission to redirect requests when it believes the request should be filed under a different subpart of part 3020. The Commission expects this will reduce the need for it to rely on information requests to make a threshold determination as to whether a request was filed under the appropriate rules.

B. Corrections to Product Descriptions

The proposed rules modify the existing rules governing corrections to MCS product descriptions, which are codified at §§ 3020.90 through 3020.92. The proposed rules codify Commission precedent holding that the rules applicable to corrections apply only to corrections to the product description that are minor in nature.

The proposed rules will require the Postal Service, when it files notice of a correction to a product description, to explain why the correction does not constitute a material change to the product description. This will provide the Postal Service with an opportunity to explain at the outset why its proposal is a minor correction rather than a material change to a product description.

The proposed rules also require the Postal Service, when it files notice of a correction to a product description, to explain why the correction is consistent with any applicable provisions of title 39. Under the current rules, the Commission is required to make a determination that the correction is not inconsistent with section 3642. 39 CFR 3020.93. However, the current rules do not require the Postal Service to provide any justification or explanation to support such a Commission finding. Without such information, the Commission has found it necessary in past proceedings to request clarifying information from the Postal Service to fulfill its regulatory responsibilities. The proposed rules' revised approach will provide the Postal Service with an opportunity to explain at the outset why its proposal is consistent with applicable statutory provisions instead of relying on an inquiry process which can complicate the Commission's review.

This approach would also harmonize the Commission's rules for reviews of corrections to product descriptions with those governing modifications to the product lists. Such rules require the party making the request to show that the proposed modification is consistent with the relevant statutory provisions and Commission regulations. See 39 CFR 3020.32, 3020.52, and 3020.72. This is also the better approach for reviews of corrections to product descriptions, as the Postal Service will, in most cases, have the best information as to the impact that the correction will have. The proposed rules require the Postal Service to address any possible legal issues when it files its notice. The Commission expects that this will give commenters and the Commission notice of possible legal issues so that they may be addressed within the 15-day window.

The proposed rules provide the Commission with several options for acting on the notice. They provide that the Commission may approve the proposed corrections, reject the proposed corrections, provide the Postal Service with an opportunity to amend the proposed corrections, direct the Postal Service to file under a different subpart, institute further proceedings, or take other appropriate action. The Commission expects that the rule permitting it to direct the Postal Service to file under a different subpart of part 3020 will reduce the need to rely on information requests to make a threshold determination as to whether a request was filed under the appropriate rules.

IV. Explanation of Proposed Rules

The following is a section-by-section analysis of the proposed rules:

Proposed § 3020.80 establishes the basic criteria for proposals to change product descriptions under subpart E. It indicates that the rules apply to material changes, as opposed to minor corrections, to MCS product

[18] In cases in which commenters have expressed concerns that a proposed change is more than a minor correction, the amount of time that it has taken for the Commission to complete its review has varied. See Docket No. MC2011–5 (95 days); Docket No. MC2011–28 (19 days); Docket No. MC2012–8 (11 days); and Docket No. MC2012–26 (189 days).

[19] See 39 CFR 3020.30.34, 39 CFR 3020.55, and 39 CFR 3020.75.

descriptions. In determining whether a proposed alteration is a material change, the most important consideration is the degree to which the proposed alteration affects the characteristics of the product. The perspectives of the Postal Service, mail users, competitors, and stakeholders will be relevant to this determination. Paragraph (a) requires that the Postal Service submit a request to change the product description no later than 30 days prior to implementing the proposed change. Paragraph (b) indicates that requests shall include a copy of the proposed change and supporting justification.

Proposed § 3020.81 delineates the supporting justification that the Postal Service is to provide. For all products, this includes a description of the changes, the rationale for them, and a description of the impact that the changes will have on users of the product and competitors. For market dominant products, the Postal Service is also required to explain why the changes are not inconsistent with 39 U.S.C. 3622(d) and 39 CFR part 3010. For competitive products, the Postal Service is also required to show that the changes will not result in a violation of 39 U.S.C. 3633 and 39 CFR part 3015.

Proposed § 3020.82 requires that the Commission establish a docket, publish notice of the request on its Web site, designate a public representative, and provide interested persons with an opportunity to comment on the proposed changes.

Proposed § 3020.83 requires that the Commission, upon review of the request and any comments: Approve the proposed changes; reject the proposed changes; provide the Postal Service with an opportunity to amend the proposed changes; direct the Postal Service to file under a different subpart; institute further proceedings; or direct other action that the Commission considers appropriate.

Proposed § 3020.90 establishes the basic criteria for proposals to correct product descriptions under subpart E. It indicates that the rules apply only to minor corrections of product descriptions in the MCS. Paragraph (b) requires the Postal Service to file notice of corrections to product descriptions no later than 15 days prior to the effective date of the corrections. Paragraph (c) requires that the notice explain why the corrections do not constitute material changes for purposes of § 3020.80, explain why the corrections are consistent with any applicable provision of title 39, and requires the Postal Service to include a copy of the proposed corrections.

Proposed § 3020.91 requires that the Commission establish a docket, publish notice of the proposal on its Web site, designate a public representative, and provide interested persons with an opportunity to comment on the proposal.

Proposed § 3020.92 requires that the Commission, upon review of the notice and any comments: Approve the proposed corrections; reject the proposed corrections; provide the Postal Service with an opportunity to amend the proposed corrections; direct the Postal Service to file under a different subpart; institute further proceedings; or take other action that the Commission considers appropriate.

V. Comments Requested

Interested persons are invited to provide written comments concerning the proposed rules. Comments may include specific language amending the proposed rules.

Comments are due no later than 30 days after the date of publication of this notice in the **Federal Register**. All comments and suggestions received will be available for review on the Commission's Web site, *http://www.prc.gov.* Interested persons are further invited to review the submissions and provide follow-up comments and suggestions within 15 additional days (that is, within 45 days of the publication of this notice in the **Federal Register**).

Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

VI. Ordering Paragraphs

It is ordered:

1. Docket No. RM2015–6 is established for the purpose of receiving comments with respect to the proposed rules attached to this Order.

2. The Commission proposes to amend its regulations at part 3020 subpart E as shown below the signature of the Secretary.

3. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is designated as an officer of the Commission to represent the interests of the general public in this docket.

4. Interested persons may submit comments no later than 30 days after the date of publication of this notice in the **Federal Register**.

5. Reply comments may be filed no later than 45 days after the date of publication of this notice in the **Federal Register**.

6. The Secretary shall arrange for publication of this order in the **Federal Register** in conformance with official publication requirements.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation of part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise subpart E of part 3020 to read as follows:

Subpart E—Requests Initiated by the Postal Service to Make Material Changes or Minor Corrections to the Mail Classification Schedule

Sec.
3020.80 Material changes to product descriptions.
3020.81 Supporting justification for changes to product descriptions.
3020.82 Docket and notice.
3020.83 Commission review.
3020.84–3020.89 [Reserved]
3020.90 Minor corrections to product descriptions.
3020.91 Docket and notice.
3020.92 Commission Review.

Subpart E—Requests Initiated by the Postal Service To Make Material Changes or Minor Corrections to the Mail Classification Schedule

§ 3020.80 Material changes to product descriptions.

(a) Whenever the Postal Service proposes material changes to a product description in the Mail Classification Schedule, no later than 30 days prior to implementing the proposed changes, it shall submit to the Commission a request to change the product description in the Mail Classification Schedule.

(b) The request shall:

(1) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format; and

(2) Provide all supporting justification for the changes upon which the Postal Service proposes to rely.

§ 3020.81 Supporting justification for changes to product descriptions.

(a) Supporting justification for changes to a product description in the Mail Classification Schedule shall include a description of, and rationale for, the proposed changes to the product

description; and the additional material in paragraphs (b) and (c) of this section.

(b)(1) As to market dominant products, explain why the changes are not inconsistent with each requirement of 39 U.S.C. 3622(d) and part 3010 of this chapter; or

(2) As to competitive products, explain why the changes will not result in the violation of any of the standards of 39 U.S.C. 3633 and part 3015 of this chapter.

(c) Describe the impact that the changes will have on users of the product and on competitors.

§ 3020.82 Docket and notice.

(a) The Commission shall take the actions identified in paragraphs (b) through (e) of this section.

(b) Establish a docket for each request to change a product description in the Mail Classification Schedule;

(c) Publish notice of the request on its Web site;

(d) Designate an officer of the Commission to represent the interests of the general public in the docket; and

(e) Provide interested persons with an opportunity to comment on whether the proposed changes are consistent with title 39 and applicable Commission regulations.

§ 3020.83 Commission review.

(a) The Commission shall review the request and any comments filed. The Commission shall take one of the actions identified in paragraphs (b) through (g) of this section.

(b) Approve the proposed changes, subject to editorial corrections;

(c) Reject the proposed changes;

(d) Provide the Postal Service with an opportunity to amend the proposed changes;

(e) Direct the Postal Service to make an appropriate filing under a different subpart;

(f) Institute further proceedings; or

(g) Direct other action that the Commission considers appropriate.

§§ 3020.84–3020.89 [Reserved]

§ 3020.90 Minor corrections to product descriptions.

(a) The Postal Service shall ensure that product descriptions in the Mail Classification Schedule accurately represent the current offerings of the Postal Service.

(b) The Postal Service shall submit minor corrections to product descriptions in the Mail Classification Schedule by filing notice with the Commission no later than 15 days prior to the effective date of the proposed corrections.

(c) The notice shall:

(1) Explain why the proposed corrections do not constitute material changes to the product description for purposes of § 3020.80;

(2) Explain why the proposed corrections are consistent with any applicable provisions of title 39; and

(3) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed corrections therein in legislative format.

§ 3020.91 Docket and notice.

(a) The Commission shall take the actions identified in paragraphs (b) through (e) of this section.

(b) Establish a docket for each proposal to correct a product description in the Mail Classification Schedule;

(c) Publish notice of the proposal on its Web site;

(d) Designate an officer of the Commission to represent the interests of the general public in the docket; and

(e) Provide interested persons with an opportunity to comment on whether the proposed corrections are consistent with title 39 and applicable Commission regulations.

§ 3020.92 Commission Review.

(a) The Commission shall review the notice and any comments filed. The Commission shall take one of the actions identified in paragraphs (b) through (g) of this section.

(b) Approve the proposed corrections, subject to editorial corrections;

(c) Reject the proposed corrections;

(d) Provide the Postal Service with an opportunity to amend the proposed corrections;

(e) Direct the Postal Service to make an appropriate filing under a different subpart;

(f) Institute further proceedings; or

(g) Direct other action that the Commission considers appropriate.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2014–27589 Filed 11–21–14; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2010–1071; FRL–9919–37–Region 10]

Approval and Promulgation of Implementation Plans; State of Washington; Regional Haze State Implementation Plan; Federal Implementation Plan for Best Available Retrofit Technology for Alcoa Intalco Operations, Tesoro Refining and Marketing, and Alcoa Wenatchee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 11, 2014, the Environmental Protection Agency (EPA) published a final rule in the **Federal Register** concerning, in part, promulgation of a Federal Implementation Plan (FIP) provision for regional haze in the State of Washington. This action identifies and corrects an error in that action by adding the factor to convert from tons of sulfur dioxide (SO_2) to pounds of SO_2 that was inadvertently left out of the amendatory instructions for the FIP for the Alcoa Wenatchee Works.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–1071, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- Email: *body.steve@epa.gov*
- Mail: Steve Body, U.S. EPA Region 10, Office of Air, Waste and Toxics, AWT–150, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101
- Hand Delivery/Courier: U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Steve Body, Office of Air, Waste and Toxics, AWT–150. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Steve Body at telephone number: (206) 553–0782, email address: *body.steve@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. The EPA is correcting an error made in a final rule (79 FR 33438, June 11, 2014) by adding the conversion factor from tons to pounds of SO_2 to 40 CFR 52.2502(b)(1)(i). The EPA is making this correction without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the action is set forth in the preamble to the direct final rule. If the EPA receives no adverse comments, the EPA will not take further action on this proposed rule.

If the EPA receives adverse comments, the EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: October 27, 2014.

Michelle Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2014–27501 Filed 11–21–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0698; FRL–9919–64–Region 4]

Approval and Promulgation of Implementation Plans; Mississippi; Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve in part and disapprove in part, the May 29, 2012, and July 26, 2012, State Implementation Plan (SIP) submissions, provided by the Mississippi Department of Environmental Quality (MDEQ) for inclusion into the Mississippi SIP. This proposal pertains to the Clean Air Act (CAA or the Act) infrastructure requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. MDEQ certified that the Mississippi SIP contains provisions that ensure the 2008 8-hour ozone NAAQS is implemented, enforced, and maintained in Mississippi (hereafter referred to as an ''infrastructure SIP submissions''). With the exception of provisions pertaining to prevention of significant deterioration (PSD) permitting, interstate transport, visibility protection requirements and the state board majority requirements respecting significant portion of income, EPA is proposing to determine that Mississippi's infrastructure SIP submissions, provided to EPA on May 29, 2012, and July 26, 2012, address the required infrastructure elements for the 2008 8-hour ozone NAAQS.

DATES: Written comments must be received on or before December 24, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0698, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. Email: *R4-RDS@epa.gov.*
3. Fax: (404) 562–9019.
4. Mail: ''EPA–R04–OAR–2012–0698,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. Hand Delivery or Courier: Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

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FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics

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I. Background and Overview

On March 27, 2008, EPA promulgated a revised NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour ozone NAAQS to 0.075 parts per million. *See* 77 FR 16436. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2008 8-hour ozone NAAQS to EPA no later than March 2011.[1]

Today's action is proposing to approve Mississippi's infrastructure SIP submissions for the applicable requirements of the 2008 8-hour ozone NAAQS, with the exception of the PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), the state board majority requirements respecting significant portion of income of section 110(a)(2)(E)(ii), and the visibility requirements of section 110(a)(2)(J). With respect to Mississippi's infrastructure SIP submissions related to the provisions pertaining to the PSD permitting requirements for major sources of sections 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II), and the visibility requirements of 110(a)(2)(J), EPA is not proposing any action today regarding these requirements. EPA will act on these portions of the submissions in a separate action. With respect to Mississippi's infrastructure SIP submissions related to the majority requirements respecting significant portion of income of 110(a)(2)(E)(ii), EPA is proposing to disapprove this portion of Mississippi's submissions in today's rulemaking. For the aspects of Mississippi's submittals proposed for approval today, EPA notes that the Agency is not approving any specific rule, but rather proposing that Mississippi's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2008 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 8-hour ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The general requirements that are the subject of EPA's infrastructure SIP rulemakings are summarized below and in EPA's September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).''[2]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[3]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[4]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data

[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term ''Air Pollution Control (APC)'' or ''Section APC–S–X'' indicates that the cited regulation has been approved into Mississippi's federally-approved SIP. The term ''Mississippi Code'' indicates cited Mississippi state statutes, which are not a part of the SIP unless otherwise indicated. Additionally, since the time of Mississippi's infrastructure SIP submissions for the 2008 8-hour NAAQS, the state's implementation plan and statutes and have been recodified. In its original infrastructure SIP submission, MDEQ refers to *Mississippi Code Title 49* as ''Appendix A–8.'' However, Mississippi supplemented its original infrastructure SIP submission following this recodification, and as such, updated the Mississippi Code reference to ''Appendix A–9'' to reflect the most current codification. Accordingly, EPA utilizes the ''Appendix A–9'' reference throughout today's rulemaking.

[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[3] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[4] As mentioned above, this element is not relevant to today's proposed rulemaking.

- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submissions from Mississippi that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 8-hour ozone NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[5] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[6] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[7] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[8] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[9]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state

[5] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[6] *See, e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[8] *See, e.g.,* ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[9] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[10]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[11] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[12] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[13] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, among other things, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[12] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[13] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[14] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[17]

IV. What is EPA's analysis of how Mississippi addressed the elements of sections 110(a)(1) and (2) ''infrastructure'' provisions?

Mississippi's infrastructure SIP submissions address the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission limits and other control measures:* Mississippi's infrastructure SIP submissions provide an overview of the provisions of the Mississippi Air Pollution Control (APC) regulations relevant to air quality control. Sections APC–S–1—*Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants,* and APC–S–3—*Regulations for the Prevention of Air Pollution Emergency Episodes,* and *Mississippi Code Title 49,* Section 49–17–17(h) (Appendix A–9),[18] authorize MDEQ to adopt, modify, or repeal ambient air quality standards and emissions standards for the control of air pollution, including those necessary to obtain EPA approval under section 110 of the CAA. EPA has made the preliminary determination that the provisions contained in these regulations and Mississippi's practices

[14] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[15] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

[16] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] *See, e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See, e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

[18] *Mississippi Code Title 49* is referenced in the State's infrastructure SIP submissions as ''Appendix A–9.'' As discussed above, unless otherwise indicated herein, portions of the Mississippi Code referenced in this proposal are not incorporated into the SIP.

are adequate to protect the 2008 8-hour ozone NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency plans to address such state regulations in a separate action.[19] In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B): *Ambient air quality monitoring/data system:* SIPs are required to provide for the establishment and operation of ambient air quality monitors, the compilation and analysis of ambient air quality data, and the submission of these data to EPA upon request. Section APC–S–1—*Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants* and *Mississippi Code Title 49,* Section 49–17–17(g), provide MDEQ with the authority to collect and disseminate information relating to air quality and pollution and the prevention, control, supervision, and abatement thereof. Annually, States develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[20] On June 26, 2013, Mississippi submitted its monitoring network plan to EPA, which was approved by EPA on November 22, 2013. Mississippi's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0698. EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for the ambient air quality monitoring and data system requirements related to the 2008 8-hour ozone NAAQS.

3. 110(a)(2)(C): *Program for enforcement of control measures including review of proposed new sources:* In this action, EPA is proposing to approve Mississippi's infrastructure SIP submissions for the 2008 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates new and modified sources of emissions that contribute to ozone concentrations and the enforcement of oxides of nitrogen (NO_X) and volatile organic compounds (VOCs) emission limits to assist in the protection of air quality in nonattainment, attainment or unclassifiable areas. To meet this obligation, Mississippi cited Sections APC–S–5, *Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality* and APC–S–2, *Permit Regulation for the Construction and/or Operation of Air Emissions Equipment,* both of which pertain to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as nonattainment, attainment or unclassifiable.

Enforcement: MDEQ's above-described, SIP-approved regulations provide for enforcement of VOC and NO_X emission limits and control measures and construction permitting for new or modified stationary sources.

Preconstruction PSD Permitting for Major Sources: With respect to Mississippi's infrastructure SIP submissions related to the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), EPA is not proposing any action today regarding these requirements and instead will act on this portion of the submissions in a separate action.

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source pre-construction program that regulates emissions of the 2008 8-hour ozone NAAQS. Mississippi has a SIP-approved minor NSR permitting program at APC–S–2, I. D—*Permitting Requirements* that regulates the preconstruction permitting of modifications and construction of minor stationary sources.

EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for enforcement of control measures and regulation of minor sources and modifications related to the 2008 8-hour ozone NAAQS.

4. 110(a)(2)(D)(i)(I) and (II): *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components; 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(II). Each of these components have two subparts resulting in four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1''), and interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4''). With respect to Mississippi's infrastructure SIP submissions related to the interstate transport requirements of section 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II) (prongs 1 through 4), EPA is not proposing any action today regarding these requirements and instead will act on these portions of the submissions in a separate action.

5. 110(a)(2)(D)(ii): *Interstate Pollution Abatement and International Air Pollution:* Section APC–S–2—*Permit Regulations For The Construction and/or Operation of Air Emissions Equipment,* provides how MDEQ will notify neighboring states of potential impacts from new or modified sources consistent with the requirements of 40 CFR 51.166. Mississippi does not have any pending obligation under section 115 and 126 of the CAA. EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2008 8-hour ozone NAAQS.

[19] On February 22, 2013, EPA published a proposed action in the **Federal Register** entitled, ''State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Proposed Rule.'' 78 FR 12459.

[20] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

6. 110(a)(2)(E): *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Mississippi's SIP as meeting the requirements of sections 110(a)(2)(E)(i) and (iii). EPA is proposing to approve in part and disapprove in part Mississippi's SIP respecting section 110(a)(2)(E)(ii). EPA's rationale for today's proposals respecting each section of 110(a)(2)(E) is described in turn below.

To satisfy the requirements of sections 110(a)(2)(E)(i) and (iii), Mississippi provides that MDEQ is responsible for promulgating rules and regulations for the NAAQS, emissions standards general policies, a system of permits, fee schedules for the review of plans, and other planning needs as found in *Mississippi Code Title 49,* Section 49–17–17(d) and Section 49–17–17(h) (Appendix A–9). As evidence of the adequacy of MDEQ's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Mississippi on March 28, 2014, outlining 105 grant commitments and the current status of these commitments for fiscal year 2013. The letter EPA submitted to Mississippi can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0698. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Mississippi satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2013, therefore Mississippi's grants were finalized and closed out. EPA has made the preliminary determination that Mississippi has adequate resources for implementation of the 2008 8-hour ozone NAAQS.

To meet the requirements of section 110(a)(2)(E)(ii), states must comply with the requirements respecting state boards pursuant to section 128 of the Act. Section 128 of the CAA requires that states include provisions in their SIP to address conflicts of interest for state boards or bodies that oversee CAA permits and enforcement orders and disclosure of conflict of interest requirements. Specifically, CAA section 128(a)(1) necessitates that each SIP shall require that at least a majority of any board or body which approves permits or enforcement orders shall be subject to the described public interest service and income restrictions therein. Subsection 128(a)(2) requires that the members of any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements.

To meet its section 110(a)(2)(E)(ii) obligations for the 2008 Ozone NAAQS, Mississippi's infrastructure SIP submissions cite the State's revision to its SIP to meet the requirements of CAA section 128 for the 1997 and 2006 $PM_{2.5}$ NAAQS, which was submitted to EPA on October 11, 2012.[21] Based upon the review of the laws and provisions as contained in MDEQ's October 11, 2012, SIP revision, which have since been incorporated into the SIP, EPA is proposing to approve the section 110(a)(2)(E)(ii) portions of the infrastructure SIP submission as it relates to the public interest requirements of section 128(a)(1) and the conflict of interest disclosure provisions of section 128(a)(2). EPA is also proposing to disapprove the section 110(a)(2)(E)(ii) portion of the infrastructure SIP submission as it pertains to compliance with the significant portion of income requirement of section 128(a)(1) for the 2008 8-hour ozone NAAQS.[22]

With respect to the public interest requirement of section 128(a)(1) and the adequate disclosure of conflicts of interest requirement of section 128(a)(2), EPA has previously found these requirements to be satisfied by the existing provisions in Mississippi's SIP. *See* 78 FR 20793.

With respect to the significant portion of income requirement of section 128(a)(1), the provisions included in the October 11, 2012 infrastructure SIP submission did not preclude at least a majority of the members of the Mississippi Board from receiving a significant portion of their income from persons subject to permits or enforcement orders issued by the Mississippi Boards. While the submitted laws and provisions preclude members of the Mississippi Boards from certain types of income (*e.g.,* contracts with State or political subdivisions thereof, or income obtained through the use of his or her public office or obtained to influence a decision of the Mississippi Boards), they do not preclude a majority of members of the Mississippi Boards from deriving any significant portion of their income from persons subject to permits or enforcement orders so long as that income is not derived from one of the proscribed methods described in the laws and provisions submitted by the State. Because a majority of board members may still derive a significant portion of income from persons subject to permits or enforcement orders issued by the Mississippi Boards, the Mississippi SIP does not meet the section 128(a)(1) majority requirements respecting significant portion of income, and as such, EPA is today proposing to disapprove the State's 110(a)(2)(E)(ii) submission as it relates only to this portion of section 128(a)(1).

Accordingly, EPA is proposing to approve the section 110(a)(2)(E)(ii) submission as it relates to the public interest requirements of section 128(a)(1) and the conflict of interest disclosure provisions of section 128(a)(2) and proposing to disapprove Mississippi's section 110(a)(2)(E)(ii) submission as it pertains to compliance with the significant portion of income requirement of section 128(a)(1) for the 2008 8-hour ozone NAAQS.

7. 110(a)(2)(F): *Stationary source monitoring system:* Section APC–S–2—*Permit Regulations for the Construction and/or Operation of Air Emissions Equipment,* establishes requirements for emissions compliance testing utilizing emissions sampling and analysis. It further describes how the State ensures the quality of its data through observing emissions and monitoring operations. MDEQ uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. *Mississippi Code 49,* Section 49–17–21 (Appendix A–9) provides MDEQ with the authority to require the maintenance of records related to the operation of air contaminant sources and any authorized representative of the Commission may examine and copy any such records or memoranda pertaining to the operation

[21] Mississippi's October 11, 2012, infrastructure SIP submission only addressed compliance with 110(a)(2)(E)(ii) respecting CAA section 128 requirements. On May 8, 2014, Mississippi clarified to EPA that the provisions submitted in the October 11, 2012, SIP submission to comply with 110(a)(2)(E)(ii) for the $PM_{2.5}$ NAAQS infrastructure SIP were also intended to cover the 2008 Lead and 2008 8-hour ozone NAAQS infrastructure SIP.

[22] EPA took similar action with respect to Mississippi's section 110(a)(2)(E)(ii) submission for the 1997 and 2006 $PM_{2.5}$ NAAQS.

of such contaminant source. Section APC–S–2 lists requirements for compliance testing and reporting that is required to be included in any MDEQ air pollution permit and requires that copies of records relating to the operation of air contamination sources be submitted to the Permit Board as required by the permit or upon request. State-approved regulation Section APC–S–1—*Air Emission Regulations For The Prevention, Abatement, and Control of Air Contaminants,* authorizes source owners or operators to use any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certifications. Accordingly, EPA is unaware of any provision preventing the use of credible evidence in the Mississippi SIP.

Additionally, Mississippi is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System (EIS). States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and VOCs. Many states also voluntarily report emissions of hazardous air pollutants. Mississippi made its latest update to the 2012 NEI on January 9, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for the stationary source monitoring systems related to the 2008 8-hour ozone NAAQS.

8. 110(a)(2)(G): *Emergency powers:* This section of the CAA requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. *Mississippi Code Title 49* (Appendix A–9) and Section APC–S–3—*Mississippi Regulations for the Prevention of Air Pollution Emergency Episodes,* identify air pollution emergency episodes and preplanned abatement strategies. Specifically, *Mississippi Code Title 49,* Section 49–17–27 (Appendix A–9), states that in the event an emergency is found to exist by the Mississippi Commission on Environmental Quality, it may issue an emergency order as circumstances may require. Section APC–S–3 authorizes the MDEQ Director, once it has been determined that an Air Pollution Emergency Episode condition exists at one or more monitoring sites solely because of emissions from a limited number of sources, to order source(s) to put into effect the emission control programs which are applicable for each episode stage. Section APC–S–3 also lists regulations to prevent the excessive buildup of air pollutants during air pollution episodes. EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for emergency powers related to the 2008 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submissions with respect to section 110(a)(2)(G).

9. 110(a)(2)(H): *SIP revisions:* MDEQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Mississippi. *Mississippi Code Title 49,* Section 49–17–17(h) (Appendix A–9), provides MDEQ with the statutory authority to adopt, modify or repeal and promulgate ambient air and water quality standards and emissions standards for the State. As such, the State has the authority to revise the SIP to accommodate changes to NAAQS and revise the SIP if the EPA Administrator finds the plan to be substantially inadequate to attain the NAAQS. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2008 8-hour ozone NAAQS when necessary.

10. 110(a)(2)(J): *Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve Mississippi's infrastructure SIP submissions for the 2008 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, and the public notification requirements of section 127. With respect to Mississippi's infrastructure SIP submissions related to the preconstruction PSD permitting and visibility protection requirements, EPA is not proposing any action today regarding these requirements and instead will act on these portions of the submissions in a separate action. EPA's rationale for applicable consultation requirements of section 121 and the public notification requirements of section 127 is described below.

Consultation with government officials (121 consultation): This requirement is met through Section APC–S–5—*Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality* and *Mississippi Code Title 49,* Section 49–17–17(c) (Appendix A–9), along with the State's various implementations plans, such as the State's Regional Haze Implementation Plan, provide for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers whose jurisdictions might be affected by SIP development activities. Mississippi adopted state-wide consultation procedures for the implementation of transportation conformity. These consultation procedures were developed in coordination with the transportation partners in the State and are consistent with the approaches used for development of mobile inventories for SIPs. Implementation of transportation conformity as outlined in the consultation procedures requires MDEQ to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate that the State meets applicable requirements related to consultation with government officials for the 2008 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submissions with respect to section 110(a)(2)(J) consultation with government officials.

Public notification: These requirements are met through regulation APC–S–3—*Mississippi Regulations for the Prevention of Air Pollution Emergency Episodes,* which requires that MDEQ notify the public of any air pollution alert, warning, or emergency. The MDEQ Web site also provides air quality summary data, air quality index reports and links to more information regarding public awareness of measures that can prevent such exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality. EPA has

made the preliminary determination that Mississippi's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2008 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submissions with respect to section 110(a)(2)(J) public notification.

11. 110(a)(2)(K): *Air Quality Modeling and Submission of Modeling Data:* Sections APC–S–2, V. B.—*Permit Regulation for the Construction and/or Operation of Air Emissions Equipment,* and APC–S–5—*Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality,* specify that required air modeling be conducted in accordance with 40 CFR part 51, Appendix W ''Guideline on Air Quality Models,'' as incorporated into the Mississippi SIP. These standards demonstrate that Mississippi has the authority to perform air quality monitoring and provide relevant data for the purpose of predicting the effect on ambient air quality of the 2008 8-hour ozone NAAQS. Additionally, Mississippi supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2008 8-hour ozone NAAQS, for the southeastern states. Taken as a whole, Mississippi's air quality regulations and practices demonstrate that MDEQ has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2008 8-hour ozone NAAQS. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2008 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submissions with respect to section 110(a)(2)(K).

12. 110(a)(2)(L): *Permitting fees:* This element necessitates that the SIP require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Mississippi's *Mississippi Code Title* 49, Section 49–2–9(c) (Appendix A–9), authorizes MDEQ to apply for, receive, and expend Federal or state funds in order to operate its air programs. Mississippi SIP *Mississippi Code Title* 49, Section 49–17–30 (Appendix A–9), provides for the assessment of title V permit fees to cover the reasonable cost of reviewing and acting upon air permitting activities in the state including title V, PSD and NNSR permits. *Mississippi Code Title 49,* Section 49–17–14 (Appendix A–9), allows MDEQ to expend or utilize monies in the Mississippi Air Operating Permit Program Fee Trust Fund to pay all reasonable direct and indirect costs associated with the development and administration of the title V program and the PSD and NNSR permitting programs. The Mississippi Air Operating Permit Program Fee Trust Fund consists of state legislative appropriations, Federal grant funds and title V fees. Additionally, Mississippi has a federally-approved title V operating permit program at Section APC–S–6 [23] that covers the implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Mississippi adequately provide for permitting fees related to the 2008 8-hour NAAQS when necessary.

13. 110(a)(2)(M): *Consultation and Participation by Affected Local Entities: Mississippi Code Title 49,* Sections 49–17–17(c) 49–17–19(b) (Appendix A–9) requires that MDEQ notify the public of an application, preliminary determination, the activity or activities involved in the permit action, any emissions change associated with any permit modification, and the opportunity for comment prior to making a final permitting decision. Additionally, MDEQ works closely with local political subdivisions during the development of its Transportation Conformity SIP and Regional Haze SIP. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate consultation with affected local entities related to the 2008 8-hour ozone NAAQS when necessary.

V. Proposed Action

With the exception of the PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), the state board majority requirements respecting the significant portion of income of section 110(a)(2)(E)(ii), and the visibility requirements of section 110(a)(2)(J), EPA is proposing to approve that MDEQ's infrastructure SIP submissions, submitted May 29, 2012, and July 26, 2012, for the 2008 8-hour ozone NAAQS have met the above described infrastructure SIP requirements. EPA is proposing to disapprove in part section 110(a)(2)(E)(ii) of Mississippi's infrastructure submissions because a majority of board members may still derive a significant portion of income from persons subject to permits or enforcement orders issued by the Mississippi Boards, therefore, its current SIP does not meet the section 128(a)(1) majority requirements respecting significant portion of income. This proposed approval in part and disapproval in part, however, does not include the PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), and the visibility requirements of section 110(a)(2)(J) and will be addressed by EPA in a separate action.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a CAA Part D Plan or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP call) starts a sanctions clock. The portion of section 110(a)(2)(E)(ii) provisions (the provisions being proposed for disapproval in today's notice) were not submitted to meet requirements for Part D or a SIP call, and therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered. However, if this disapproval action is finalized, that final action will trigger the requirement under section 110(c) that EPA promulgate a federal implementation plan (FIP) no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and EPA approves the plan or plan revision before EPA promulgates such FIP.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions,

[23] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: November 3, 2014.

V. Anne Heard,

Acting Regional Administrator, Region 4.

[FR Doc. 2014–27808 Filed 11–21–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0258; FRL–9919–50–Region 9]

Approval and Promulgation of State Implementation Plans; Arizona; Infrastructure Requirements for the 2008 Lead (Pb) and the 2008 8-Hour Ozone National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Arizona to address the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 Lead (Pb) and 2008 ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each State adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA. We refer to such SIP revisions as ''infrastructure'' SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS including, but not limited to, legal authority, regulatory structure, resources, permit programs, monitoring, and modeling necessary to assure attainment and maintenance of the standards. In addition, we are proposing to approve several state provisions addressing CAA conflict of interest and monitoring requirements into the Arizona SIP. We are taking comments on this proposal and plan to follow with a final action.

DATES: Written comments must be received on or before December 24, 2014.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R09–OAR–2014–0258, by one of the following methods:

1. *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email:* Jeffrey Buss at *buss.jeffrey@epa.gov.*

3. *Fax:* Jeffrey Buss, Air Planning Office (AIR–2), at fax number 415–947–3579.

4. *Mail:* Jeffrey Buss, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105.

5. *Hand or Courier Delivery:* Jeffrey Buss, Air Planning Section (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105. Such deliveries are only accepted during the Regional Office's normal hours of operation. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR–2014–0258. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected from disclosure. The *www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly

available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection during normal business hours.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (415) 947–4152, email: *buss.jeffrey@epa.gov.*

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

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V. Statutory and Executive Order Reviews

I. EPA's Approach to the Review of Infrastructure SIP Submittals

EPA is acting upon several SIP submittals from Arizona that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone and 2008 Pb NAAQS. The requirement for states to make a SIP submittal of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submittals ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submittals are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submittals, and the requirement to make the submittals is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submittal must address.

EPA has historically referred to these SIP submittals made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submittals. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submittal from submittals that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment SIP'' submittals to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submittals required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NSR) permit program submittals to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submittals, and section 110(a)(2) provides more details concerning the required contents of these submittals. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[1] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submittals provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submittal.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submittals for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submittal must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[2] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submittals to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submittal of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[3] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submittal.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submittal, and whether EPA must act upon such SIP submittal in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submittals separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submittals to meet the infrastructure SIP requirements, EPA can elect to act on such submittals either individually or in a larger combined action.[4] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submittal for a given NAAQS without concurrent action on the entire submittal. For example, EPA has sometimes elected to act at different times on various elements and sub-

[1] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[2] *See, e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162, at 25163–25165, May 12, 2005 (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[3] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submittal of certain types of SIP submittals in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submittal of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[4] *See, e.g.,* ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339, January 22, 2013 (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' 78 FR 4337, January 22, 2013 (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

elements of the same infrastructure SIP submittal.[5]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submittal requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submittals for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submittal for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submittal to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[6]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submittals required under the CAA. Therefore, as with infrastructure SIP submittals, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submittals. For example, section 172(c)(7) requires that attainment plan SIP submittals required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submittals must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submittals required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the air quality prevention of significant deterioration (PSD) program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submittal may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submittal. In other words, EPA assumes that Congress could not have intended that each and every SIP submittal, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submittals against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submittals for particular elements.[7] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Infrastructure SIP Guidance).[8] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submittals to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submittals.[9] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submittals need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submittal for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submittals. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submittals to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Infrastructure SIP Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submittals because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submittals with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C, title I of the Act and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and regulated NSR pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40

[5] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[6] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[7] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submittals. The CAA directly applies to states and requires the submittal of infrastructure SIP submittals, regardless of whether or not EPA provides guidance or regulations pertaining to such submittals. EPA elects to issue such guidance in order to assist states, as appropriate.

[8] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[9] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submittals to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

Code of Federal Regulations (CFR) 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submittal focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has a SIP-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submittal, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submittal is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186, December 31, 2002, as amended by 72 FR 32526, June 13, 2007 (''NSR Reform''). Thus, EPA believes it may approve an infrastructure SIP submittal without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submittal even if it is aware of such existing provisions.[10] It is important to note that EPA's approval of a state's infrastructure SIP submittal should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submittals is to identify the CAA requirements that are logically applicable to that submittal. EPA believes that this approach to the review of a particular infrastructure SIP submittal is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submittal. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Infrastructure SIP Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submittal for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[11] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submittals.[12] Significantly, EPA's determination that an action on a state's infrastructure SIP submittal is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submittal, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[13]

II. Background

A. Statutory Framework

As discussed in section I of this proposed rule, CAA section 110(a)(1) requires each state to submit to EPA, within three years after the promulgation of a primary or secondary NAAQS or any revision thereof, an infrastructure SIP revision that provides

[10] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submittal that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[11] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 76 FR 21639, April 18, 2011.

[12] EPA has used this authority to correct errors in past actions on SIP submittals related to PSD programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536, December 30, 2010. EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664, July 25, 1996 and 62 FR 34641, June 27, 1997 (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051, November 3, 2009 (corrections to Arizona and Nevada SIPs).

[13] See, *e.g.,* EPA's disapproval of a SIP submittal from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344, July 21, 2010 (proposed disapproval of director's discretion provisions); 76 FR 4540, January 26, 2011 (final disapproval of such provisions).

for the implementation, maintenance, and enforcement of such NAAQS. Section 110(a)(2) sets the content requirements of such a plan, which generally relate to the information and authorities, compliance assurances, procedural requirements, and control measures that constitute the ''infrastructure'' of a state's air quality management program. These infrastructure SIP elements required by section 110(a)(2) are as follows:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.
- Section 110(a)(2)(D)(ii): Interstate and international pollution abatement.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, PSD, and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submittal of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: (i) Section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment NSR), and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I).

B. Regulatory History

2008 Pb NAAQS

On November 12, 2008, the U.S. Environmental Protection Agency (EPA) issued a revised NAAQS for Pb.[14] This action triggered a requirement for states to submit an infrastructure SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the revised NAAQS. On October 14, 2011, EPA issued ''Guidance on Section 110 Infrastructure SIPs for the 2008 Pb NAAQS'', referred to herein as EPA's 2011 Pb Guidance.[15] Depending on the timing of a given submittal, some states relied on the earlier draft version of this guidance, referred to herein as EPA's 2011 Draft Pb Guidance.[16] EPA issued additional guidance on infrastructure SIPs on September 13, 2013.[17]

2008 Ozone NAAQS

On March 27, 2008, EPA issued a revised NAAQS for 8-hour Ozone.[18] This action triggered a requirement for states to submit an infrastructure SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the revised NAAQS. EPA did not, however, prepare guidance at this time for states in submitting I–SIP revisions for the 2008 Ozone NAAQS.[19] On September 13, 2013, EPA issued ''Guidance of Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' which provides advice on the development of infrastructure SIPs for the 2008 ozone NAAQS (among other pollutants) as well as infrastructure SIPs for new or revised NAAQS promulgated in the future.[20]

III. The State's Submittals

The Arizona Department of Environmental Quality (ADEQ) has submitted several infrastructure SIP revisions pursuant to EPA's promulgation of the NAAQS addressed by this proposed rule, including the following:

- October 14, 2011—''Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(2) and (2); 2008 Lead NAAQS,'' to address all of the CAA section 110(a)(2) requirements, except for section 110(a)(2)(G)[21] for the 2008 Pb NAAQS (2011 Pb I–SIP Submittal).
- December 27, 2012—''Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(2) and (2); 2008 8-hour Ozone NAAQS,'' to address all of the CAA section 110(a)(2) requirements for the 2008 8-hour Ozone NAAQS (2012 Ozone I–SIP Submittal).
- December 6, 2013—''Submittal of Maricopa County Rule 100 revising the Maricopa County Portion of the Arizona State Implementation Plan for Section 110(a)(2) Infrastructure'' from Eric Massey, Director of ADEQ (2013 Maricopa County Submittal). Maricopa County Rule 100 was submitted to address a deficiency in section 110(a)(2)(E)(ii) of the SIP for Maricopa County concerning conflict of interest requirements for hearing boards.
- December 19, 2013—''Submittal of Pima County Rules revising the Pima County Portion of the Arizona State Implementation Plan for Section 110(a)(2) Infrastructure'' from Eric Massey, Director of ADEQ (2013 Pima County Submittal). This submittal included Pima County Rule 17.04.190 ''Composition,'' adopted September 28, 1993; Pima County Rule 17.12.040 ''Reporting for Compliance Evaluations,'' adopted September 28, 1993; and Pima County Rule 17.24.040 ''Reporting Requirements,'' adopted April 19, 2005 for inclusion into the Arizona SIP. These rules were submitted to address deficiencies in section 110(a)(2)(E)(ii) of the SIP concerning conflict of interest requirements for hearing boards and section 110(a)(2)(F) of the SIP concerning stationary source monitoring and reporting.
- September 4, 2014—''Submittal of Pinal County Rule 1–3–140 Revising the Pinal County Portion of the Arizona State Implementation Plan for Section 110(a)(2) Infrastructure'' from Eric Massey, Director of ADEQ (2014 Pinal

[14] 73 FR 66964 (November 12, 2008). The 1978 Pb standard (1.5 μg/m^3 as a quarterly average) was modified to a rolling 3 month average not to be exceeded of 0.15 μg/m^3. EPA also revised the secondary NAAQS to 0.15 μg/m^3 and made it identical to the revised primary standard. Id.

[15] See Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1–10 (October 14, 2011).

[16] ''DRAFT Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS),'' June 17, 2011 version.

[17] *See* Memorandum dated September 13, 2013 from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to Regional Air Directors, EPA Regions 1–10, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (referred to herein as ''2013 Infrastructure SIP Guidance'').

[18] 73 FR 16436 (March 27, 2008).

[19] Preparation of guidance for the 2008 Ozone NAAQS was postponed given EPA's reconsideration of the standard. See 78 FR 34183 (June 6, 2013).

[20] See Memorandum dated September 13, 2013 from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to Regional Air Directors, EPA Regions 1–10, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (referred to herein as ''2013 Infrastructure SIP Guidance'').

[21] In a separate rulemaking, EPA fully approved Arizona's SIP to address the requirements regarding air pollution emergency episodes in CAA section 110(a)(2)(G) for the 1997 8-hour ozone NAAQS. 77 FR 62452 (October 15, 2012). Although ADEQ did not submit an analysis of Section 110(a)(2)(G) requirements, we discuss them in our TSD, which is in the docket for this rulemaking.

County Submittal). This submittal included Pinal County Rule 1–3–140 ''Definitions,'' adopted July 23, 2014 for inclusion into the Arizona SIP. Pinal County Rule 1–3–140 was submitted to address a deficiency in section 110(a)(2)(E)(ii) of the SIP for Pinal County concerning conflict of interest requirements for hearing boards.

We find that these submittals meet the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102.

In addition to the above infrastructure submittals, on October 29, 2012, ADEQ submitted ''New Source Review State Implementation Plan Submission'' as well as ''Supplemental Information to 2012 New Source Review State Implementation Plan Submission'' on July 2, 2014. In addition to addressing revisions to Arizona's New Source Review (NSR) program, these submissions also relate to I–SIP elements in CAA sections 110(a)(2)(C), (D), (J) and (K), which EPA is not acting on in today's rulemaking. The I–SIP elements in CAA sections 110(a)(2)(C), (D), (J) and (K) will be addressed in a future rulemaking.

IV. EPA's Evaluation and Proposed Action

EPA has evaluated the 2011 Pb I–SIP Submittal, the 2012 Ozone I–SIP Submittal, the 2013 Maricopa County Submittal, the 2013 Pima County Submittal, and the 2014 Pinal County Submittal, as well as the existing provisions of the Arizona SIP for compliance with the CAA section 110(a) requirements for the 2008 Pb and 2008 ozone NAAQS. Our Technical Support Document (TSD) contains more detailed evaluations and is available in the public docket for this rulemaking, which may be accessed online at *http://www.regulations.gov,* docket number EPA–R09–OAR–2014–0258.

Based upon this analysis, EPA proposes to approve the 2011 Pb I–SIP Submittal, the 2012 Ozone I–SIP Submittal, the 2013 Maricopa County Submittal, the 2013 Pima County Submittal and the 2013 Pinal County Submittal with respect to the following infrastructure SIP requirements:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(K): Air quality modeling and submission of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

In addition, we are proposing to approve into the SIP certain regulatory provisions included in the 2013 Pima County and Maricopa County Submittals, and in the 2014 Pinal County Submittal, as discussed in the TSD.[22]

On November 5, 2012, EPA approved in part and disapproved in part State Implementation Plan (SIP) revisions submitted by the state of Arizona pursuant to the requirements of the Clean Air Act (CAA) for the 1997 8-hour ozone NAAQS and the 1997 and 2006 NAAQS for fine particulate matter ($PM_{2.5}$).[23] In today's action, we propose to approve certain portions of the previously disapproved infrastructure SIP action. Specifically, today's proposed action will correct the previous deficiencies with respect to CAA section 110(a)(2)(E)(ii) for Maricopa, Pima, and Pinal Counties and section 110(a)(2)(F) for Pima County. If finalized before the end of the two-year FIP deadline established by our 2012 action on Arizona's I–SIP for the 1997 8-hour ozone NAAQS and 1997 and 2006 $PM_{2.5}$ NAAQS, approval of these infrastructure SIP elements would relieve EPA of the obligation to promulgate a FIP, as required under CAA Section 110(c)(1).

We are not proposing to act today on those elements of the infrastructure SIP that address the requirements of sections 110(a)(2)(C), (D), (J) and (K) of the Act. On October 29, 2012, ADEQ submitted ''New Source Review State Implementation Plan Submission'' and on July 2, 2014 submitted ''Supplemental Information to 2012 New Source Review State Implementation Plan Submission''. These submissions address the permitting portions of I–SIP elements in CAA sections 110(a)(2)(C), (D), (J) and (K) and will be addressed in a subsequent rulemaking.

Section 110(l) of the Act prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act. All of the elements of the infrastructure SIP that we are proposing to approve, as explained in the TSD, would improve the SIP by replacing obsolete statutes or regulations and by updating the state and local agencies' SIP implementation and enforcement authorities. We propose to determine that our approval of the elements discussed above would comply with CAA section 110(l) because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for RFP and attainment of the NAAQS are met, and the SIP revision clarifies and updates the SIP. Our TSD contains a more detailed discussion of our evaluation.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National

[22] Copies of these Arizona county regulations are included in the 2013 Pima County and Maricopa County Submittals, and 2014 Pinal County Submittal, which are available in the docket for this action and online at *http://regulations.gov,* docket number EPA–R09–OAR–2014–0258.

[23] 77 FR 66398 (November 5, 2012).

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Lead, Reporting and recordkeeping requirements.

Dated: September 30, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2014–27752 Filed 11–21–14; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 800

RIN 3206–AN12

Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a proposed rule to implement modifications to the Multi-State Plan (MSP) Program based on the experience of the Program to date. OPM established the MSP Program pursuant to section 1334 of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, referred to collectively as the Affordable Care Act. This proposed rule clarifies the approach used to enforce the applicable requirements of the Affordable Care Act with respect to health insurance issuers that contract with OPM to offer MSP options. This proposed rule amends MSP standards related to coverage area, benefits, and certain contracting provisions under section 1334 of the Affordable Care Act. This document also makes non-substantive technical changes.

DATES: Comments are due on or before December 24, 2014.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 3206–AN12 using any of the following methods:

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

Mail, Hand Delivery or Courier: National Healthcare Operations, Healthcare and Insurance, U.S. Office of Personnel Management, 1900 E Street NW., Room 3468, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Cameron Stokes by telephone at (202) 606–2128, by FAX at (202) 606–4430, or by email at *mspp@opm.gov.*

SUPPLEMENTARY INFORMATION: The Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), together known as the Affordable Care Act, provides for the establishment of Affordable Insurance Exchanges, or ''Exchanges'' (also called Health Insurance Marketplaces, or ''Marketplaces''), where individuals and small businesses can purchase qualified coverage. The Exchanges provide competitive marketplaces for individuals and small employers to compare available private health insurance options based on price, quality, and other factors. The Exchanges enhance competition in the health insurance market, improve choice of affordable health insurance, and give individuals and small businesses purchasing power comparable to that of large businesses. The Multi-State Plan (MSP) Program was created pursuant to section 1334 of the Affordable Care Act to increase competition by offering high-quality health insurance coverage sold in multiple States on the Exchanges. The U.S. Office of Personnel Management (OPM) is proposing this regulation to modify the standards set forth for the MSP Program under 45 CFR part 800 that was published as final rule on March 11, 2013 (78 FR 15560). This proposed rule will clarify OPM's intent in administering the Program as well as make regulatory changes in order to expand issuer participation and offerings in the Program to meet the goal of increasing competition.

Abbreviations

EHB Essential Health Benefits
FEHBA Federal Employees Health Benefits Act
FEHB Program Federal Employees Health Benefits Program
HHS U.S. Department of Health and Human Services
MSP Multi-State Plan
NAIC National Association of Insurance Commissioners
OPM U.S. Office of Personnel Management
PHS Act Public Health Service Act
QHP Qualified Health Plan
SHOP Small Business Health Options Program

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I. Background

Section 1334 of the Affordable Care Act created the Multi-State Plan (MSP) Program to foster competition in the individual and small group health insurance markets on the Exchanges (also called Health Insurance Exchanges or Marketplaces) based on price, quality, and benefit delivery. The Affordable Care Act directs the U.S. Office of Personnel Management (OPM) to contract with private health insurance issuers to offer at least two MSP options on each of the Exchanges in the States and the District of Columbia.[1] [2] The law

[1] Multi-State Plan option or MSP option means a discrete pairing of a package of benefits with particular cost sharing (which does not include premium rates or premium rate quotes) that is offered under a contract with OPM.

[2] Note that the U.S. Department of Health & Human Services (HHS) determined that State-specific requirements in the ACA do not apply to U.S. territories, and thus territories are not required to establish Exchanges. See Letter to Commissioner Gregory R. Francis, Division of Banking & Insurance, St. Croix, Virgin Islands, from Marilyn Tavenner, Administrator, Centers for Medicare and Medicaid Services, July 16, 2014.

allows MSP issuers to phase in coverage.[3]

In the 2014 plan year, OPM contracted with one group of issuers to offer more than 150 MSP options in 31 States, including the District of Columbia. Approximately 371,000 individuals have enrolled in an MSP option to date. OPM added a second group of issuers for plan year 2015 and the MSP Program will expand into five additional States for a total of 36 States. The Program will offer more than 200 MSP options on the Exchanges during the 2015 plan year to further competition and expand choices available to individuals, families, and small businesses.

A. Affordable Insurance Exchanges

The Affordable Care Act established the Exchanges where individuals and small businesses can purchase qualified coverage. The Exchanges provide competitive marketplaces for individuals and small businesses to compare health insurance coverage based on price, quality, and other factors. The goals of the Exchanges are to enhance competition in the health insurance market, improve choice of affordable health insurance, and provide individuals and small businesses purchasing power comparable to that of large businesses.

The purpose of this proposed rule is to modify the MSP Program final rule published March 11, 2013.[4] Proposed changes to the regulation include clarifications to the process by which OPM administers the MSP Program, pursuant to section 1334 of the Affordable Care Act, and revisions to select sections of the regulation that establish standards and requirements applicable to MSP options and MSP issuers.

B. Objectives of the Multi-State Plan Program

MSP options were among several private health insurance coverage options offered on the Exchanges beginning in 2014. MSP options differ from QHPs in that MSP options are certified by OPM to be offered on an Exchange through the MSP Program application process and signing of a contract with OPM. In administering the MSP Program, OPM focuses on several important objectives:

- To ensure a choice of at least two options for high-quality health insurance coverage on each Exchange;
- To promote competition on the Exchanges to the benefit of all consumers;
- To provide strong, effective contractual oversight of the issuers that offer MSP options; and
- To work cooperatively with States and HHS to ensure a level playing field between QHP issuers and MSP issuers.

Pursuant to section 1334 of the Affordable Care Act, the Director of OPM sets standards for the MSP Program. Under section 1334(b)(2), MSP issuers generally are also required to comply with requirements of State law not inconsistent with requirements in section 1334. OPM accordingly aligns standards for the MSP Program with the standards set for QHPs and QHP issuers by States, HHS, and the Exchanges. In certain unique and specific circumstances, MSP Program standards differ from QHP requirements. OPM will continue to ensure that to the extent that any of the rules governing MSP options and MSP issuers differ from those governing QHPs and QHP issuers, the standards afford the MSP options and MSP issuers neither a competitive advantage nor disadvantage with respect to other plans offered on the Exchange. OPM will continue to administer the MSP Program in a manner that is sensitive to the significant State and Federal interests affected by the MSP Program and informed by input from a broad array of stakeholders. Accordingly, OPM appreciates the ongoing coordination and cooperation with States and HHS in the administration of the MSP Program.

C. Review of OPM's Role in Contracting Under the Federal Employees Health Benefits Program

Enacted in 1959, the Federal Employees Health Benefits Act (FEHBA) established health benefits for Federal employees, annuitants, and their dependents. More than eight million employees, annuitants, and their family members have coverage under the Federal Employees Health Benefits (FEHB) Program. Enrollees can choose fee-for-service plans with preferred providers, local Health Maintenance Organizations, consumer-driven health plans, or high-deductible health plans in the FEHB Program. Among these options are six nationwide plans, each of which offers coverage in all 50 States and the District of Columbia.

For the 2014 and 2015 plan years, OPM negotiated with issuers to participate in the MSP Program. The process was guided by our experience in the FEHB Program, although it differed in certain respects from the FEHB Program process to account for the differences between the large group market, where OPM solely operated prior to the MSP Program, and the individual and small group markets served by the Exchanges.

D. Overview of the MSP Program's Statutory Requirements

Section 1334(a)(1) of the Affordable Care Act requires OPM to ''enter into contracts with health insurance issuers, (which may include a group of health insurance issuers affiliated either by common ownership and control or by the common use of a nationally licensed service mark) . . . to offer at least 2 multi-State qualified health plans through each Exchange in each State.'' [5] The Director has the authority to implement and administer the MSP Program ''in a manner similar to the manner in which the Director implements the contracting provisions with respect to carriers under the Federal Employees Health Benefit Program.'' [6] Further, OPM may enter into these contracts without regard to competitive bidding laws.[7] Each MSP Program contract must be for a term of at least one year, but can be automatically renewable in the absence of a notice of termination from either the MSP issuer or OPM.[8]

The statute grants to OPM the authority to certify MSP options.[9] Any MSP options offered under a contract negotiated with OPM are ''deemed to be certified by an Exchange for purposes of section 1311(d)(4)(A)'' of the Affordable Care Act and would not need to apply separately for certification on each Exchange,[10] as outlined at 45 CFR 155.1010(b)(1). The Director is authorized to withdraw approval of an MSP Program contract after notice and opportunity for a hearing.[11] The Director also has the authority to negotiate with each MSP issuer ''(A) a medical loss ratio; (B) a profit margin; (C) the premiums to be charged; and (D) such other terms and conditions of coverage as are in the interests of enrollees in such plans.'' [12]

MSP issuers are required to be licensed in each State in which they offer an MSP option [13] and be ''subject

[3] Multi-State Plan issuer or MSP issuer means a health insurance issuer or group of issuers that has a contract with OPM to offer MSP options pursuant to section 1334 of the Affordable Care Act.

[4] Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges, 78 FR 15560 (Mar. 11, 2013).

[5] Affordable Care Act section 1334(a)(1).

[6] Affordable Care Act section 1334(a)(4).

[7] Affordable Care Act section 1334(a)(1).

[8] Affordable Care Act section 1334(a)(2).

[9] Affordable Care Act section 1334(d).

[10] *Id.*

[11] Affordable Care Act section 1334(a)(7).

[12] Affordable Care Act section 1334(a)(4).

[13] Affordable Care Act section 1334(b)(2).

to all requirements of State law not inconsistent with this section [1334], including the standards and requirements that a State imposes that do not prevent the application of a requirement of part A of title XXVII of the Public Health Service Act (PHS Act) or a requirement of this title [I of the Affordable Care Act].'' [14] The Affordable Care Act directs that MSP issuers must comply with the minimum standards for FEHB Program carriers under section 8902(e) of title 5 of the United States Code to the extent that the standards do not conflict with provisions of title I of the Affordable Care Act.[15] Congress also authorized OPM to establish additional standards for MSP options that OPM, in consultation with HHS, deems ''appropriate.'' [16]

E. Stakeholder Interaction

To assess the level of interest in the MSP Program, and to ascertain feedback from stakeholders about the program, OPM issued a Request for Information June 16, 2011.[17] OPM received 19 responses representing the views of 39 groups and organizations. Responses came from health insurance issuers (including issuers of dental and vision insurance), employer organizations, labor organizations, consumer groups, patient organizations, and provider associations. On December 5, 2012, OPM published a notice of proposed rulemaking (77 FR 72582) establishing the MSP Program at part 800 of title 45, Code of Federal Regulations. OPM received about 350 comments from a wide variety of entities and individuals. Since publishing the final rule, OPM conducted presentations and met with numerous stakeholders to seek feedback on the implementation of the MSP Program. Stakeholder groups included representatives from the National Association of Insurance Commissioners (NAIC), States, tribal entities, consumer advocacy groups, health insurance issuers, provider associations, and trade groups. OPM also convened groups of individuals—representing the general public as well as consumer advocates—to solicit input on branding and marketing of the MSP Program.

OPM is also in the process of establishing an MSP Program Advisory Board, the purpose of which will be to ''provide recommendations on the activities'' of the MSP Program.[18] A ''significant percentage of the members'' of the MSP Program Advisory Board will be enrollees in an MSP option or representatives of such enrollees.[19] Members of the MSP Program Advisory Board will exchange information, ideas, and recommendations regarding OPM's administration of the MSP Program. OPM values the participation of diverse stakeholders and encourages them to submit comments on this proposed rule.

II. Proposed Regulatory Approach

A. Overview of Regulatory Approach

OPM's approach to the development of this proposed regulation seeks to:

- Support a program that will attract additional issuers and thus, offer a greater selection of MSP options on each Exchange in every State and the District of Columbia.
- Balance State and Federal regulatory interests in a manner that will enable MSP issuers to offer viable plans on the Exchanges.
- Ensure a level playing field such that neither MSP options nor plans offered by non-MSP issuers are advantaged or disadvantaged on the Exchanges.

OPM seeks comment on whether these proposed changes to this regulation satisfy our goals. We are republishing the unchanged sections of the regulation to provide context for the proposed changes as well as to include non-substantive technical corrections.

B. Governing Law

The Affordable Care Act generally requires that the MSP Program be governed by all State and Federal laws that apply to QHPs. The Act, however, grants discretion to the Director to administer the MSP Program in a manner that fulfills OPM's statutory responsibility to ensure that there are at least two issuers offering MSP options on each Exchange in every State and the District of Columbia. OPM recognizes that potential MSP issuers seek administrative simplicity and some uniformity of standards in the MSP Program. Accordingly, in unusual circumstances, it may be necessary for the Director to adopt standards or requirements for the MSP Program that differ from standards and requirements applicable to QHPs under either State or Federal law. This proposed regulation, however, reflects the Director's continued intention for the MSP options and MSP issuers to generally adhere to all State and Federal laws applicable to QHPs and QHP issuers, except to the extent any such laws are inconsistent with section 1334. We propose to continue to implement these regulations in OPM guidance and OPM's contracts with MSP issuers.

III. Provisions of the Proposed Regulation

A. Subpart A—General Provisions and Definitions

Definitions (§ 800.20)

We seek comments on a definition for ''group of issuers'' that was defined in the final rule. We are specifically interested in whether this definition allows for alternative structures, such as decentralized health insurance issuers or organizations, to join together as potential applicants to offer MSP options. Under the definition in the MSP Program final rule, a ''group of issuers,'' for purposes of the MSP Program, may include: (1) A group of health insurance issuers who are affiliated either by common ownership and control or by common use of a nationally licensed service mark (as defined in § 800.20); or (2) an affiliation of health insurance issuers and an entity that is not an issuer but owns a nationally licensed service mark.[20] We are making an editorial correction to this definition under (1) to state that ''health insurance issuers that are affiliated.''

We propose to add the definition for ''Multi-State Plan option,'' which may also be referred to as ''MSP option.'' We propose the definition of ''MSP option'' as a discrete pairing of a package of benefits with particular cost sharing (which does not include premium rates or premium rate quotes) that is offered pursuant to a contract with OPM pursuant to section 1334 of the Affordable Care Act and meets the requirements of 45 CFR part 800. We also propose to remove the definition of ''Multi-State Plan.'' The term ''Multi-State Plan option'' is more precise and avoids the confusion of the varying definitions of the word ''plan'' in the context of health insurance. In the past two years, OPM refined how to use the term ''Multi-State Plan.'' It is our intention to not apply the term ''Multi-State Plan'' as a general concept, but instead as a specific descriptor used under this Program. OPM registered the term ''Multi-State Plan'' as a mark with the U.S. Patent and Trademark Office,[21] and we intend to enforce its exclusive use under this Program.

We also propose to add a definition for State-level issuer. This definition is consistent with the statutory concept of

[14] Affordable Care Act section 1334(b)(2).

[15] Affordable Care Act section 1334(b)(3).

[16] Affordable Care Act section 1334(b)(4).

[17] The Request for Information is available at *https://www.fbo.gov/index?s=opportunity&mode=form&id=677e422dd3f2bc983cb985eb73995b63&tab=core&_cview=1.*

[18] Affordable Care Act section 1334(h).

[19] *Id.*

[20] 78 FR 15588.

[21] U.S. Reg. No. 4599136.

contracting with a group of issuers, and our experience reviewing MSP applications and negotiating contracts with MSP issuers. We propose to define a State-level issuer as a health insurance issuer designated by the MSP issuer to offer an MSP option or MSP options. The State-level issuer may offer health insurance coverage through one or more MSP options in all or part of one or more States.

OPM invites comments on the proposed changes to the definitions under 45 CFR 800.20.

B. Subpart B—Multi-State Plan Issuer Requirements

Phased Expansion: Coverage in All States; Coverage State-Wide; and SHOP (§ 800.104)

Section 1334(e) of the Affordable Care Act provides for OPM to phase expansion of an issuer's participation in the MSP Program. In the final rule, OPM largely codified the statutory language for the phase-in standards and set standards for coverage within a State, participation in the Small Business Health Insurance Options Program (SHOP), and licensure. Since the publication of the final rule, OPM gained valuable insight and feedback from MSP issuers and potential MSP issuer applicants.

Coverage in All States

Under § 800.104(a) of the final rule, OPM established a standard that it may enter into a contract with a health insurance issuer to offer MSP options if the health insurance issuer agrees to a phased expansion of coverage in States. We request comment on how we may expand participation in the Program to meet the goal of increasing competition while balancing consumers' needs for coverage across an entire State. OPM conducted outreach to potential MSP issuers and is engaged in ongoing discussions with current MSP issuers to address expansion of access to MSP options for consumers throughout the country. These issuers have expressed significant concern about the challenges of rapidly expanding access to MSP coverage both within and across State lines.

The text of section 1334 is clear in its intent that the primary purpose of the MSP Program is to promote competition on Exchanges by contracting with issuers to offer coverage in each State. Section 1334 contemplates interest from private health insurance issuers in participating in the Program; however, there is no requirement for health insurance issuers to participate in the Program. The statute sets forth standards to guide the exercise of this contracting authority, noting that section 1334(b)(1) contemplates offering coverage in every State and the District of Columbia, and outlining a framework within which participation in the MSP Program is a feasible and attractive business activity. Such standards include the provisions under subsections (b) and (e) on offering coverage in every State. OPM intends to ensure that MSP coverage is available as expansively and as soon as practicable, but recognizes the operational challenges issuers may face.

OPM has discretion over how we may implement and expand the MSP Program. We request comment on timeframes and other appropriate parameters within which an MSP issuer could reasonably expand participation in the Program. For example, a MSP issuer may be expected to expand to a certain number of states within a specified timeframe. In addition, we request comment on how OPM may encourage MSP issuers to expedite their participation on the Exchanges in which there is limited competition. At this time, we do not propose any changes to the regulatory text.

State-Wide Coverage

The final rule established a standard for MSP coverage in a State under § 800.104(b) that permits OPM to enter into a contract with an issuer that offers coverage in part of a State, but not necessarily the entire State. Most, but not all, of the MSP options available to consumers in plan years 2014 and 2015 provide coverage statewide.

In some circumstances, issuers in particular States have not consistently been able to offer statewide MSP coverage. Based on discussions with potential MSP issuers, we believe some of the challenges to providing statewide coverage in all States will continue to impede expansion or participation in the Program. One of these challenges is the licensing agreements for use of a nationally licensed service mark among the group of issuers participating in the MSP Program.[22] Section 1334 requires that a group of issuers offering MSP coverage must be affiliated in one of a few specific ways, including common use of a nationally licensed service mark. Antitrust and other laws that limit the permissible scope of interaction among issuers may make it difficult for a group of issuers under the MSP Program to coordinate nationally. OPM is sensitive to these constraints and recognizes that they may hinder development and implementation of issuers' plans to offer statewide MSP coverage.

OPM is committed to a goal of statewide coverage in the MSP Program, and intends to continue working with MSP issuers and potential MSP issuers to develop productive and ambitious approaches to achieving statewide coverage. In clarifying the status of the Program and how we are implementing the standards set under § 800.104, we propose to delete the standard for an MSP issuer to submit a plan to become statewide. In lieu of requiring a plan, OPM intends to negotiate with MSP issuers to determine their MSP coverage area. In the MSP Program contract negotiation process, we will consider the MSP issuers' capacity to provide statewide coverage. OPM will take into account many factors when assessing an MSP issuer's capacity for offering statewide coverage (*e.g.,* other business commitments, financials, Exchange QHP standards, and OPM's dialogue with State regulators). In addition, OPM will assess consumers' needs for coverage, including ensuring that MSP issuers' proposed service areas have been established without regard to racial, ethnic, language, or health status-related factors listed in section 2705(a) of the PHS Act, or other factors that exclude specific high-utilizing, high-cost, or medically underserved populations.

SHOP Coverage

The final rule established flexibility in SHOP participation for MSP issuers in § 800.104(c) by establishing a policy for participation consistent with standards set for QHP issuers. Specifically, we adopted standards that require MSP issuers to generally comply with standards in 45 CFR 156.200(g) and with State standards for SHOP participation if the State has set a standard that requires QHP issuers to participate. This policy provided OPM discretion to provide MSP issuers flexibility during the initial years of the Program to phase into the SHOP in a State-based Exchange. OPM provided that an MSP issuer may meet the requirements of 45 CFR 156.200(g)(3) if a State-level issuer or any other issuer in the same issuer group affiliated with an MSP issuer provides coverage on the Federally-facilitated SHOP. We discussed this policy in-depth in the final rule.[23]

Section 1334 requires OPM to contract for coverage to be offered on each Exchange in each State, offering individual or small group coverage.

[22] 45 CFR 800.20. (2013).

[23] 78 FR 15565.

Based on our current experience implementing the Program, a number of challenges prevent issuer participation in the MSP Program, including timing and resources. Very few MSP issuers have offered MSP SHOP options in these initial years of the Program. We solicit comment on when MSP issuers should be required to participate on the SHOPs.

Benefits (§ 800.105)

The final rule adopted requirements in § 800.105(a) that an MSP issuer must offer a uniform package of benefits for each MSP option within a State and that the package of benefits must comply with section 1302 of the Affordable Care Act, as well as standards set by OPM and any applicable standards set by HHS.

In § 800.105(b), OPM finalized a rule that allowed MSP issuers to offer a package of benefits in all States that is substantially equal to either (1) each State's Essential Health Benefits (EHB)-benchmark plan in each State in which it operates; or (2) any EHB-benchmark plan selected by OPM. In response to comments received on the proposed rule, OPM clarified that the option chosen must be applied uniformly in each State in which the MSP issuer proposes to offer MSP options.

OPM continues to conduct outreach to potential MSP issuers and encourages ongoing discussions with current MSP issuers in hopes of expanding the Program. OPM interprets the discretion afforded to the Director under section 1334(a) of the Affordable Care Act, such that he or she may administer the Program in a way to attract issuers to the Program and grow the Program to meet the goal of increasing competition. By applying the Director's discretion to offer flexibility in the selection of the package of benefits, OPM hopes to reduce the number of obstacles and increase competition and consumer choice while maintaining benefit standards and protections

After completing two application cycles for the MSP Program and administering the Program since January 2014, OPM is proposing to adjust the approach to the selection of the package of benefits to allow for more flexibility to attract issuers to the MSP Program with the expectation of expanding competition on the Exchanges. OPM is requesting public comment on this approach. This flexibility would allow an MSP issuer to make benchmark selections on a State-by-State basis. The issuer would also be able to offer two or more MSP options in each State, for example, one using the State-selected benchmark and one using the OPM-selected benchmark. OPM believes that allowing this flexibility will enable coalition building across issuers in different States, so that they can work together toward MSP options that meets the MSP Program standards. For example, an MSP issuer or potential issuer that chooses to offer an OPM-selected benchmark plan in one State may want to partner with another MSP issuer or potential issuer that would choose to offer a State EHB-benchmark plan in another State. We seek comments on whether this would have the desired effect of encouraging participation without causing consumer confusion or segmenting of risk.

In § 800.105(c)(1), OPM finalized the selection of EHB-benchmark plans. OPM selected the three largest FEHB Program plan options by enrollment that are open to Federal employees and annuitants. These FEHB Program benchmark plans were identified by HHS pursuant to section 1302(b) of the Affordable Care Act. On July 3, 2012, HHS identified the three largest FEHB Program plan options, as of March 31, 2012, as Blue Cross Blue Shield (BCBS) Standard Option; BCBS Basic Option; and Government Employees Health Association (GEHA) Standard Option.[24] OPM will continue to offer flexibility to MSP issuers to select among these benchmark options based on their business strategies and perceived needs of MSP enrollees.

In § 800.105(c)(2), OPM finalized the requirement that any OPM-selected EHB-benchmark plan lacking coverage of pediatric oral services or pediatric vision services must be supplemented by the addition of the entire category of benefits from the largest Federal Employee Dental and Vision Insurance Program (FEDVIP) dental or vision plan option, respectively, pursuant to 45 CFR 156.110(b) and section 1302(b) of the Affordable Care Act. On July 3, 2012, HHS identified the largest FEDVIP dental and vision plan options, as of March 31, 2012, to be, respectively, MetLife Federal Dental Plan High Option and FEP BlueVision High Option.[25]

OPM is proposing to add a clarification in the new § 800.105(c)(3). Based on outreach with potential MSP issuers and ongoing discussions with current MSP issuers, there is confusion about the prescription drug formulary standards of OPM-selected benchmarks. As is done in the FEHB Program, OPM will work with MSP issuers to negotiate a formulary that best manages the needs of MSP enrollees while focusing on managing costs and ensuring access. In addition, OPM will ensure that MSP issuers comply with any HHS standards related to drug formularies for QHPs and are not discriminatory in the formulary's design. OPM sees large variations in the formulary structures in the FEHB Program, and there are ongoing changes in the use of managed formularies. OPM also seeks comment on the feasibility of substituting an OPM-selected benchmark plan formulary with the formulary from the respective State's EHB-benchmark plan. This approach would promote consistency in benefits to enhance portability while maintaining a level playing field. By working with MSP issuers to build flexibility in the management of formularies, OPM believes the formulary will be seen as an opportunity to build a plan around the needs of enrollees while clarifying formulary requirements with the OPM-selected benchmarks.

In the final rule at § 800.105(c)(3), proposed to be republished as § 800.105(c)(4), OPM finalized the use of State definitions for habilitative services where the State chooses to specifically define this category pursuant to 45 CFR 156.110(f). In this section of the final rule, OPM also reserved the authority to determine what to include in this category for the OPM-selected benchmarks where the State has not defined it and no definition exists in the OPM-selected benchmark. OPM is proposing to change this section to apply a Federal definition of habilitative services, should HHS choose to define the term.

We propose to renumber § 800.105(c)(4) to § 800.105(c)(5). We are not proposing changes to this standard.

In § 800.105(d), OPM finalized the rule that an MSP issuer's package of benefits, including its formulary, must be submitted to and approved by OPM, which will determine whether a package of benefits proposed by an MSP issuer is substantially equal to an EHB-benchmark plan. OPM also plans to review an MSP issuer's package of benefits for discriminatory benefit design, consistently with section 1302(b)(4) of the Affordable Care Act and 45 CFR 156.110(d), 156.110(e), and 156.125, and will work closely with States and HHS to identify and investigate any potentially discriminatory or otherwise noncompliant benefit design in MSP options.

In § 800.105(e), OPM finalized the rule that the cost of benefits required by

[24] Centers for Medicare and Medicaid Services, Essential Health Benefits: List of the Largest Three Small Group Products by State, available at *http://cciio.cms.gov/resources/files/largest-smgroup-products-7-2-2012.pdf.PDF* (July 3, 2012).

[25] *Id.*

the State in addition to those in the benchmark package would be assumed by the State. This policy was consistent with section 1334(c)(2) of the Affordable Care Act. OPM now proposes to change ''assume'' to ''defray'' to make the language align with the language in the statute.

Assessments and User Fees (§ 800.108)

OPM has authority to collect MSP Program user fees, and continues to preserve its discretion to collect an MSP Program user fee. We wish to clarify that OPM may begin collecting the fee as early as plan year 2015. The user fee may be used to fund OPM activities directly related to MSP Program certification, administration, and operational costs. We currently estimate that any assessment or fee would be no more than 0.2 percent of premiums. In the Federally-facilitated Exchange, OPM is coordinating with HHS regarding the collection of user fees, so that issuers would not be affected operationally. We are revising the regulatory text to allow for flexibility in the process for collecting MSP Program assessments or user fees. We solicit comments on the process for collecting user fees in the State-based Exchanges. We also seek comments on the use of these fees.

Network Adequacy (§ 800.109)

We are proposing to add that an MSP issuer must also comply with any additional standards related to provider directories set by HHS for QHP issuers.

Accreditation (§ 800.111)

We revised the reference to the specific section in the Code of Federal Regulations to 45 CFR 156.275(a)(1) to be more precise.

Level Playing Field (§ 800.115)

We revised the regulatory text to clarify that all the areas listed under section 1324 of the Affordable Care Act are subject to § 800.114. In addition, we are making a technical correction to § 800.114(l) to change a reference to 45 CFR part 162 to 45 CFR part 164.

C. Subpart D—Application and Contracting Procedures

Application Process (§ 800.301)

In § 800.301, OPM provided that health insurance issuers may submit applications to OPM for participation in the MSP Program. If OPM decided not to consider new applications for the upcoming year, it would issue a notice indicating so. This section also specified that applications would meet the form, manner, and timeframes prescribed by OPM.

The edit to § 800.301(a) is a technical correction that more accurately describes that OPM determines annually whether new issuer applications should be considered to participate in the MSP Program. This correction is meant to distinguish new applications from renewal applications. OPM's discretion over whether to consider issuer applications pertains to new issuers that want to apply to participate in the MSP Program for the first time. Issuers that already participate in the MSP Program, and would like to continue participating, may submit a renewal application to OPM on an annual basis. OPM will determine annually whether a renewal application is required.

MSP Contracting (§ 800.303)

In § 800.303, OPM provided that an applicant must execute a contract with OPM to become an MSP issuer; that OPM would establish a standard contract for the MSP Program; that OPM and an applicant would negotiate premiums for each plan year; that OPM would review for approval an applicant's benefit packages; that OPM may negotiate additional contractual terms and conditions; and that MSP issuers would be certified to offer MSP coverage on Exchanges.

The edit to § 800.303(f) is a technical correction to clarify that the MSP Program contract specifies that OPM certifies the MSP options that are authorized to provide coverage. We also propose a technical correction to § 800.303(f)(2) consistent with the edit to (f)(1) to provide that MSP options must be certified in order to be offered on an Exchange. These edits more accurately describe the information that is reflected in the MSP Program contract with respect to OPM's certification process.

Nonrenewal (§ 800.306)

The proposed language for § 800.306(a) serves to clarify two different nonrenewal concepts. The term ''nonrenewal'' as described in the current rule more accurately describes nonrenewal of an MSP Program contract because it pertains to the MSP issuer. Therefore, we propose the term ''nonrenewal of contract'' to clarify this concept. Additionally, there are instances where a State-level issuer may choose not to renew its participation in the MSP Program contract, even though the MSP issuer (of which the State-level issuer is a part) will continue to contract with OPM. The current regulatory language does not contemplate this latter concept. Therefore, we propose the term ''nonrenewal of participation'' to describe such concept. By distinguishing the two types of nonrenewal, the rule will better align with the terms described in the MSP Program contract, which already distinguishes these concepts. Despite this distinction, the notice requirements and MSP issuer responsibilities as provided in subsections (b) and (c) respectively, are still applicable. In subsection § 300.306(c), with respect to providing notice of termination to enrollees, we propose to reference § 800.404(d) instead of duplicating the explanation of the requirements in this section. This will ensure consistency across the MSP Program.

D. Subpart E—Compliance

Contract Performance (§ 800.401)

In addition to other MSP contract performance requirements, § 800.401 paragraphs (b)(5)–(6), (c), and (d) require an MSP issuer to perform its obligations under an MSP Program contract using prudent business practices that emphasize ethical standards and compliance with OPM directives and other applicable laws, regulations, and MSP contract provisions. The section prohibits fraud, waste, abuse, and deceptive business practices. It also requires an MSP issuer to adjudicate claims promptly and maintain a system that accurately accounts for costs occurring under the MSP Program. Although this section lists numerous prudent and poor business practices, we did not intend them to be exhaustive. In addition, because industry standards and State markets are evolving constantly, we address business practice standards in each MSP Program contract. Therefore, we are clarifying that OPM will consider an MSP issuer's specific circumstances and facts in using its discretion to determine if an MSP issuer has fulfilled its obligations pursuant to this section. We seek comment on these issues.

Contract Quality Assurance (§ 800.402)

OPM proposes corrections to § 800.402 paragraphs (b) and (c). In paragraph (b), OPM proposes to clarify that it ''may,'' instead of ''will,'' periodically evaluate a contractor's system of internal controls. OPM also clarifies in paragraph (b) that it will only acknowledge in writing when the contractor's system of internal controls is inconsistent with the MSP Program contract requirements. In paragraph (c), OPM will correct a drafting error and clarify that MSP issuers must comply with the performance standards issued ''pursuant'' to this section.

Compliance Actions (§ 800.404)

OPM proposes to make technical edits to § 800.404 paragraphs (a), (b), (c) and (d). In paragraph (a)(4), we clarify that OPM may initiate a compliance action for violations of law or regulation as OPM may determine, ''including pursuant to its authority under §§ 800.102 and 800.114.'' This revision more accurately reflects OPM's approach to enforcement and compliance.

In paragraph (b), we clarify that OPM may withdraw certification of the MSP option or options for noncompliance with applicable law or the MSP contract. Consistent with new paragraph 800.306(a)(2), we add ''nonrenewal of participation'' as a compliance action. Accordingly, we renumber the two subsequent compliance actions. We also revised ''Nonrenewal of the MSPP contract'' to ''Nonrenewal of contract'' to be consistent with the term as defined in new paragraph 800.306(a)(1). We revise paragraph (c)(2) to include nonrenewal of participation as a compliance action for which OPM must notify the MSP issuer of its right to reconsideration.

Paragraph (d) requires an MSP issuer to comply with State and Exchange requirements regarding termination of a plan when an MSP Program contract is terminated or when OPM withdraws certification. Absent State or Exchange requirements, the MSP issuer must provide enrollees 90 days' notice. If a State or Exchange has a requirement to provide enrollees notice of more than 90 days, then the MSP issuer must comply with that standard. We clarify that these requirements are triggered in the event that one of the following occurs: The MSP Program contract is terminated, OPM withdraws certification of an MSP option, or if a State-level issuer's participation is not renewed.

Reconsideration of Compliance Actions (§ 800.405)

OPM proposes technical edits and corrections to section 800.405. Section 800.405 describes the compliance actions for which the MSP issuer may request reconsideration. We correct paragraph (a)(1) to reflect that an MSP issuer may request reconsideration upon withdrawal of certification of the MSP option or options offered on an Exchange. Consistent with the approach 800.404(b), we revise (a)(2) to allow an MSP issuer to request reconsideration of the nonrenewal of participation of a State-level issuer. We renumber the subsequent paragraphs accordingly.

E. Subpart G—Miscellaneous

Consumer Choice With Respect to Certain Services (§ 800.602)

Section 1334(a)(6) of the Affordable Care Act requires OPM to contract with at least one MSP issuer that excludes coverage of abortion services, except in the case of rape or incest, or when the life of the woman would be endangered. In the MSP Program final rule, we codified the statutory language and provided sub-regulatory guidance to MSP issuer applicants on how to meet this requirement in their benefit proposals.

For the 2014 and 2015 plan years, OPM operationalized this policy by requiring each MSP issuer to offer at least one silver MSP option and one gold MSP option that excludes these services in each State in which it was under contract. MSP issuers also had discretion to cover these services if the issuer offered additional MSP options on the Exchange.

Consumers, State regulators, and other stakeholders expressed to OPM the desire to have greater transparency with regard to MSP options that exclude non-excepted abortion services.[26] Section 2715 of the PHS Act requires group health plans and health insurance issuers of group or individual health insurance coverage to provide ''a summary of benefits and coverage explanation that accurately describes the benefits and coverage under the applicable plan or coverage to applicants, enrollees, and policyholders or certificate holders.''[27] MSP issuers are required to notify consumers who purchase an MSP option that covers non-excepted abortion services of such coverage as part of the SBC at time of enrollment.[28]

We are proposing to add a new paragraph (c) to § 800.602 that would require an MSP issuer to provide disclosure of coverage or exclusion of this benefit before a consumer enrolls in an MSP option. In addition, OPM will reserve the authority to review and approve these MSP notices and materials. OPM requests comments on the form and manner for the disclosure. Note that the question of how this coverage should be disclosed is not unique to MSP options; the Departments of Health and Human Services, Labor, and Treasury intend to issue guidance on the Summary of Benefits and Coverage in the future.

[26] These are services for which Federal funding is prohibited.

[27] PHS Act section 2715(a) (2012).

[28] 45 CFR 156.280(f).

Disclosure of Information (§ 800.603)

In order to effectively implement and operationalize the MSP Program, there may be circumstances in which OPM would share information with State entities, including State Departments of Insurance and Exchanges. The sharing of information is intended to keep such entities informed and to reflect OPM's approach to compliance. The addition of this new section clarifies that OPM may use its discretion and authority to disclose information to such State entities. In all cases, OPM will adhere to any applicable privacy and security standards for the disclosure of such information.

Technical Changes to 45 CFR Part 800

In addition to the changes proposed for the specific sections of the regulation, we also propose technical corrections to streamline the use of ''MSP'' throughout the rules. The changes are not substantive to our policy. These changes apply to all sections and include the following:

- ''MSPP'' will be replaced with ''MSP Program;''
- ''MSPP issuer'' will be replaced with ''MSP issuer;''
- ''MSP'' will be replaced with ''MSP option'' when referring to the plan that makes up the specific package of benefits and associated cost-sharing; and
- ''MSPP contract'' will be replaced with ''MSP Program contract.''

IV. Regulatory Impact Analysis

OPM has examined the impact of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993) and Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011). 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 must be prepared for major rules with economically significant effects ($100 million or more in any 1 year adjusted for inflation). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more in any one year or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the

environment, public health or safety, or State, local, or tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

OPM will continue to generally operate the MSP Program as it previously had in plan year 2014. The regulatory changes in this proposed rule are for purposes of policy clarification and any proposed changes will have minimal impact on the administration of the Program. Administrative costs of the rule are generated both within OPM and by issuers offering MSP options. The costs that MSP issuers may incur are the same as those of QHPs and, as stated in 45 CFR part 156, will include: Accreditation, network adequacy standards, and quality improvement strategy reporting. The costs associated with MSP certification offset the costs that issuers would face were they to be certified by the State, or HHS on behalf of the State, to offer QHPs through the Exchange. For the 2014 plan year, there are approximately 371,000 enrolled in MSP options and with an estimated average monthly premium of $350, premiums collected by MSP issuers for consumers enrolled in MSP options is are approximately $1.4 billion this year. While the overall regulation and Program have a significant economic impact, this proposed rule provides for no substantial changes to the Program and will not be economically significant. The economic impact of this rule is not expected exceed the $100 million threshold; we therefore do not assess costs and benefits as required by the Executive Order.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; see 5 CFR part 1320) requires that the U.S. Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. OPM is not proposing any additional collections from MSP issuers or applicants seeking to become MSP issuers in this proposed rule. OPM continues to expect fewer than ten responsible entities to respond to all of the collections noted above. For that reason alone, the existing collections are exempt from the Paperwork Reduction Act under 44 U.S.C. 3502(3)(A)(i).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [29] requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule would not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as—(1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.''

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a proposed rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, small non-profit organizations, and small government jurisdictions. Small businesses are those with sizes below thresholds established by the SBA. With respect to health insurers, the SBA size standard is $7.0 million in annual receipts.[30]

OPM does not think that small businesses with annual receipts less than $7.0 million would likely have sufficient economies of scale to become MSP issuers or be part of a group of MSP issuers. Similarly, while the Director must enter into an MSP Program contract with at least one non-profit entity, OPM does not think that small non-profit organizations would likely have sufficient economies of scale to become MSP issuers or be part of a group of MSP issuers.

OPM does not think that this proposed rule would have a significant economic impact on a substantial number of small businesses with annual receipts less than $7.0 million, because there are only a few health insurance issuers that could be considered small businesses. Moreover, while the Director must enter into an MSP contract with at least one non-profit entity, OPM does not think that this proposed rule would have a significant economic impact on a substantial number of small non-profit organizations, because few health insurance issuers are small non-profit organizations.

OPM incorporates by reference previous analysis by HHS, which provides some insight into the number of health insurance issuers that could be small entities. Particularly, as discussed by HHS in the Medical Loss Ratio interim final rule (75 FR 74918), few, if any, issuers are small enough to fall below the size thresholds for small business established by the SBA. In that rule, HHS used a data set created from 2009 NAIC Health and Life Blank annual financial statement data to develop an updated estimate of the number of small entities that offer comprehensive major medical coverage in the individual and group markets. For purposes of that analysis, HHS used total Accident and Health earned premiums as a proxy for annual receipts. HHS estimated that there are 28 small entities with less than $7 million in accident and health earned premiums offering individual or group comprehensive major medical coverage. OPM concurs with this HHS analysis, and, thus, does not think that this proposed rule would have a significant economic impact on a substantial number of small entities.

Based on the foregoing, OPM is not preparing an analysis for the RFA because OPM has determined, and the Director certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

VII. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) [31] requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a proposed rule (and subsequent final rule) that includes any Federal mandate that may result in expenditures in any one year by a State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. UMRA does not address the total cost of a rule. Rather, it focuses on certain categories of costs, mainly those ''Federal mandate'' costs resulting from: (1) Imposing enforceable duties on State, local, or tribal governments, or on the private sector; or (2) increasing the

[29] 5 U.S.C. 601 *et seq.*

[30] According to the SBA size standards, entities with average annual receipts of $7 million or less would be considered small entities for North American Industry Classification System (NAICS) Code 524114 (Direct Health and Medical Insurance Carriers) (for more information, see ''Table of Size Standards Matched To North American Industry Classification System Codes,'' effective March 26, 2012, U.S. Small Business Administration, available at *http://www.sba.gov*).

[31] Public Law 104–4.

stringency of conditions in, or decreasing the funding of, State, local, or tribal governments under entitlement programs.

This proposed rule does not place any Federal mandates on State, local, or Tribal governments, or on the private sector. This proposed rule would modify the MSP Program, a voluntary federal program that provides health insurance issuers the opportunity to contact with OPM to offer MSP options on the Exchanges. Section 3 of UMRA excludes from the definition of ''Federal mandate'' duties that arise from participation in a voluntary Federal program. Accordingly, no analysis under UMRA is required.

VIII. Federalism

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with State and local officials, and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

This proposed regulation has federalism implications, because it has direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among various levels of government. In particular, under § 800.114, OPM may deem a State law to be inconsistent with section 1334 of the Affordable Care Act, and, thus, inapplicable to an MSP option or MSP issuer. However, in OPM's view, the federalism implications of this proposed regulation are substantially mitigated because, OPM expects that the vast majority of States have laws that are consistent with section 1334 of the Affordable Care Act. Furthermore, § 800.116 sets forth a process for dispute resolution if a State seeks to challenge OPM's determination that a State law is inapplicable to an MSP option or MSP issuer.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, OPM has engaged in efforts to consult with and work cooperatively with affected State and local officials, including attending meetings of the NAIC and consulting with State insurance officials on an individual basis. It is expected OPM will continue act in a similar fashion in enforcing the Affordable Care Act requirements. Throughout the process of administering the MSP Program and developing this proposed regulation, OPM has attempted to balance the States' interests in regulating health insurance issuers, and the statutory requirement to provide two MSP options in all Exchanges in the every States and the District of Columbia. By doing so, it is OPM's view that it has complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signature affixed to this proposed regulation, OPM certifies that it has complied with the requirements of Executive Order 13132 for the attached regulation in a meaningful and timely manner.

List of Subjects in 45 CFR Part 800

Administrative practice and procedure, Health facilities, Health insurance, Health professions, Reporting and recordkeeping requirements.

Office of Personnel Management.

Katherine Archuleta,

Director.

Accordingly, the U.S. Office of Personnel Management is proposing to revise part 800 to title 45, Code of Federal Regulations, as follows:

PART 800—MULTI-STATE PLAN PROGRAM

Subpart A—General Provisions and Definitions

Sec.
800.10 Basis and scope.
800.20 Definitions.

Subpart B—Multi-State Plan Program Issuer Requirements

800.101 General requirements.
800.102 Compliance with Federal law.
800.103 Authority to contract with issuers.
800.104 Phased expansion, etc.
800.105 Benefits.
800.106 Cost-sharing limits, advance payments of premium tax credits, and cost-sharing reductions.
800.107 Levels of coverage.
800.108 Assessments and user fees.
800.109 Network adequacy.
800.110 Service area.
800.111 Accreditation requirement.
800.112 Reporting requirements.
800.113 Benefit plan material or information.
800.114 Compliance with applicable State law.
800.115 Level playing field.
800.116 Process for dispute resolution.

Subpart C—Premiums, Rating Factors, Medical Loss Ratios, and Risk Adjustment

800.201 General requirements.
800.202 Rating factors.
800.203 Medical loss ratio.
800.204 Reinsurance, risk corridors, and risk adjustment.

Subpart D—Application and Contracting Procedures

800.301 Application process.
800.302 Review of applications.
800.303 MSP Program contracting.
800.304 Term of the contract.
800.305 Contract renewal process.
800.306 Nonrenewal.

Subpart E—Compliance

800.401 Contract performance.
800.402 Contract quality assurance.
800.403 Fraud and abuse.
800.404 Compliance actions.
800.405 Reconsideration of compliance actions.

Subpart F—Appeals by Enrollees of Denials of Claims for Payment or Service

800.501 General requirements.
800.502 MSP issuer internal claims and appeals.
800.503 External review.
800.504 Judicial review.

Subpart G—Miscellaneous

800.601 Reservation of authority.
800.602 Consumer choice with respect to certain services.
800.603 Disclosure of information.

Authority: Sec. 1334 of Pub. L. 111–148, 124 Stat. 119; Pub. L. 111–152, 124 Stat. 1029 (42 U.S.C. 18054).

Subpart A—General Provisions and Definitions

§ 800.10 Basis and scope.

(a) *Basis.* This part is based on the following sections of title I of the Affordable Care Act:

1001. Amendments to the Public Health Service Act.

1302. Essential Health Benefits Requirements.

1311. Affordable Choices of Health Benefit Plans.

1324. Level Playing Field.

1334. Multi-State Plans.

1341. Transitional Reinsurance Program for Individual Market in Each State.

1342. Establishment of Risk Corridors for Plans in Individual and Small Group Markets.

1343. Risk Adjustment.

(b) *Scope.* This part establishes standards for health insurance issuers to contract with the United States Office of Personnel Management (OPM) to offer Multi-State Plan (MSP) options to provide health insurance coverage on Exchanges for each State. It also

establishes standards for appeal of a decision by OPM affecting the issuer's participation in the MSP Program and standards for an enrollee in an MSP option to appeal denials of payment or services by an MSP issuer.

§ 800.20 Definitions.

For purposes of this part:

Actuarial value (AV) has the meaning given that term in 45 CFR 156.20.

Affordable Care Act means the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152).

Applicant means an issuer or group of issuers that has submitted an application to OPM to be considered for participation in the Multi-State Plan Program.

Benefit plan material or information means explanations or descriptions, whether printed or electronic, that describe a health insurance issuer's products. The term does not include a policy or contract for health insurance coverage.

Cost sharing has the meaning given that term in 45 CFR 155.20.

Director means the Director of the United States Office of Personnel Management.

EHB-benchmark plan has the meaning given that term in 45 CFR 156.20.

Exchange means a governmental agency or non-profit entity that meets the applicable requirements of 45 CFR part 155 and makes qualified health plans (QHPs) and MSP options available to qualified individuals and qualified employers. Unless otherwise identified, this term refers to State Exchanges, regional Exchanges, subsidiary Exchanges, and a Federally-facilitated Exchange.

Federal Employees Health Benefits Program or *FEHB Program* means the health benefits program administered by the United States Office of Personnel Management pursuant to chapter 89 of title 5, United States Code.

Group of issuers means:

(1) A group of health insurance issuers that are affiliated either by common ownership and control or by common use of a nationally licensed service mark (as defined in this section); or

(2) An affiliation of health insurance issuers and an entity that is not an issuer but that owns a nationally licensed service mark (as defined in this section).

Health insurance coverage means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer. Health insurance coverage includes group health insurance coverage, individual health insurance coverage, and short-term, limited duration insurance.

Health insurance issuer or *issuer* means an insurance company, insurance service, or insurance organization (including a health maintenance organization) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law that regulates insurance (within the meaning of section 514(b)(2) of the Employee Retirement Income Security Act (ERISA)). This term does not include a group health plan as defined in 45 CFR 146.145(a).

HHS means the United States Department of Health and Human Services.

Level of coverage means one of four standardized actuarial values of plan coverage as defined by section 1302(d)(1) of the Affordable Care Act.

Licensure means the authorization obtained from the appropriate State official or regulatory authority to offer health insurance coverage in the State.

Multi-State Plan Program issuer or *MSP issuer* means a health insurance issuer or group of issuers (as defined in this section) that has a contract with OPM to offer health plans pursuant to section 1334 of the Affordable Care Act and meets the requirements of this part.

Multi-State Plan option or *MSP* option means a discrete pairing of a package of benefits with particular cost sharing (which does not include premium rates or premium rate quotes) that is offered pursuant to a contract with OPM pursuant to section 1334 of the Affordable Care Act and meets the requirements of 45 CFR part 800.

Multi-State Plan Program or *MSP Program* means the program administered by OPM pursuant to section 1334 of the Affordable Care Act.

Nationally licensed service mark means a word, name, symbol, or device, or any combination thereof, that an issuer or group of issuers uses consistently nationwide to identify itself.

Non-profit entity means:

(1) An organization that is incorporated under State law as a non-profit entity and licensed under State law as a health insurance issuer; or

(2) A group of health insurance issuers licensed under State law, a substantial portion of which are incorporated under State law as non-profit entities.

OPM means the United States Office of Personnel Management.

Percentage of total allowed cost of benefits has the meaning given that term in 45 CFR 156.20.

Plan year means a consecutive 12-month period during which a health plan provides coverage for health benefits. A plan year may be a calendar year or otherwise.

Prompt payment means a requirement imposed on a health insurance issuer to pay a provider or enrollee for a claimed benefit or service within a defined time period, including the penalty or consequence imposed on the issuer for failure to meet the requirement.

Qualified Health Plan or *QHP* means a health plan that has in effect a certification that it meets the standards described in subpart C of 45 CFR part 156 issued or recognized by each Exchange through which such plan is offered pursuant to the process described in subpart K of 45 CFR part 155.

Rating means the process, including rating factors, numbers, formulas, methodologies, and actuarial assumptions, used to set premiums for a health plan.

Secretary means the Secretary of the Department of Health and Human Services.

SHOP means a Small Business Health Options Program operated by an Exchange through which a qualified employer can provide its employees and their dependents with access to one or more qualified health plans (QHPs).

Silver plan variation has the meaning given that term in 45 CFR 156.400.

Small employer means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 100 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. In the case of plan years beginning before January 1, 2016, a State may elect to define *small employer* by substituting ''50 employees'' for ''100 employees.''

Standard plan has the meaning given that term in 45 CFR 156.400.

State Insurance Commissioner means the commissioner or other chief insurance regulatory official of a State.

State means each of the 50 States or the District of Columbia.

State-level issuer means a health insurance issuer designated by the Multi-State Plan (MSP) issuer to offer an MSP option or MSP options. The State-level issuer may offer health insurance coverage through an MSP option in all or part of one or more States.

Subpart B—Multi-State Plan Program Issuer Requirements

§ 800.101 General requirements.

An MSP issuer must:

(a) Licensed. Be licensed as a health insurance issuer in each State where it offers health insurance coverage;

(b) Contract with OPM. Have a contract with OPM pursuant to this part;

(c) Required levels of coverage. Offer levels of coverage as required by § 800.107;

(d) Eligibility and enrollment. MSP options and MSP issuers must meet the same requirements for eligibility, enrollment, and termination of coverage as those that apply to QHPs and QHP issuers pursuant to 45 CFR part 155, subparts D, E, and H, and 45 CFR 156.250, 156.260, 156.265, 156.270, and 156.285;

(e) Applicable to each MSP issuer. Ensure that each of its MSP options meets the requirements of this part;

(f) Compliance. Comply with all standards set forth in this part;

(g) OPM direction and other legal requirements. Timely comply with OPM instructions and directions and with other applicable law; and

(h) Other requirements. Meet such other requirements as determined appropriate by OPM, in consultation with HHS, pursuant to section 1334(b)(4) of the Affordable Care Act.

(i) *Non-discrimination.* MSP options and MSP issuers must comply with applicable Federal and State non-discrimination laws, including the standards set forth in 45 CFR 156.125 and 156.200(e).

§ 800.102 Compliance with Federal law.

(a) *Public Health Service Act.* As a condition of participation in the MSP Program, an MSP issuer must comply with applicable provisions of part A of title XXVII of the PHS Act. Compliance shall be determined by the Director.

(b) *Affordable Care Act.* As a condition of participation in the MSP Program, an MSP issuer must comply with applicable provisions of title I of the Affordable Care Act. Compliance shall be determined by the Director.

§ 800.103 Authority to contract with issuers.

(a) *General.* OPM may enter into contracts with health insurance issuers to offer at least two MSP options on Exchanges and SHOPs in each State, without regard to any statutes that would otherwise require competitive bidding.

(b) *Non-profit entity.* In entering into contracts with health insurance issuers to offer MSP options, OPM will enter into a contract with at least one non-profit entity as defined in § 800.20.

(c) *Group of issuers.* Any contract to offer MSP options may be with a group of issuers as defined in § 800.20.

(d) *Individual and group coverage.* The contracts will provide for individual health insurance coverage and for group health insurance coverage for small employers.

§ 800.104 Phased expansion, etc.

(a) *Phase-in.* OPM may enter into a contract with a health insurance issuer to offer MSP options if the health insurance issuer agrees that:

(1) With respect to the first year for which the health insurance issuer offers MSP options, the health insurance issuer will offer MSP options in at least 60 percent of the States;

(2) With respect to the second such year, the health insurance issuer will offer the MSP options in at least 70 percent of the States;

(3) With respect to the third such year, the health insurance issuer will offer the MSP options in at least 85 percent of the States; and

(4) With respect to each subsequent year, the health insurance issuer will offer the MSP options in all States.

(b) Partial coverage within a State. (1) OPM may enter into a contract with an MSP issuer even if the MSP issuer's MSP options for a State cover fewer than all the service areas specified for that State pursuant to § 800.110.

(2) If an issuer offers both an MSP option and QHP on the same Exchange, an MSP issuer must offer MSP coverage in a service area or areas that is equal to the greater of:

(i) The QHP service area defined by the issuer or,

(ii) The service area specified for that State pursuant to § 800.110 covered by the issuer's QHP.

(c) Participation in SHOPs. (1) An MSP issuer's participation in the Federally-facilitated SHOP must be consistent with the requirements for QHP issuers specified in 45 CFR 156.200(g).

(2) An MSP issuer must comply with State standards governing participation in State-based SHOPs, consistent with § 800.114. For these State-based SHOP standards, OPM retains discretion to allow an MSP issuer to phase-in SHOP participation in States pursuant to section 1334(e) of the Affordable Care Act.

(d) *Licensed where offered.* OPM may enter into a contract with an MSP issuer who is not licensed in every State, provided that the issuer is licensed in every State where it offers MSP coverage through any Exchanges in that State and demonstrates to OPM that it is making a good faith effort to become licensed in every State consistent with the timeframe in paragraph (a) of this section.

§ 800.105 Benefits.

(a) *Package of benefits.* (1) An MSP issuer must offer a package of benefits that includes the essential health benefits (EHB) described in section 1302 of the Affordable Care Act for each MSP option within a State.

(2) The package of benefits referred to in paragraph (a)(1) of this section must comply with section 1302 of the Affordable Care Act, as well as any applicable standards set by OPM and any applicable standards set by HHS.

(b) *Package of benefits options.* (1) An MSP issuer must offer at least one uniform package of benefits in each State that is substantially equal to:

(i) The EHB-benchmark plan in each State in which it operates; or

(ii) Any EHB-benchmark plan selected by OPM under paragraph (c) of this section.

(2) An issuer applying to participate in the MSP Program may select either or both of the package of benefits options described in paragraph (b)(1) of this section in its application. In each State, the issuer may choose one EHB-benchmark for each product it offers.

(3) An MSP issuer must comply with any State standards relating to substitution of benchmark benefits or standard benefit designs.

(c) *OPM selection of benchmark plans.* (1) The OPM-selected EHB-benchmark plans are the three largest Federal Employees Health Benefits (FEHB) Program plan options, as identified by HHS pursuant to section 1302(b) of the Affordable Care Act, and as supplemented pursuant to paragraphs (c)(2) through (c)(4) of this section.

(2) Any EHB-benchmark plan selected by OPM under paragraph (c)(1) of this section lacking coverage of pediatric oral services or pediatric vision services must be supplemented by the addition of the entire category of benefits from the largest Federal Employee Dental and Vision Insurance Program (FEDVIP) dental or vision plan options, respectively, pursuant to 45 CFR 156.110(b) and section 1302(b) of the Affordable Care Act.

(3) In all States where an MSP issuer uses the OPM-selected EHB-benchmark plan, the MSP issuer may manage formularies around the needs of anticipated or actual users, subject to approval by OPM.

(4) An MSP issuer must follow State definitions where the State specifically defines the habilitative services category

pursuant to 45 CFR 156.110(f) or any Federal definitions where HHS specifically defines habilitative services. In the case of any State that does not define this category and absent a clearly applicable Federal definition, if any OPM-selected EHB-benchmark plan lacks coverage of habilitative services and devices, OPM may determine what habilitative services are to be included in that EHB-benchmark plan.

(5) Any EHB-benchmark plan selected by OPM under paragraph (c)(1) of this section must include, for each State, any State-required benefits enacted before December 31, 2011, that are included in the State's EHB-benchmark plan as described in paragraph (b)(1)(i) of this section, or specific to the market in which the plan is offered.

(d) *OPM approval.* An MSP issuer's package of benefits, including its formulary, must be submitted for approval by OPM, which will review a package of benefits proposed by an MSP issuer and determine if it is substantially equal to an EHB-benchmark plan described in paragraph (b)(1) of this section, pursuant to standards set forth by OPM and any applicable standards set forth by HHS, including 45 CFR 156.115, 156.122, and 156.125.

(e) *State payments for additional State-required benefits.* If a State requires that benefits in addition to the benchmark package be offered to MSP enrollees in that State, then pursuant to section 1334(c)(2) of the Affordable Care Act, the State must defray the cost of such additional benefits by making payments either to the enrollee or to the MSP issuer on behalf of the enrollee.

§ 800.106 Cost-sharing limits, advance payments of premium tax credits, and cost-sharing reductions.

(a) *Cost-sharing limits.* For each MSP option it offers, an MSP issuer must ensure that the cost-sharing provisions of the MSP option complies with section 1302(c) of the Affordable Care Act, as well as any applicable standards set by OPM or HHS.

(b) *Advance payments of premium tax credits and cost-sharing reductions.* For each MSP option it offers, an MSP issuer must ensure that an eligible individual receives the benefit of advance payments of premium tax credits under section 36B of the Internal Revenue Code and the cost-sharing reductions under section 1402 of the Affordable Care Act. An MSP issuer must also comply with any applicable standards set by OPM or HHS.

§ 800.107 Levels of coverage.

(a) *Silver and gold levels of coverage required.* An MSP issuer must offer at least one MSP option at the silver level of coverage and at least one MSP option at the gold level of coverage on each Exchange in which the issuer is certified to offer an MSP option pursuant to a contract with OPM.

(b) *Bronze or platinum metal levels of coverage permitted.* Pursuant to a contract with OPM, an MSP issuer may offer one or more MSP options at the bronze level of coverage or the platinum level of coverage, or both, on any Exchange or SHOP in any State.

(c) *Child-only plans.* For each level of coverage, the MSP issuer must offer a child-only MSP options at the same level of coverage as any health insurance coverage offered to individuals who, as of the beginning of the plan year, have not attained the age of 21.

(d) *Plan variations for the reduction or elimination of cost-sharing.* An MSP issuer must comply with section 1402 of the Affordable Care Act, as well as any applicable standards set by OPM or HHS.

(e) *OPM approval.* An MSP issuer must submit the levels of coverage plans and plan variations to OPM for review and approval by OPM.

§ 800.108 Assessments and user fees.

(a) *Discretion to charge assessment and user fees.* Beginning in plan year 2015, OPM may require an MSP issuer to pay an assessment or user fee as a condition of participating in the MSP Program.

(b) *Determination of amount.* The amount of the assessment or user fee charged by OPM for a plan year is the amount determined necessary by OPM to meet the costs of OPM's functions under the Affordable Care Act for a plan year, including but not limited to such functions as entering into contracts with, certifying, recertifying, decertifying, and overseeing MSP options and MSP issuers for that plan year. The amount of the assessment or user fee charged by OPM will be offset against the assessment or user fee amount required by any State-based Exchange or Federally-facilitated Exchange such that the total of all assessments and user fees paid by the MSP issuer for the year for the MSP option shall be no greater than nor less than the amount of the assessment or user fee paid by QHP issuers in that State-based Exchange or Federally-facilitated Exchange for that year.

(c) *Process for collecting MSP assessment or user fees.* OPM may require an MSP issuer to make payment of the MSP Program assessment or user fee amount directly to OPM, or may establish other mechanisms for the collection process.

§ 800.109 Network adequacy.

(a) *General requirement.* An MSP issuer must ensure that the provider network of each of its MSP options, as available to all enrollees, meets the following standards:

(1) Maintains a network that is sufficient in number and types of providers to assure that all services will be accessible without unreasonable delay;

(2) Is consistent with the network adequacy provisions of section 2702(c) of the Public Health Service Act; and

(3) Includes essential community providers in compliance with 45 CFR 156.235.

(b) *Provider directory.* An MSP issuer must make its provider directory for an MSP option available to the Exchange for publication online pursuant to guidance from the Exchange and to potential enrollees in hard copy, upon request. In the provider directory, an MSP issuer must identify providers that are not accepting new patients. An MSP issuer must also comply with any additional standards related to provider directories set by HHS for QHP issuers.

(c) *OPM guidance.* OPM will issue guidance containing the criteria and standards that it will use to determine the adequacy of a provider network.

§ 800.110 Service area.

An MSP issuer must offer an MSP option within one or more service areas in a State defined by each Exchange pursuant to 45 CFR 155.1055. If an Exchange permits issuers to define their service areas, an MSP issuer must obtain OPM's approval for its proposed service areas. Pursuant to § 800.104, OPM may enter into a contract with an MSP issuer even if the MSP issuer's MSP options for a State cover fewer than all the service areas specified for that State. MSP options will follow the same standards for service areas for QHPs pursuant to 45 CFR 155.1055.

§ 800.111 Accreditation requirement.

(a) *General requirement.* An MSP issuer must be or become accredited consistently with the requirements for QHP issuers specified in section 1311 of the Affordable Care Act and 45 CFR 156.275(a)(1).

(b) *Release of survey.* An MSP issuer must authorize the accrediting entity that accredits the MSP issuer to release to OPM and to the Exchange a copy of its most recent accreditation survey, together with any survey-related

information that OPM or an Exchange may require, such as corrective action plans and summaries of findings.

(c) *Timeframe for accreditation.* An MSP issuer that is not accredited as of the date that it enters into a contract with OPM must become accredited within the timeframe established by OPM as authorized by 45 CFR 155.1045.

§ 800.112 Reporting requirements.

(a) *OPM specification of reporting requirements.* OPM will specify the data and information that must be reported by an MSP issuer, including data permitted or required by the Affordable Care Act and such other data as OPM may determine necessary for the oversight and administration of the MSP Program. OPM will also specify the form, manner, processes, and frequency for the reporting of data and information. The Director may require that MSP issuers submit claims payment and enrollment data to facilitate OPM's oversight and administration of the MSP Program in a manner similar to the FEHB Program.

(b) *Quality and quality improvement standards.* An MSP issuer must comply with any standards required by OPM for reporting quality and quality improvement activities, including but not limited to implementation of a quality improvement strategy, disclosure of quality measures to enrollees and prospective enrollees, reporting of pediatric quality measures, and implementation of rating and enrollee satisfaction surveys, which will be similar to standards under section 1311(c)(1)(E), (H), and (I), (c)(3), and (c)(4) of the Affordable Care Act.

§ 800.113 Benefit plan material or information.

(a) *Compliance with Federal and State law.* An MSP issuer must comply with Federal and State laws relating to benefit plan material or information, including the provisions of this section and guidance issued by OPM specifying its standards, process, and timeline for approval of benefit plan material or information.

(b) *General standards for MSP applications and notices.* An MSP issuer must provide all applications and notices to enrollees in accordance with the standards described in 45 CFR 155.205(c). OPM may establish additional standards to meet the needs of MSP enrollees.

(c) *Accuracy.* An MSP issuer is responsible for the accuracy of its benefit plan material or information.

(d) Truthful, not misleading, no material omissions, and plain language. All benefit plan material or information must be:

(1) Truthful, not misleading, and without material omissions; and

(2) Written in plain language, as defined in section 1311(e)(3)(B) of the Affordable Care Act.

(e) *Uniform explanation of coverage documents and standardized definitions.* An MSP issuer must comply with the provisions of section 2715 of the PHS Act and regulations issued to implement that section.

(f) *OPM review and approval of benefit plan material or information.* OPM may request an MSP issuer to submit to OPM benefit plan material or information, as defined in § 800.20. OPM reserves the right to review and approve benefit plan material or information to ensure that an MSP issuer complies with Federal and State laws, and the standards prescribed by OPM with respect to benefit plan material or information.

(g) *Statement on certification by OPM.* An MSP issuer may include a statement in its benefit plan material or information that:

(1) OPM has certified the MSP option as eligible to be offered on the Exchange; and

(2) OPM monitors the MSP option for compliance with all applicable law.

§ 800.114 Compliance with applicable State law.

(a) *Compliance with State law.* An MSP issuer must, with respect to each of its MSP options, generally comply with State law pursuant to section 1334(b)(2) of the Affordable Care Act. However, the MSP options and MSP issuers are not subject to State laws that:

(1) Are inconsistent with section 1334 of the Affordable Care Act or this part;

(2) Prevent the application of a requirement of part A of title XXVII of the PHS Act; or

(3) Prevent the application of a requirement of title I of the Affordable Care Act.

(b) *Determination of inconsistency.* After consultation with the State and HHS, OPM reserves the right to determine, in its judgment, as effectuated through an MSP Program contract, these regulations, or OPM guidance, whether the standards set forth in paragraph (a) of this section are satisfied with respect to particular State laws.

§ 800.115 Level playing field.

An MSP issuer must, with respect to each of its MSP options, meet the following requirements in order to ensure a level playing field, subject to § 800.114:

(a) *Guaranteed renewal.* Guarantee that an enrollee can renew enrollment in an MSP option in compliance with sections 2703 and 2742 of the PHS Act;

(b) *Rating.* In proposing premiums for OPM approval, use only the rating factors permitted under section 2701 of the PHS Act and State law;

(c) *Preexisting conditions.* Not impose any preexisting condition exclusion and comply with section 2704 of the PHS Act;

(d) *Non-discrimination.* Comply with section 2705 of the PHS Act;

(e) *Quality improvement and reporting.* Comply with all Federal and State quality improvement and reporting requirements. Quality improvement and reporting means quality improvement as defined in section 1311(h) of the Affordable Care Act and quality improvement plans or strategies required under State law, and quality reporting as defined in section 2717 of the PHS Act and section 1311(g) of the Affordable Care Act. Quality improvement also includes activities such as, but not limited to, implementation of a quality improvement strategy, disclosure of quality measures to enrollees and prospective enrollees, and reporting of pediatric quality measures, which will be similar to standards under section 1311(c)(1)(E), (H), and (I) of the Affordable Care Act;

(f) *Fraud and abuse.* Comply with all Federal and State fraud and abuse laws;

(g) *Licensure.* Be licensed in every State in which it offers an MSP option;

(h) *Solvency and financial requirements.* Comply with the solvency standards set by each State in which it offers an MSP option;

(i) *Market conduct.* Comply with the market conduct standards of each State in which it offers an MSP option;

(j) *Prompt payment.* Comply with applicable State law in negotiating the terms of payment in contracts with its providers and in making payments to claimants and providers;

(k) *Appeals and grievances.* Comply with Federal standards under section 2719 of the PHS Act for appeals and grievances relating to adverse benefit determinations, as described in subpart F of this part;

(l) *Privacy and confidentiality.* Comply with all Federal and State privacy and security laws and requirements, including any standards required by OPM in guidance or contract, which will be similar to the standards contained in 45 CFR part 164 and applicable State law; and

(m) *Benefit plan material or information.* Comply with Federal and State law, including § 800.113.

§ 800.116 Process for dispute resolution.

(a) *Determinations about applicability of State law under section 1334(b)(2) of the Affordable Care Act.* In the event of a dispute about the applicability to an MSP option or MSP issuer of a State law, the State may request that OPM reconsider a determination that an MSP option or MSP issuer is not subject to such State law.

(b) *Required demonstration.* A State making a request under paragraph (a) of this section must demonstrate that the State law at issue:

(1) Is not inconsistent with section 1334 of the Affordable Care Act or this part;

(2) Does not prevent the application of a requirement of part A of title XXVII of the PHS Act; and

(3) Does not prevent the application of a requirement of title I of the Affordable Care Act.

(c) *Request for review.* The request must be in writing and include contact information, including the name, telephone number, email address, and mailing address of the person or persons whom OPM may contact regarding the request for review. The request must be in such form, contain such information, and be submitted in such manner and within such timeframe as OPM may prescribe.

(1) The requester may submit to OPM any relevant information to support its request.

(2) OPM may obtain additional information relevant to the request from any source as it may, in its judgment, deem necessary. OPM will provide the requester with a copy of any additional information it obtains and provide an opportunity for the requester to respond (including by submission of additional information or explanation).

(3) OPM will issue a written decision within 60 calendar days after receiving the written request, or after the due date for a response under paragraph (c)(2) of this section, whichever is later, unless a different timeframe is agreed upon.

(4) OPM's written decision will constitute final agency action that is subject to review under the Administrative Procedure Act in the appropriate U.S. district court. Such review is limited to the record that was before OPM when OPM made its decision.

Subpart C—Premiums, Rating Factors, Medical Loss Ratios, and Risk Adjustment

§ 800.201 General requirements.

(a) *Premium negotiation.* OPM will negotiate annually with an MSP issuer, on a State by State basis, the premiums for each MSP option offered by that issuer in that State. Such negotiations may include negotiations about the cost-sharing provisions of an MSP option.

(b) *Duration.* Premiums will remain in effect for the plan year.

(c) *Guidance on rate development.* OPM will issue guidance addressing methods for the development of premiums for the MSP Program. That guidance will follow State rating standards generally applicable in a State, to the greatest extent practicable.

(d) *Calculation of actuarial value.* An MSP issuer must calculate actuarial value in the same manner as QHP issuers under section 1302(d) of the Affordable Care Act, as well as any applicable standards set by OPM or HHS.

(e) *OPM rate review process.* An MSP issuer must participate in the rate review process established by OPM to negotiate rates for MSP options. The rate review process established by OPM will be similar to the process established by HHS pursuant to section 2794 of the PHS Act and disclosure and review standards established under 45 CFR part 154.

(f) *State effective rate review.* With respect to its MSP options, an MSP issuer is subject to a State's rate review process, including a State's Effective Rate Review Program established by HHS pursuant to section 2794 of the PHS Act and 45 CFR part 154. In the event HHS is reviewing rates for a State pursuant to section 2794 of the PHS Act, HHS will defer to OPM's judgment regarding the MSP options' proposed rate increase. If a State withholds approval of an MSP option and OPM determines, in its discretion, that the State's action would prevent OPM from administrating the MSP Program, OPM retains authority to make the final decision to approve rates for participation in the MSP Program, notwithstanding the absence of State approval.

(g) *Single risk pool.* An MSP issuer must consider all enrollees in an MSP option to be in the same risk pool as all enrollees in all other health plans in the individual market or the small group market, respectively, in compliance with section 1312(c) of the Affordable Care Act, 45 CFR 156.80, and any applicable Federal or State laws and regulations implementing that section.

§ 800.202 Rating factors.

(a) *Permissible rating factors.* In proposing premiums for each MSP option, an MSP issuer must use only the rating factors permitted under section 2701 of the PHS Act.

(b) *Application of variations based on age or tobacco use.* Rating variations permitted under section 2701 of the PHS Act must be applied by an MSP issuer based on the portion of the premium attributable to each family member covered under the coverage in accordance with any applicable Federal or State laws and regulations implementing section 2701(a) of the PHS Act.

(c) *Age rating.* For age rating, an MSP issuer must use the ratio established by the State in which the MSP option is offered, if it is less than 3:1.

(1) *Age bands.* An MSP issuer must use the uniform age bands established under HHS regulations implementing section 2701(a) of the PHS Act.

(2) *Age curves.* An MSP issuer must use the age curves established under HHS regulations implementing section 2701(a) of the PHS Act, or age curves established by a State pursuant to HHS regulations.

(d) *Rating areas.* An MSP issuer must use the rating areas appropriate to the State in which the MSP option is offered and established under HHS regulations implementing section 2701(a) if the PHS Act.

(e) *Tobacco rating.* An MSP issuer must apply tobacco use as a rating factor in accordance with any applicable Federal or State laws and regulations implementing section 2701(a) of the PHS Act.

(f) *Wellness programs.* An MSP issuer must comply with any applicable Federal or State laws and regulations implementing section 2705 of the PHS Act.

§ 800.203 Medical loss ratio.

(a) *Required medical loss ratio.* An MSP issuer must attain:

(1) The medical loss ratio (MLR) required under section 2718 of the PHS Act and regulations promulgated by HHS; and

(2) Any MSP-specific MLR that OPM may set in the best interests of MSP enrollees or that is necessary to be consistent with a State's requirements with respect to MLR.

(b) *Consequences of not attaining required medical loss ratio.* If an MSP issuer fails to attain an MLR set forth in paragraph (a) of this section, OPM may take any appropriate action, including but not limited to intermediate sanctions, such as suspension of marketing, decertifying an MSP option in one or more States, or terminating an MSP issuer's contract pursuant to § 800.404.

§ 800.204 Reinsurance, risk corridors, and risk adjustment.

(a) *Transitional reinsurance program.* An MSP issuer must comply with section 1341 of the Affordable Care Act, 45 CFR part 153, and any applicable Federal or State regulations under section 1341 that set forth requirements to implement the transitional reinsurance program for the individual market.

(b) *Temporary risk corridors program.* An MSP issuer must comply with section 1342 of the Affordable Care Act, 45 CFR part 153, and any applicable Federal regulations under section 1342 that set forth requirements to implement the risk corridor program.

(c) *Risk adjustment program.* An MSP issuer must comply with section 1343 of the Affordable Care Act, 45 CFR part 153, and any applicable Federal or State regulations under section 1343 that set forth requirements to implement the risk adjustment program.

Subpart D—Application and Contracting Procedures

§ 800.301 Application process.

(a) *Acceptance of applications.* Without regard to 41 U.S.C. 6101(b)–(d), or any other statute requiring competitive bidding, OPM may consider annual applications from health insurance issuers, including groups of health insurance issuers as defined in § 800.20, to participate in the MSP Program. If OPM determines that it is not beneficial for the MSP Program to consider new issuer applications for an upcoming year, OPM will issue a notice to that effect. Each existing MSP issuer may complete a renewal application annually.

(b) *Form and manner of applications.* An applicant must submit to OPM, in the form and manner and in accordance with the timeline specified by OPM, the information requested by OPM for determining whether an applicant meets the requirements of this part.

§ 800.302 Review of applications.

(a) *Determinations.* OPM will determine if an applicant meets the requirements of this part. If OPM determines that an applicant meets the requirements of this part, OPM may accept the applicant to enter into contract negotiations with OPM to participate in the MSP Program.

(b) *Requests for additional information.* OPM may request additional information from an applicant before making a decision about whether to enter into contract negotiations with that applicant to participate in the MSP Program.

(c) *Declination of application.* If, after reviewing an application to participate in the MSP Program, OPM declines to enter into contract negotiations with the applicant, OPM will inform the applicant in writing of the reasons for that decision.

(d) *Discretion.* The decision whether to enter into contract negotiations with a health insurance issuer who has applied to participate in the MSP Program is committed to OPM's discretion.

(e) *Impact on future applications.* OPM's declination of an application to participate in the MSP Program will not preclude the applicant from submitting an application for a subsequent year to participate in the MSP Program.

§ 800.303 MSP Program contracting.

(a) *Participation in MSP Program.* To become an MSP issuer, the applicant and the Director or the Director's designee must sign a contract that meets the requirements of this part.

(b) *Standard contract.* OPM will establish a standard contract for the MSP Program.

(c) *Premiums.* OPM and the applicant will negotiate the premiums for an MSP option for each plan year in accordance with the provisions of subpart C of this part.

(d) *Benefit packages.* OPM must approve the applicant's benefit packages for an MSP option.

(e) *Additional terms and conditions.* OPM may elect to negotiate with an applicant such additional terms, conditions, and requirements that:

(1) Are in the interests of MSP enrollees; or

(2) OPM determines to be appropriate.

(f) Certification to offer health insurance coverage.

(1) For each plan year, an MSP Program contract will specify MSP options that OPM has certified, the specific package of benefits authorized to be offered on each Exchange, and the premiums to be charged for each package of benefits on each Exchange.

(2) An MSP issuer may not offer an MSP option on an Exchange unless its MSP Program contract with OPM includes a certification authorizing the MSP issuer to offer the MSP option on that Exchange in accordance with paragraph (f)(1) of this section.

§ 800.304 Term of the contract.

(a) *Term of a contract.* The term of the contract will be specified in the MSP Program contract and must be for a period of at least the 12 consecutive months defined as the plan year.

(b) *Plan year.* The plan year is a consecutive 12-month period during which an MSP option provides coverage for health benefits. A plan year may be a calendar year or otherwise.

§ 800.305 Contract renewal process.

(a) *Renewal.* To continue participating in the MSP Program, an MSP issuer must provide to OPM, in the form and manner and in accordance with the timeline prescribed by OPM, the information requested by OPM for determining whether the MSP issuer continues to meet the requirements of this part.

(b) *OPM decision.* Subject to paragraph (c) of this section, OPM will renew the MSP Program contract of an MSP issuer who timely submits the information described in paragraph (a).

(c) *OPM discretion not to renew.* OPM may decline to renew the contract of an MSP issuer if:

(1) OPM and the MSP issuer fail to agree on premiums and benefits for an MSP option for the subsequent plan year;

(2) The MSP issuer has engaged in conduct described in § 800.404(a); or

(3) OPM determines that the MSP issuer will be unable to comply with a material provision of section 1334 of the Affordable Care Act or this part.

(d) *Failure to agree on premiums and benefits.* Except as otherwise provided in this part, if an MSP issuer has complied with paragraph (a) of this section and OPM and the MSP issuer fail to agree on premiums and benefits for an MSP option on one or more Exchanges for the subsequent plan year by the date required by OPM, either party may provide notice of nonrenewal pursuant to § 800.306, or OPM may in its discretion withdraw the certification of that MSP option on the Exchange or Exchanges for that plan year. In addition, if OPM and the MSP issuer fail to agree on benefits and premiums for an MSP option on one or more Exchanges by the date set by OPM and in the event of no action (no notice of nonrenewal or renewal) by either party, the MSP Program contract will be renewed and the existing premiums and benefits for that MSP option on that Exchange or Exchanges will remain in effect for the subsequent plan year.

§ 800.306 Nonrenewal.

(a) *Nonrenewal.* Nonrenewal may pertain to the MSP issuer or the State-level issuer. The circumstances under which nonrenewal may occur are:

(1) Nonrenewal of contract. As used in this subpart and subpart E of this part, ''nonrenewal of contract'' means a decision by either OPM or an MSP issuer not to renew an MSP Program contract.

(2) Nonrenewal of participation. As used in this subpart and subpart E of this part, ''nonrenewal of participation'' means a decision by OPM, an MSP issuer, or a State-level issuer not to renew a State-level issuer's participation in a MSP Program contract.

(b) *Notice required.* Either OPM or an MSP issuer may decline to renew an MSP Program contract by providing a written notice of nonrenewal to the other party.

(c) *MSP issuer responsibilities.* The MSP issuer's written notice of nonrenewal must be made in accordance with its MSP Program contract with OPM. The MSP issuer also must comply with any requirements regarding the termination of a plan that are applicable to a QHP offered on an Exchange on which the MSP option was offered, including a requirement to provide advance written notice of termination to enrollees. MSP issuers shall provide written notice to enrollees in accordance with § 800.404(d).

Subpart E—Compliance

§ 800.401 Contract performance.

(a) *General.* An MSP issuer must perform an MSP Program contract with OPM in accordance with the requirements of section 1334 of the Affordable Care Act and this part. The MSP issuer must continue to meet such requirements while under an MSP Program contract with OPM.

(b) *Specific requirements for issuers.* In addition to the requirements described in paragraph (a) of this section, each MSP issuer must:

(1) Have, in the judgment of OPM, the financial resources to carry out its obligations under the MSP Program;

(2) Keep such reasonable financial and statistical records, and furnish to OPM such reasonable financial and statistical reports with respect to the MSP option or the MSP issuer, as may be requested by OPM;

(3) Permit representatives of OPM (including the OPM Office of Inspector General), the U.S. Government Accountability Office, and any other applicable Federal Government auditing entities to audit and examine its records and accounts that pertain, directly or indirectly, to the MSP option at such reasonable times and places as may be designated by OPM or the U.S. Government Accountability Office;

(4) Timely submit to OPM a properly completed and signed novation or change-of-name agreement in accordance with subpart 42.12 of 48 CFR part 42;

(5) Perform the MSP Program contract in accordance with prudent business practices, as described in paragraph (c) of this section; and

(6) Not perform the MSP Program contract in accordance with poor business practices, as described in paragraph (d) of this section.

(c) *Prudent business practices.* OPM will consider an MSP issuer's specific circumstances and facts in using its discretion to determine compliance with paragraph (b)(5) of this section. For purposes of paragraph (b)(5) of this section, prudent business practices include, but are not limited to, the following:

(1) Timely compliance with OPM instructions and directives;

(2) Legal and ethical business and health care practices;

(3) Compliance with the terms of the MSP Program contract, regulations, and statutes;

(4) Timely and accurate adjudication of claims or rendering of medical services;

(5) Operating a system for accounting for costs incurred under the MSP Program contract, which includes segregating and pricing MSP option medical utilization and allocating indirect and administrative costs in a reasonable and equitable manner;

(6) Maintaining accurate accounting reports of costs incurred in the administration of the MSP Program contract;

(7) Applying performance standards for assuring contract quality as outlined at § 800.402; and

(8) Establishing and maintaining a system of internal controls that provides reasonable assurance that:

(i) The provision and payments of benefits and other expenses comply with legal, regulatory, and contractual guidelines;

(ii) MSP funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and

(iii) Data is accurately and fairly disclosed in all reports required by OPM.

(d) *Poor business practices.* OPM will consider an MSP issuer's specific circumstances and facts in using its discretion to determine compliance with paragraph (b)(6) of this section. For purposes of paragraph (b)(6) of this section, poor business practices include, but are not limited to, the following:

(1) Using fraudulent or unethical business or health care practices or otherwise displaying a lack of business integrity or honesty;

(2) Repeatedly or knowingly providing false or misleading information in the rate setting process;

(3) Failing to comply with OPM instructions and directives;

(4) Having an accounting system that is incapable of separately accounting for costs incurred under the contract and/or that lacks the internal controls necessary to fulfill the terms of the contract;

(5) Failing to ensure that the MSP issuer properly pays or denies claims, or, if applicable, provides medical services that are inconsistent with standards of good medical practice; and

(6) Entering into contracts or employment agreements with providers, provider groups, or health care workers that include provisions or financial incentives that directly or indirectly create an inducement to limit or restrict communication about medically necessary services to any individual covered under the MSP Program. Financial incentives are defined as bonuses, withholds, commissions, profit sharing or other similar adjustments to basic compensation (*e.g.,* service fee, capitation, salary) which have the effect of limiting or reducing communication about appropriate medically necessary services.

(e) *Performance escrow account.* OPM may require MSP issuers to pay an assessment into an escrow account to ensure contract compliance and benefit MSP enrollees.

§ 800.402 Contract quality assurance.

(a) *General.* This section prescribes general policies and procedures to ensure that services acquired under MSP Program contracts conform to the contract's quality requirements.

(b) *Internal controls.* OPM may periodically evaluate the contractor's system of internal controls under the quality assurance program required by the contract and will acknowledge in writing if the system is inconsistent with the requirements set forth in the contract. OPM's reviews do not diminish the contractor's obligation to implement and maintain an effective and efficient system to apply the internal controls.

(c) Performance standards. (1) OPM will issue specific performance standards for MSP Program contracts and will inform MSP issuers of the applicable performance standards prior to negotiations for the contract year. OPM may benchmark its standards against standards generally accepted in the insurance industry. OPM may authorize nationally recognized standards to be used to fulfill this requirement.

(2) MSP issuers must comply with the performance standards issued pursuant to this section.

§ 800.403 Fraud and abuse.

(a) *Program required.* An MSP issuer must conduct a program to assess its vulnerability to fraud and abuse as well as to address such vulnerabilities.

(b) *Fraud detection system.* An MSP issuer must operate a system designed to detect and eliminate fraud and abuse by employees and subcontractors of the MSP issuer, by providers furnishing goods or services to MSP enrollees, and by MSP enrollees.

(c) *Submission of information.* An MSP issuer must provide to OPM such information or assistance as may be necessary for the agency to carry out the duties and responsibilities, including those of the Office of Inspector General as specified in sections 4 and 6 of the Inspector General Act of 1978 (5 U.S.C. App.). An MSP issuer must provide any requested information in the form, manner, and timeline prescribed by OPM.

§ 800.404 Compliance actions.

(a) *Causes for OPM compliance actions.* The following constitute cause for OPM to impose a compliance action described in paragraph (b) of this section against an MSP issuer:

(1) Failure by the MSP issuer to meet the requirements set forth in § 800.401(a) and (b);

(2) An MSP issuer's sustained failure to perform the MSP Program contract in accordance with prudent business practices, as described in § 800.401(c);

(3) A pattern of poor conduct or evidence of poor business practices such as those described in § 800.401(d); or

(4) Such other violations of law or regulation as OPM may determine, including pursuant to its authority under §§ 800.102 and 800.114.

(b) Compliance actions. (1) OPM may impose a compliance action against an MSP issuer at any time during the contract term if it determines that the MSP issuer is not in compliance with applicable law, this part, or the terms of its contract with OPM.

(2) Compliance actions may include, but are not limited to:

(i) Establishment and implementation of a corrective action plan;

(ii) Imposition of intermediate sanctions, such as suspensions of marketing;

(iii) Performance incentives;

(iv) Reduction of service area or areas;

(v) Withdrawal of the certification of the MSP option or options offered on one or more Exchanges;

(vi) Nonrenewal of participation;

(vii) Nonrenewal of contract; and

(viii) Withdrawal of approval or termination of the MSP Program contract.

(c) Notice of compliance action. (1) OPM must notify an MSP issuer in writing of a compliance action under this section. Such notice must indicate the specific compliance action undertaken and the reason for the compliance action.

(2) For compliance actions listed in § 800.404(b)(2)(v) through (b)(2)(viii), such notice must include a statement that the MSP issuer is entitled to request a reconsideration of OPM's determination to impose a compliance action pursuant to § 800.405.

(3) Upon imposition of a compliance action listed in paragraphs (b)(2)(iv) through (b)(2)(vii) of this section, OPM must notify the State Insurance Commissioner(s) and Exchange officials in the State or States in which the compliance action is effective.

(d) *Notice to enrollees.* If the contract is terminated, if OPM withdraws certification of an MSP option, or if a State-level issuer's participation in the MSP Program contract is not renewed, as described in §§ 800.306 and 800.404(b)(2) or any situation in which an MSP option is no longer available to enrollees, the MSP issuer must comply with any State or Exchange requirements regarding discontinuing a particular type of coverage that are applicable to a QHP offered on the Exchange on which the MSP option was offered including a requirement to provide advance written notice before the coverage will be discontinued. If a State or Exchange does not have requirements about advance notice to enrollees, the MSP issuer must inform current MSP enrollees in writing of the discontinuance of the MSP option no later than 90 days prior to discontinuing the MSP option, unless OPM determines that there is good cause for less than 90 days' notice.

(e) *Definition.* As used in this subpart, ''termination'' means a decision by OPM to cancel an MSP Program contract prior to the end of its contract term. The term includes OPM's withdrawal of approval of an MSP Program contract.

§ 800.405 Reconsideration of compliance actions.

(a) *Right to request reconsideration.* An MSP issuer may request that OPM reconsider a determination to impose one of the following compliance actions:

(1) Withdrawal of the certification of the MSP option or options offered on one or more Exchanges;

(2) Nonrenewal of participation;

(3) Nonrenewal of contract; or

(4) Termination of the MSP Program contract.

(b) Request for reconsideration and/or hearing. (1) An MSP issuer with a right to request reconsideration specified in paragraph (a) of this section may request a hearing in which OPM will reconsider its determination to impose a compliance action.

(2) A request under this section must be in writing and contain contact information, including the name, telephone number, email address, and mailing address of the person or persons whom OPM may contact regarding a request for a hearing with respect to the reconsideration. The request must be in such form, contain such information, and be submitted in such manner as OPM may prescribe.

(3) The request must be received by OPM within 15 calendar days after the date of the MSP issuer's receipt of the notice of compliance action. The MSP issuer may request that OPM's reconsideration allow a representative of the MSP issuer to appear personally before OPM.

(4) A request under this section must include a detailed statement of the reasons that the MSP issuer disagrees with OPM's imposition of the compliance action, and may include any additional information that will assist OPM in rendering a final decision under this section.

(5) OPM may obtain additional information relevant to the request from any source as it may, in its judgment, deem necessary. OPM will provide the MSP issuer with a copy of any additional information it obtains and provide an opportunity for the MSP issuer to respond (including by submitting additional information or explanation).

(6) OPM's reconsideration and hearing, if requested, may be conducted by the Director or a representative designated by the Director who did not participate in the initial decision that is the subject of the request for review.

(c) *Notice of final decision.* OPM will notify the MSP issuer, in writing, of OPM's final decision on the MSP issuer's request for reconsideration and the specific reasons for that final decision. OPM's written decision will constitute final agency action that is subject to review under the Administrative Procedure Act in the appropriate U.S. district court. Such review is limited to the record that was before OPM when it made its decision.

Subpart F—Appeals by Enrollees of Denials of Claims for Payment or Service

§ 800.501 General requirements.

(a) *Definitions.* For purposes of this subpart:

(1) *Adverse benefit determination* has the meaning given that term in 45 CFR 147.136(a)(2)(i).

(2) *Claim* means a request for:

(i) Payment of a health-related bill; or

(ii) Provision of a health-related service or supply.

(b) *Applicability.* This subpart applies to enrollees and to other individuals or entities who are acting on behalf of an enrollee and who have the enrollee's specific written consent to pursue a remedy of an adverse benefit determination.

§ 800.502 MSP issuer internal claims and appeals.

(a) *Processes.* MSP issuers must comply with the internal claims and appeals processes applicable to group health plans and health insurance issuers under 45 CFR 147.136(b).

(b) *Timeframes and notice of determination.* An MSP issuer must provide written notice to an enrollee of its determination on a claim brought under paragraph (a) of this section according to the timeframes and notification rules under 45 CFR 147.136(b) and (e), including the timeframes for urgent claims. If the MSP issuer denies a claim (or a portion of the claim), the enrollee may appeal the adverse benefit determination to the MSP issuer in accordance with 45 CFR 147.136(b).

§ 800.503 External review.

(a) *External review by OPM.* OPM will conduct external review of adverse benefit determinations using a process similar to OPM review of disputed claims under 5 CFR 890.105(e), subject to the standards and timeframes set forth in 45 CFR 147.136(d).

(b) *Notice.* Notices to MSP enrollees regarding external review under paragraph (a) of this section must comply with 45 CFR 147.136(e), and are subject to review and approval by OPM.

(c) *Issuer obligation.* An MSP issuer must pay a claim or provide a health-related service or supply pursuant to OPM's final decision or the final decision of an independent review organization without delay, regardless of whether the plan or issuer intends to seek judicial review of the external review decision and unless or until there is a judicial decision otherwise.

§ 800.504 Judicial review.

(a) OPM's written decision under the external review process established under § 800.503(a) will constitute final agency action that is subject to review under the Administrative Procedure Act in the appropriate U.S. district court. A decision made by an independent review organization under the process established under § 800.503(a) is not within OPM's discretion and therefore is not final agency action.

(b) Judicial review under paragraph (a) of this section is limited to the record that was before OPM when OPM made its decision.

Subpart G—Miscellaneous

§ 800.601 Reservation of authority.

OPM reserves the right to implement and supplement these regulations with written operational guidelines.

§ 800.602 Consumer choice with respect to certain services.

(a) *Assured availability of varied coverage.* Consistent with § 800.104, OPM will ensure that at least one of the MSP issuers on each Exchange in each State offers at least one MSP option that does not provide coverage of services described in section 1303(b)(1)(B)(i) of the Affordable Care Act.

(b) *State opt-out.* An MSP issuer may not offer abortion coverage in any State where such coverage of abortion services is prohibited by State law.

(c) *Notice to enrollees*—(1) *Notice of exclusion.* The MSP issuer must provide notice to consumers prior to enrollment when non-excepted abortion services are not a covered benefit in a State where such coverage of such abortion services is permitted by State law, in the form, manner, and timeline prescribed by OPM.

(2) *Notice of coverage.* If an MSP issuer chooses to offer an MSP option that covers non-excepted abortion services, in addition to an MSP option that does not provide coverage for these services, the MSP issuer must provide notice to consumers prior to enrollment that non-excepted abortion services are a covered benefit, in a manner consistent with 45 CFR 147.200(a)(3), to meet the requirements of 45 CFR 156.280(f). OPM may provide guidance on the form, manner, and timeline for this notice.

(3) *OPM review and approval of notices.* OPM may require an MSP issuer to submit to OPM such notices. OPM reserves the right to review and approve these consumer notices to ensure that an MSP issuer complies with Federal and State laws, and the standards prescribed by OPM with respect to § 800.602.

§ 800.603 Disclosure of information.

(a) *Disclosure to certain entities.* OPM may provide information relating to the activities of MSP issuers or State-level issuers to a State Insurance Commissioner or Director of a State-based Exchange.

(b) *Conditions of when to disclose.* OPM shall only make a disclosure described in this section to the extent that such disclosure is:

(1) Necessary or appropriate to permit OPM's Director, a State Insurance Commissioner, or Director of a State-based Exchange to administer and enforce laws applicable to an MSP issuer or State-level issuer over which it has jurisdiction, or

(2) Otherwise in the best interests of enrollees or potential enrollees in MSP options.

(c) *Confidentiality of information.* OPM will take appropriate steps to cause the recipient of this information to preserve the information as confidential.

[FR Doc. 2014–27793 Filed 11–21–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BE55

Fisheries of the Caribbean, Gulf of Mexico and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 29

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

ACTION: Notice of availability; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted Amendment 29 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. Amendment 29 proposes actions to update the Council's acceptable biological catch (ABC) control rule to incorporate methodology for determining the ABC of unassessed species; adjust ABCs for 14 unassessed snapper-grouper species through application of the updated ABC control rule; adjust annual catch limits (ACLs) and recreational annual catch targets (ACTs)for four snapper-grouper species and three species complexes based on revised ABCs; and revise management measures for gray triggerfish to modify minimum size limits, establish a commercial split season, and specify a commercial trip limit.

DATES: Written comments must be received on or before January 23, 2015.

ADDRESSES: You may submit comments on Amendment 29 identified by ''NOAA–NMFS–2014–0132'' by any of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0132,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• Mail: Submit written comments to Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Amendment 29 may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.* Amendment 29 includes a draft environmental assessment, a Regulatory Flexibility Act analysis, a Regulatory Impact Review, and a Fishery Impact Statement.

FOR FURTHER INFORMATION CONTACT: Karla Gore, telephone: 727–824–5305; email: *Karla.Gore@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The FMP being revised by Amendment 29 was prepared by the Councils and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Council's Scientific and Statistical Committee (SSC) has recommended an update of the Council's ABC control rule to incorporate new methodology for species without assessments but for which there are reliable catch data. Amendment 29 updates the ABC control rule and includes revised ABCs for 14 unassessed snapper-grouper species based on the new control rule. Amendment 29 also includes revisions to ACLs and recreational annual catch targets (ACTs) for four species and three species complexes based on the revised ABCs. These actions are based on the best scientific information available.

A stock assessment for the South Atlantic stock of gray triggerfish was initiated in 2013 but completion of the assessment has been postponed to 2015. Meanwhile, fishermen have approached the Council with requests for management measures due to concerns about early closures in the commercial sector and the stock status of gray triggerfish. While the Council had intended to wait for the results of the stock assessment to make changes to management measures for this stock, the unforeseen delays in the assessment prompted the Council to be proactive and consider actions in Amendment 29. These actions include modifying minimum size limits for gray triggerfish, establishing a commercial split season, and specifying a commercial trip limit for gray triggerfish.

Actions Contained in Amendment 29

Amendment 29 includes actions to revise ACLs for three species complexes and four snapper-grouper species based on the revised ABC values. In addition, Amendment 29 includes actions to revise management measures for gray triggerfish in Federal waters of the South Atlantic region.

Amendment 29 to Update the ABC Control Rule

Amendment 29 modifies the ABC control rule to use the Only Reliable Catch Stocks (ORCS) approach, recommended by the Council's SSC, to calculate ABC values for unassessed stocks for which there is only reliable catch information available. The approach involved selection of a ''catch statistic'' based on the maximum landings from 1999–2007, similar to the period of landings used in the Council's Comprehensive ACL Amendment, and to minimize the impact of a decrease in landings that may have been caused by the economic downturn and the effect of recent regulations. The catch statistic was then multiplied by a scalar (number) ranging from 1.25 to 2, based on SSC consensus and expert judgment, to denote the stock's risk of overexploitation (how likely the stock is to become overfished), and a scalar ranging from 0.50 to 0.90 to denote the stock's management risk level. The SSC provided the first two criteria for each stock at issue and the Council developed the risk tolerance level. The amendment employed the ORCS approach to revise ABC values for the following unassessed snapper-grouper species: Bar jack, margate, red hind, cubera snapper, yellowedge grouper, silk snapper, Atlantic spadefish, gray snapper, lane snapper, rock hind, tomtate, white grunt, scamp, and gray triggerfish.

Revise ACLs for Select Species

Amendment 29 would revise the ACLs and recreational ACTs for three species and four species complexes of unassessed snapper-grouper species, based on the revised ABC values. In Amendment 29, the Council defines ACL = OY = ABC for the snappers complex, grunts complex, shallow-water complex, bar jack, Atlantic spadefish and gray triggerfish. For scamp, the Council chose to revise the definition to ACL = OY = 0.90(ABC) to provide a buffer between the ABC and the ACL for scamp due to concerns about the stock status of scamp.

Amendment 29 would not change the specified sector allocations or the recreational ACT definitions for the snapper-grouper species contained in Amendment 29.

Modify Minimum Size Limit for Gray Triggerfish

Amendment 29 includes an action to establish a 12-inch (30.5-cm) fork length (FL) minimum size limit for gray triggerfish in Federal waters off North Carolina, South Carolina, and Georgia for both the commercial and recreational sectors. This action would also increase the minimum size limit for gray triggerfish off the east coast of Florida from 12 inches (30.5 cm), total length to 14 inches (35.6 cm), FL for both the commercial and recreational sectors, which is consistent with the commercial and recreational minimum size limit in place off the west coast of Florida, however, this is inconsistent with the 12-inch (30.5-cm) minimum size limit for gray triggerfish in state waters off the east coast of Florida. The rationale for increasing the minimum size limit to 14 inches (35.6 cm), FL, off the east coast of Florida is to implement consistent regulations for fishermen in South Florida, specifically off the

Florida Keys. The Florida Fish and Wildlife Commission is expected to discuss implementing compatible regulations for state waters off the east coast of Florida.

Establish a Commercial Split Season for Gray Triggerfish

The fishing year for gray triggerfish begins on January 1. Weather conditions can be poor off North Carolina and South Carolina during the early part of the year, making fishing for gray triggerfish difficult. Amendment 29 includes an action to divide the annual commercial fishing season for gray triggerfish into two 6-month fishing seasons, to provide opportunities to fish for gray triggerfish throughout the South Atlantic and throughout the calendar year. This action would allocate 50 percent of the commercial gray triggerfish ACL for the time period January 1 through June 30, and 50 percent for the time period July 1 through December 31. As a result, the commercial ACL would be divided into two seasonal quotas of equal amounts of 156,162 lb (70,834 kg), round weight. When the quota would be reached for a given season, the commercial sector would close. In addition, any unused portion of the quota from the first season would be added to the quota in the second season. Any unused portion of the quota specified in the second season, including any addition of quota from the first season, would become void and would not be added to any subsequent quota.

Establish a Commercial Trip Limit for Gray Triggerfish

Amendment 29 would establish a commercial trip limit of 1,000 lb (454 kg), round weight, for gray triggerfish, to extend the commercial fishing season for this species.

A proposed rule that would implement measures outlined in Amendment 29 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 29 for Secretarial review, approval, and implementation. Comments received by January 23, 2015, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: November 19, 2014.

Alan D. Risenhoover,

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

[FR Doc. 2014–27740 Filed 11–21–14; 8:45 am]

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Notices

Federal Register

Vol. 79, No. 226

Monday, November 24, 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.

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket No. 110142014–1111–01]

Council Pre-Award Notification Requirements for Grants Agreements

AGENCY: Gulf Coast Ecosystem Restoration Council (Council).

ACTION: Notice.

SUMMARY: This notice constitutes a compilation of the Council's pre-award requirements for grants and cooperative agreements, including all amendments and revisions to date.

DATES: These provisions are effective November 24, 2014.

FOR FURTHER INFORMATION CONTACT: Mary Pleffner, Council, telephone number: 813–995–2025.

SUPPLEMENTARY INFORMATION: The Council is authorized to award grants and cooperative agreements under the 33 U.S.C. 1321(t)(2) and (3).

It is the policy of the Council to seek full and open competition for awards of discretionary financial assistance funds whenever possible. Moreover, Council financial assistance awards are made through a competitive review and selection process, unless otherwise directed by statute. Notices announcing the availability of Federal funds for new awards for each Council competitive financial assistance program will be posted on *www.grants.gov.* Announcements will reference or include the Council Pre-Award Notification Requirements identified in Sections A. and B. of this notice, and the program-specific information identified in Section C. of this notice.

This announcement provides notice of the Council Pre-Award Notification Requirements that apply to all Council-sponsored grant programs, and that may supplement those program announcements that reference this notice. Some of the general provisions published herein contain, by reference or substance, a summary of the pertinent Federal statutes or regulations, Executive Orders (E.O.), Office of Management and Budget (OMB) Circulars, or OMB Assurances (*e.g.* Standard Forms SF–424B and SF–424D). This notice is not intended to be a derogation of, or amend, any statute, regulation, Executive Order, OMB Circular, or OMB Assurance.

Each individual award notice will complete and include the relevant analyses pursuant to the requirements in Executive Order 12866, Executive Order 13132, the Administrative Procedure Act, the Regulatory Flexibility Act, and the Paperwork Reduction Act, as applicable.

A. The following pre-award notice provisions apply to all applicants for and recipients of Council grants:

1. Federal Policies and Procedures. Applicants, non-Federal entities (also referred to as ''recipients'') and subrecipients are subject to all Federal laws and Council policies, regulations, and procedures applicable to recipients of Federal financial assistance.

2. Debarment, Suspension, Drug-Free Workplace, and Lobbying Provisions. The non-Federal entity must comply with the provisions of Subpart C of 2 CFR part 1326, ''Nonprocurement Debarment and Suspension'' (published in the **Federal Register** on December 21, 2006, 71 FR 76573), and the provisions of 31 U.S.C. 1352, 2 CFR 200.450, as well as the common rule, ''New Restrictions on Lobbying'' published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget, ''Governmentwide Guidance for New Restrictions on Lobbying,'' and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).

3. Pre-Award Screening of Applicant's and Recipient's Management Capabilities, Financial Condition, and Present Responsibility. It is the policy of the Council to make awards to applicants and recipients that are competently managed, responsible, financially capable and committed to achieving the objectives of the award(s) they receive. Therefore, pre-award screening may include, but is not limited to, the following reviews:

(a) Past Performance. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(b) Credit Checks. A credit check will be performed on individuals, for-profit, and non-profit organizations.

(c) Delinquent Federal Debts. No award of Federal funds shall be made to an applicant that has an outstanding delinquent Federal debt until:

(1) The delinquent account is paid in full;

(2) A negotiated repayment schedule is established and at least one payment is received; or

(3) Other arrangements satisfactory to the Council are made.

Pursuant to 31 U.S.C. 3720B and 31 CFR 901.6, unless waived, the Council is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

Pursuant to 28 U.S.C. 3201(e), a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan which is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied. The Council may promulgate regulations to allow for waiver of this restriction on eligibility for such grants.

(d) List of Parties Excluded from Procurement and Nonprocurement Programs. The System for Award Management (SAM) (previously this information was located within the Excluded Parties Listing System), maintained by the General Services Administration (GSA), is available at *https://www.sam.gov.* SAM encompasses the capabilities of the Central Contractor Registration (CCR)/Federal Agency Registration (FedReg), Online Representations and Certifications Application (ORCA), and the Excluded Parties List System (EPLS), among other federal databases, and will be checked by Council to ensure that an applicant is properly registered and eligible to receive a Council financial assistance award.

(e) Pre-Award Accounting System Surveys. The Council Grants Office may

require a pre-award survey of the applicant's financial management system in cases where the recommended applicant has had no prior Federal support, the operating unit has reason to question whether the financial management system meets Federal financial management standards, or the applicant is being considered for a high-risk designation.

(f) Other. Council may conduct additional pre-award screenings in accordance with new public laws or administrative directives.

4. No Obligation for Future Funding. If the Council obligates funding for an applicant's project, the Council has no obligation to provide any additional future funding in connection with that award. Any amendment of an award to increase funding or to extend the period of performance is at the total discretion of the Council.

5. Pre-Award Activities. If an applicant incurs any costs prior to receiving an award, it does so solely at its own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of Council to cover pre-award costs unless approved by the Grants Officer as part of the terms of the award, or as authorized for awards that meet the requirements outlined in any Council implementing regulations promulgated pursuant to its authority.

6. Freedom of Information Act (FOIA) Disclosure. The FOIA (5 U.S.C. 552) and any Council implementing regulations promulgated pursuant to its authority set forth the process and procedure the Council follows to make requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications, proposals, and other information submitted by applicants may be released in response to FOIA requests. Applicants and recipients should designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submissions that it considers protected from disclosure under 5 U.S.C. 552(b)(4). In addition, Federal contractors may assist with program implementation and have access to materials applicants and recipients submit.

7. False Statements. A false statement on an application is grounds for denial or termination of an award, and/or possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

8. Application Forms. Unless a notice announcing the availability of funding states otherwise, the following forms, family of forms, and/or certifications are required, as applicable, for Council grants and cooperative agreements: OMB Standard Forms (SF) SF–424, ''Application for Federal Assistance;'' SF–424A, ''Budget Information—Non-Construction Programs;'' SF–424B, ''Assurances—Non-Construction Programs;'' SF–424C, ''Budget Information—Construction Programs;'' SF–424D, ''Assurances—Construction Programs;'' SF–424 Family of Forms for Research and Related Programs; SF–424 Short Organizational Family; SF–424 Individual Form Family; and SF–424 Mandatory Family. In addition, any Council certifications regarding lobbying, lobbying and lower-tier covered transactions promulgated pursuant to its authortiy; and SF–LLL, ''Disclosure of Lobbying Activities,'' will be used as appropriate.

9. Environmental Compliance. Applicants and recipients (including subrecipients) of grants and cooperative agreements subject to this notice must comply with all applicable environmental laws, regulations, and policies. Additionally, applicants and recipients may be required to assist the Council in complying with laws, regulations, and policies applicable to Council actions. Laws, regulations, and policies potentially applicable to Council actions and/or applicants and recipients may include but are not limited to the statutes and Executive Orders listed below. The Council does not make independent determinations of compliance with laws such as the Clean Water Act. Rather, the Council may require an applicant or recipient to provide information to the Council to demonstrate that the applicant or recipient has complied with or will comply with such requirements. The failure to comply with or assist the Council in complying with applicable environmental requirements may be a basis for not selecting an application. In some cases, if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the applicant to submit additional information sufficient to enable the Council to make an assessment regarding compliance with applicable environmental laws, regulations, or policies.

(a) The National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Council approval of financial assistance awards may be subject to the environmental review requirements of the National Environmental Policy Act (NEPA). In such cases, applicants and recipients of financial assistance awards may be required to assist the Council in complying with NEPA. For example, applicants may be required to assist the Council by providing information on a proposal's potential environmental impacts, or drafting or supplementing an environmental assessment or environmental impact statement if the Council determines such documentation is required. Independent of the Council's responsibility to comply with NEPA, where appropriate, projects or programs funded by the Council may trigger Federal agency NEPA compliance duties involving a separate Federal action, such as the issuance of a Federal permit.

(b) The Endangered Species Act (16 U.S.C. 1531 *et seq.*). Council approval of financial assistance for project implementation is subject to compliance with section 7 of the Endangered Species Act (ESA). Applicants and recipients must identify any impact or activities that may involve a Federally-listed threatened or endangered species, or their designated critical habitat. Section 7 of the ESA requires every Federal agency to ensure that any action it authorizes, funds, or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat. Federal agencies have the responsibility for ensuring that a protected species or habitat does not incur adverse effects from actions taken under Federal assistance awards, and for conducting the required consultations with the National Marine Fisheries (NMFS) and the U.S. Fish and Wildlife Service (U.S. FWS) under the Endangered Species Act, as applicable.

(c) Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Essential Fish Habitat Regulations (50 CFR Subpart J and K). Applicants and recipients of financial assistance awards must identify to the Council any effects the award may have on essential fish habitat (EFH). Federal agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with NMFS regarding the potential effects of their actions, and respond in writing to NMFS recommendations. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. In addition, NMFS is required to comment on any state agency activities that would impact EFH. Provided the specifications outlined in the

regulations are met, EFH consultations will be incorporated into interagency procedures previously established under the NEPA, ESA, Clean Water Act (CWA), Fish and Wildlife Coordination Act, or other applicable statutes.

(d) Clean Water Act Section 404 (33 U.S.C. 1344 *et seq.*). CWA Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as levees and some coastal restoration activities), and infrastructure development (such as highways and airports). CWA Section 404 requires a permit from the U.S. Army Corps of Engineers before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (*e.g.* certain farming and forestry activities).

(e) The Migratory Bird Treaty Act (1 U.S.C. 703–712 *et seq.*), Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and Executive Order No. 13186, Responsibilities of Federal Agencies to Protect Migratory Birds. A number of prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. FWS to promote conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.

(f) National Historic Preservation Act (16 U.S.C. 470 *et seq.*). Council approval of financial assistance awards may be subject to Section 106 of the National Historic Preservation Act (NHPA). In such cases, applicants and recipients of financial assistance awards may be requested to assist the Council in identifying any adverse effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Pursuant to 40 CFR 800.2(c)(4), applicants and recipients may also be requested to assist the Council in initiating consultation with State or Tribal Historic Preservation Officers, Indian tribes, Native Hawaiian Organizations or other applicable interested parties as necessary to the Council's responsibilities to identify historic properties, assess adverse effects to them, and determine ways to avoid, minimize or mitigate adverse effects on historic properties.

(g) Executive Order 11988 (''Floodplain Management'') and Executive Order 11990 (''Protection of Wetlands''). Applicants and recipients must identify proposed actions located in a 100-year floodplain and/or wetlands to enable Council to determine whether there is an alternative to minimize any potential harm.

(h) Clean Air Act (42 U.S.C. 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 (''Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans''). Applicants and recipients must comply with the provisions of the Clean Air Act (42 U.S.C. 7401 *et seq.*), Clean Water Act (33 U.S.C. 1251 *et seq.*), and Executive Order 11738. Recipients shall not use a facility that the Environmental Protection Agency (EPA) has placed on EPA's List of Violating Facilities (this list is incorporated into the Excluded Parties List System which is part of SAM located at *https://www.sam.gov*) in performing any award that is nonexempt under subpart J of 2 CFR part 1532.

(i) The Flood Disaster Protection Act (42 U.S.C. 4002 *et seq.*). Flood insurance, when available, is required for Federally-assisted construction or acquisition in areas having special flood hazards and flood-prone areas. When required, recipients will ensure that flood insurance is secured for their project(s).

(j) The Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*). Federally funded projects must be consistent with a coastal state's approved management program for the coastal zone.

(k) The Coastal Barriers Resources Act (16 U.S.C. 3501 *et seq.*). Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System. This Act generally prohibits new Federal expenditures, including Federal grants, within specific units of the Coastal Barrier Resources System (CBRS). Although the Act restricts Federal expenditures for coastal barrier development, Section 6(a)(6)(A) contains an exemption for projects relating to the study, management, protection, or enhancement of fish and wildlife resources and habitats, including recreational projects. Section 6(a)(6)(G) also exempts nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems. However, care must be taken when interpreting any exemptions described, as they are limited to projects that are consistent with the purpose of this Act as interpreted by the lead agency, the Department of the Interior. Applicants should work with the U.S. FWS, which reviews proposals to determine whether a project falls within a protected unit and if so, whether an exception applies. Maps of the CBRS are available at *http://www.fws.gov/habitatconservation/coastal_barrier.html.*

(l) The Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*). This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system. Funded projects in the National Wild and Scenic Rivers system must be consistent with Wild and Scenic Rivers Act requirements.

(m) The Safe Drinking Water Act (42 U.S.C. 300 *et seq.*). The Sole Source Aquifer program under this statute precludes Federal financial assistance for any project that the EPA determines may contaminate a designated sole source aquifer through a recharge zone so as to create a significant hazard to public health.

(n) The Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*). This act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that recipients of Federal funds that are state agencies or political subdivisions of states give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

(o) The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. 9601 *et seq.*), as amended by the Community Environmental Response Facilitation Act, provides the President with broad, discretionary response authorities to address actual and threatened releases of hazardous substances, as well as pollutants and contaminants where there is an imminent and substantial danger to public health and the environment. Section 103 of this Act contains specific reporting requirements and responsibilities and section 117 of the Act contains specific provisions designed to ensure meaningful public participation in the response process.

(p) Executive Order 12898 (''Environmental Justice in Minority Populations and Low Income Populations''). This Order identifies and addresses adverse human health or environmental effects of programs, policies and activities on low income and minority populations. Consistent with Executive Order 12898, applicants and recipients may be requested to help identify and address, as appropriate, disproportionate impacts to low income and minority populations which could result from their project.

10. Limitation of Liability. In no event will the Council be responsible for proposal preparation costs if a program fails to receive funding or is cancelled because of other agency priorities. The publication of an announcement of funding availability does not oblige the Council to award any specific project or to obligate any available funds.

B. The following general provisions will apply to all Council grant awards:

1. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The uniform administrative requirements, cost principles, and audit requirements for all Council grants and cooperative agreements are codified at 2 CFR part 200.

2. Award Payments. Advances will be limited to the minimum amounts necessary to meet immediate disbursement needs, but in no case should advances exceed the amount of cash required for a 30-day period. Any advanced funds that are not disbursed in a timely manner and any applicable interest must be returned promptly to the Council. The Council uses the Department of the Treasury's Automated Standard Application for Payment (ASAP) system. In order to receive payments under ASAP, recipients will be required to enroll electronically in the ASAP system by providing their Federal awarding agency with pertinent information to begin the enrollment process, which allows them to use the online and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. It is the recipient's responsibility to ensure that its contact information is correct. The funding agency must be provided a Point of Contact name, mailing address, email address, telephone number, Data Universal Number System (DUNS) identifier issued by the commercial company Dun & Bradstreet (D&B), and taxpayer identification number (TIN) to commence the enrollment process. In order to be able to complete the enrollment process, the recipient will need to identify a Head of Organization, an Authorizing Official, and a Financial Officer. It is very important that the recipient's banking data be linked to the funding agency's Agency Location Code in order to ensure proper payment under an award. For additional information on this requirement, prospective applicants should contact the Council.

3. Federal and Non-Federal Cost Sharing.

(a) Awards that include Federal and non-Federal cost sharing will incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved budget, the Federal share will not exceed the total Federal dollar amount authorized by the award.

(b) The non-Federal share, whether in cash or in-kind, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for or later commitment of cash or in-kind contributions. In any case, recipients must meet the cost share commitment over the life of the award.

(c) For grant awards made under 33 U.S.C. 1321(t)(3), a Gulf Coast State of coastal political subdivision may use, in whole or in part, amounts made available to that Gulf Coast State or coastal political subdivision to satisfy the non-Federal share of any project or program that is (I) authorized by Federal law; (II) is an eligible activity described in 33 U.S.C. 1321(t)(1)(i) and (ii). Using funds for the non-Federal share shall not affect the priority in which other Federal funds are allocated or awarded. *See* 33 U.S.C. 1321(t)(3)(F).

4. Budget Changes and Transfers among Cost Categories. When the terms of an award allow the recipient to transfer funds among approved direct cost categories, the transfer authority does not authorize the recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. In addition, the recipient will not be authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

5. Three (3) Percent Cap on Administrative Costs. Of the amounts received by a Gulf Coast State, coastal political subdivision, or coastal zone parish in a grant from Treasury under the Direct Component, or in a grant from the Council under the Comprehensive Plan Component or Spill Impact Component, not more than three percent may be used for administrative costs. The three percent limit is applied to the total amount of funds received by a recipient under each grant. The three percent limit does not apply to the administrative costs of subrecipients. All subrecipient costs are subject to the cost principles in Federal law and policies on grants. *See* 31 CFR 34.204(a), Treasury's regulations implementing the limitation set forth in 33 U.S.C. 1321(t)(1)(ii)(IX). *See also* 31 CFR 34.2 Definitions—Administrative Costs.

6. Indirect Costs and Facilities and Administrative Costs.

(a) Indirect (facilities and administrative (F&A) costs will not be allowable charges against an award unless permitted under subawards and specifically included as a line item in the award's approved budget.)

(b) Excess indirect costs may not be used to offset unallowable direct costs.

(c) OMB established the cognizant agency concept, under which a single agency represents all others in dealing with grantees in common areas. The cognizant agency reviews and approves a recipient's indirect cost rate. Approved rates must be accepted by other agencies, unless specific program regulations restrict the recovery of indirect costs. If indirect costs are permitted and the recipient would like to include indirect costs in its budget, but the recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate will be subject to the procedures in the applicable cost principles.

(d) For those organizations for which the Council is cognizant or has oversight, the Council or its designee will either negotiate a fixed rate with carry-forward provisions or, in some instances, limit its review to evaluating the procedures described in the recipient's cost allocation plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs. For general guidance on how to put an indirect cost plan together go to: *http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm.*

(2) Within 90 days of the award date, the recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The recipient shall provide the Grants Officer with a copy of the transmittal letter.

Gulf Coast Ecosystem Restoration Council,
Attn: Grants Office,
500 Poydras St., Suite 1117,
New Orleans, LA 70130.

(3) The recipient can use the fixed rate proposed in the indirect cost plan until such time as the Council provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carry-forward provision used in

calculating next year's rate. This calculation of actual indirect costs and the carry-forward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each recipient's fiscal year.

(d) When the Council is not the oversight or cognizant Federal agency, the recipient shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.

(e) If the recipient fails to submit the required documentation to the Council within 90 days of the award date, the recipient may be precluded from recovering any indirect costs under the award. If the Council, oversight, or cognizant Federal agency determines there is good cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

(f) The maximum dollar amount of allocable indirect costs for which the Council will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and applicable to the period in which the cost was occurred, provided the rate is approved on or before the award end date.

(g) The total allowable indirect costs are subject to the three (3) percent cap on administrative costs stated in 33 U.S.C. 1321(t)(1)(iii). Pursuant to 31 CFR 34.2, administrative costs means those indirect costs for administration incurred by the Gulf Coast States, coastal political subdivisions, and coastal zone parishes that are allocable to activities authorized under the Act. Administrative costs may include costs for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services. Administrative costs do not include indirect costs that are identified specifically with, or readily assignable to: (1) Facilities; (2) Eligible projects, programs, or planning activities; or (3) Activities relating to grant applications, awards, audit requirements, or post-award management, including payments and collections.

7. Tax Refunds. Refunds of Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes received by the non-Federal entity during or after the project period must be refunded or credited to Council where the benefits were financed with Federal funds under the award. The non-Federal entity agrees to contact the Grants Officer immediately upon receipt of these refunds. The non-Federal entity further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal government, including refunds received after the project period ends.

8. Other Federal Awards with Similar Programmatic Activities. Recipients will be required to provide written notification to the Federal Program Officer and the Grants Officer in the event that, subsequent to receipt of the Council award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the Council award. The Council will not pay for costs that are funded by other sources.

9. Non-Compliance with Award Provisions. Failure to comply with any or all of the provisions of an award, or the requirements of this notice, may have a negative impact on future funding by the Council and may be considered grounds for any or all of the following enforcement actions: establishment of an account receivable, withholding payments under any Council awards to the recipient, changing the method of payment from advance to reimbursement only, or the imposition of other special award conditions, suspension of any Council active awards, or termination of any Council active awards.

10. Prohibition against Assignment by the Non-Federal Entity. The non-Federal entity shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of the Grants Officer.

11. Non-Discrimination Requirements. There are several Federal statutes, regulations, Executive Orders, and policies relating to non-discrimination. No person in the United States shall, on the grounds of race, color, national origin, handicap, religion, age, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. These requirements include but are not limited to:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and any Council implementing regulations promulgated pursuant to its authority prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and any Council implementing regulations promulgated pursuant to its authority prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any Council implementing regulations promulgated pursuant to its authority prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance. The U.S. Department of Justice issued regulations implementing Title II of the Americans with Disabilities Act (ADA) (28 CFR part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 CFR part 36; 75 FR 56164, as amended by 76 FR 13286). These regulations adopt enforceable accessibility standards called the ''2010 ADA Standards for Accessible Design'' (2010 Standards). The Council deems compliance with the 2010 Standards to be an acceptable means of complying with the Section 504 accessibility requirements for new construction and alteration projects.

(d) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) and any Council implementing regulations promulgated pursuant to its authority prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

(e) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;

(f) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), relating to nondiscrimination in the sale, rental or financing of housing;

(g) Parts II and III of Executive Order 11246, as amended by Executive Orders 11375 and 12086 requiring Federally assisted construction contracts to include the nondiscrimination provisions of sections 202 and 203 of that Executive Order and the Department of Labor's regulations at 41 CFR 60–1.4(b) implementing Executive Order 11246;

(h) Executive Order 13166 (August 11, 2000), ''Improving Access to Services for Persons With Limited English Proficiency,'' requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them; and

(i) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), recognizing the constitutionally-protected interest of religious organizations in making religiously-motivated employment decisions, religious organizations are expressly exempt from the prohibition against discrimination on the basis of religion.

12. Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 *et seq.*) and Single Audit Act Amendments of 1996 (as implemented by 2 CFR part 200, subpart F, ''Audit Requirements.''), non-Federal entities that are subject to the provisions of 2 CFR part 200, subpart F and that expend $750,000 or more in a year in Federal awards must have an audit conducted for that year in accordance with the requirements contained in 2 CFR part 200, subpart F. When Council does not have a program-specific audit guide available for the program, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit and should refer to 2 CFR 200.507. The grant recipient may include a line item in the budget for the cost of the audit to be approved by the Grants Officer.

13. Policies and Procedures for Resolution of Audit-Related Debts. The Council will establish policies and procedures for handling the resolution and reconsideration of financial assistance audits which have resulted in, or may result in, the establishment of a debt (account receivable) for financial assistance awards. The policies and procedures are consistent with the provisions of 2 CFR part 200, subpart F, and are provided in more detail in the Council Financial Assistance Standard Terms and Conditions.

14. Debts. The non-Federal entity must promptly pay any debts determined to be owed the Federal government. Council debt collection procedures are set out in 2 CFR part 200, subpart D. In accordance with 2 CFR 200.345, delinquent debt includes any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal government (this includes a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. In accordance with 2 CFR 200.345, failure to pay a debt by the due date, or if there is no due date, within 90 calendar days after demand, shall result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. 3717 and 31 CFR parts 900 through 999. The Council will transfer any debt that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as ''cross-servicing,'' pursuant 31 U.S.C. 3711(g), 31 CFR 285.12 and any Council regulations and policies promulgated pursuant to its authority, and may result in Council taking further action as specified in the standard term and condition entitled ''Non-Compliance With Award Provisions.'' Funds for payment of a debt cannot come from other Federally-sponsored programs. Verification that other Federal funds have not been used will be made (*e.g.* during on-site visits and audits). If a non-Federal entity fails to repay a debt within 90 calendar days after the demand, the Council may reduce the debt by following the procedures set forth in 2 CFR 200.345(a).

15. Remedies for Noncompliance. If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award (including discovery of adverse information on a recipient or any key individual associated with a recipient which reflects significantly and adversely on the recipient's responsibility), the Council or pass-through entity may impose additional conditions, as described in 2 CFR 200.207. If the Council or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Council or pass-through entity may take one or more of the following actions:

(a) Require the recipient to correct the conditions.

(b) Consider the recipient to be ''high risk'' and unilaterally impose special award conditions to protect the Federal government's interest.

(c) Suspend or terminate an active award. The recipient will be afforded due process while effecting such actions.

(d) Require the removal of personnel from association with the management of and/or implementation of the project and require Grants Officer approval of personnel replacements.

(e) Withhold further Federal awards for the project or program.

(f) Take other remedies that may be legally available.

16. Competition and Standards of Conduct.

(a) Pursuant to the certification in Form SF–424B, paragraph 3, non-Federal entities must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of a personal or organizational conflict of interest, or personal gain in the administration of this award and any subawards.

(b) Non-Federal entities must comply with the requirements of 2 CFR 200.318 General procurement standards, including maintaining written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(c) All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition in accordance with the requirements of 2 CFR 200.317 through 200.326, ''Procurement Standards.'' The non-Federal entity must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for

proposals shall be excluded from competing for such subawards.

(d) For purposes of the award, a financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

17. When contracting, the non-Federal entity must take all necessary affirmative steps, as prescribed in 2 CFR 200.321(b), to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

18. Subaward and/or Contract to a Federal Agency. The non-Federal entity, subrecipient, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of the Council and/or other Federal department, agency, or instrumentality without the prior written approval of the Grants Officer.

19. Foreign Travel. Non-Federal entities must comply with the provisions of the Fly America Act (49 U.S.C. 40118) and the implementing Federal Travel Regulations (41 CFR 301–10.131 through 301–10.143). The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag carrier service will not accomplish the agency's mission. If a non-Federal entity anticipates using a foreign air carrier for any portion of travel under a Council financial assistance award, the recipient must receive prior approval from the Grants Officer.

20. Purchase of American-Made Equipment and Products. Non-federal entities are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under Council financial assistance awards.

21. Intangible Property Rights. Title to intangible property (as defined by 2 CFR 200.59 means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible)) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Council. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 CFR 200.313(e).

(a) Inventions. The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements.''

(b) Patent Notification Procedures. Pursuant to Executive Order 12889, the Council is required to notify the owner of any valid patent covering technology whenever the Council or its financial assistance recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the recipient uses or has used patented technology under this award without a license or permission from the owner, the recipient will be required to notify the Grants Officer. This notice does not necessarily mean that the government authorizes and consents to any copyright or patent infringement occurring under the financial assistance award.

(c) Data, Databases, and Software. The rights to any work produced or purchased under a Council financial assistance award are determined by policies promulgated pursuant to its authority. Such works may include data, databases or software. The recipient owns any work produced or purchased under a Council financial assistance award subject to Council's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Federal government purposes.

(d) Copyright. The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. Council reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

22. Seat Belt Use. Pursuant to Executive Order 13043, recipients shall seek to encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating recipient/company-owned, rented or personally owned vehicles.

23. Research Involving Human Subjects. All proposed research involving human subjects must be conducted in accordance with 15 CFR part 27, ''Protection of Human Subject.'' No research involving human subjects is permitted under any Council financial assistance award unless expressly authorized by the Grants Officer.

24. Federal Employee Expenses. Federal agencies are generally barred from accepting funds from a recipient to pay transportation, travel, or other expenses for any Federal employee. Use of award funds (Federal or non-Federal) or the recipient's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee, may raise appropriation augmentation issues. In addition, Council policy prohibits the acceptance of gifts, including travel payments for Federal employees, from recipients or applicants regardless of the source.

25. Minority Serving Institutions (MSIs) Initiative. Pursuant to Executive Orders 13555 (''White House Initiative on Educational Excellence for Hispanics''), 13270 (''Tribal Colleges and Universities''), and 13532 (''Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities''), the Council encourages all applicants and recipients to include meaningful participation of MSIs as appropriate. Institutions eligible to be considered MSIs are listed on the Department of Education's Web site.

26. Access to Records. The Council, the Inspector General of the Treasury, the Comptroller General of the United States, or any of their duly authorized representatives, and, if appropriate, the State, shall have access to any pertinent books, documents, papers and records of the parties to a grant or cooperative agreement, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. An audit of an award may be conducted at any time.

27. Research Misconduct. The Council adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). Recipient organizations that conduct extramural research funded by Council must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and possible suspension or debarment. The Council requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the Treasury OIG of such allegation.

28. Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763). Recipients must comply with this Act relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of the Office of Personnel Management Standards for a Merit System of Personnel Administration (5 CFR part 900, subpart F).

29. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) and the Council implementing regulations promulgated pursuant to its authority. These provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

30. Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*). Non-Federal entities must comply with the Lead-Based Paint Poisoning Prevention Act which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

31. Hatch Act (5 U.S.C. 1501–1508 and 7324–7328). Non-Federal entities must comply with the Hatch Act which limits the political activities of employees or officers of State or local governments whose principal employment activities are funded in whole or in part with Federal funds.

32. Labor standards for Federally-assisted construction sub-agreements (wage guarantees). Recipients must comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 3141–3148); the Copeland ''Anti-Kickback'' Act (40 U.S.C. 3145 and 18 U.S.C. 874); and the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708).

33. Care and Use of Live Vertebrate Animals. Non-Federal entities must comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544), as amended (7 U.S.C. 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects) and implementing regulations, 9 CFR parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any Council financial assistance award unless authorized by the Grants Officer.

34. Publications, Videos, and Acknowledgment of Sponsorship. Publication of the results or findings in appropriate professional journals and production of videos or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (*e.g.,* scientific research). The recipient may be required to submit a copy of any publication materials, including but not limited to print, recorded or Internet materials to the funding agency. When releasing information related to a funded project the recipient must include a statement that the project or effort undertaken was or is sponsored by Council. The recipient is also responsible for assuring that every publication of material based on, developed under or otherwise produced under a Council award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer or other disclaimer approved by the Grants Officer: ''This [report/video/etc.] was prepared by [non-Federal entity name] using Federal funds under award [number] from the Council. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the Council.''

35. Homeland Security Presidential Directive—12. If the performance of a grant award requires recipient organization personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term ''routine access'' is defined as more than 180 days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the Council will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award shall comply with the Council personal identity verification procedures that implement Homeland Security Presidential Directive -12, ''Policy for a Common Identification Standard for Federal Employees and Contractors,'' FIPS PUB 201, and OMB Memorandum M–05–24. The recipient shall ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The recipient shall insert the following terms in all subawards and contracts when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

(a) The subrecipient or contractor shall comply with Council personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD–12), Office of Management and Budget (OMB) Guidance M–05–24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

(b) The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by Council: (1) When no longer needed for subaward or contract performance; (2) upon completion of the subrecipient or contractor employee's employment; (3) upon completion of the subaward or contract.

36. The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 CFR part 175. The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal government, if the recipient or subrecipient engages in certain activities related to trafficking in persons. The Council incorporates the award term required by 2 CFR 175.15(b) into all financial assistance awards. *See http://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part175.pdf* for the full award term.

37. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282; codified at 31 U.S.C. 6101 note) (FFATA).

(a) The FFATA requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable Web site. This information is available at USASpending.gov. Recipients and subrecipients must include the following required data elements in their application:

(1) Name of entity receiving award;

(2) Award amount;

(3) Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;

(4) Location of entity, primary location of performance (City/State/Congressional District/Country); and

(5) Unique identifier of entity.

(b) Reporting Subawards and Executive Compensation. Prime grant recipients awarded a new Federal grant greater than or equal to $25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in 2 CFR part 170. The prime recipient is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to $25,000. *See* Pub. L. 109–282, as amended by section 6202(a) of Pub. L. 110–252 (*see* 31 U.S.C. 6101 note). The Council incorporates the award term required by Appendix A of 2 CFR part 170 into all financial assistance awards. See *http://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part170.pdf* for the full award term and reporting requirements.

(c) System for Award Management (formerly ''Central Contractor Registration (CCR)'') and Universal Identifier Requirements. Unless an exemption applies under 2 CFR 25.110, applicants for federal financial assistance awards must be registered in the System for Award Management (SAM)—which includes the former ''Central Contractor Registration (CCR)''—prior to submitting an application for financial assistance, maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by an agency, and provide its DUNS number in each application it submits to the agency. For this purpose, the Council incorporates the award term required by Appendix A of 2 CFR part 25 into all financial assistance awards. *See http://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part25.pdf* for the full award term.

C. In limited circumstances (*e.g.,* when required by statute), the Council will issue a **Federal Register** notice, in addition to a notice on *www.grants.gov,* announcing the availability of Federal funds for each Council competitive financial assistance program. Unless statute or regulation requires otherwise, such **Federal Register** notices will contain only the following program-specific information: Summary description of program; deadline date for receipt of applications; addresses for submission of applications; information contacts (including electronic access); the amount of funding available; statutory authority; the applicable Catalog of Federal Domestic Assistance (CFDA) number(s); eligibility requirements; cost-sharing or matching requirements; Intergovernmental Review requirements; evaluation criteria used by the merit reviewers, as applicable; selection procedures, including funding priorities/selection factors/policy factors to be applied by the selecting official; and administrative and national policy requirements; and information about how to access the full program notice at *www.grants.gov.*

D. When applicable, the Council follows the uniform format for an announcement of Federal Funding Opportunity notice for discretionary grants and cooperative agreements established by OMB in a guidance published in the **Federal Register** on June 23, 2003, and revised on October 8, 2003 (*see* 68 FR 37370 and 68 FR 58146, respectively). Announcements published by Council are available at *www.grants.gov.* Applicants are strongly encouraged and in some cases required to apply through *www.grants.gov.* It can take up to two weeks to register with *www.grants.gov* if problems are encountered. Registration is required only once. Applicants should consider the time needed to register with Grants.gov, and should begin the registration process well in advance of the application due date if they have never registered. Applicants should allow themselves adequate time to submit the proposal through Grants.gov, as the deadline for submission generally cannot be extended and there is significant potential for human or computer error during the electronic submission process. After registering, it may take several days or longer from the initial log-on before a new Grants.gov system user can submit an application. Only authorized individual(s) will be able to submit the application, and the system may need time to process a submitted proposal. Applicants should save and print the proof of submission they receive from Grants.gov, which may take up to two days to receive.

Administrative Procedure Act and Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice relating to public property, loans, grants benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act

This notice does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. The use of the following family of forms has been approved by OMB under the following control numbers: (1) SF–424 Family: 0348–0041, 0348–0044, 4040–

0003, and 4040–0004; (2) SF–424 Research and Related Family: 4040–0001; SF–424 Individual Family: 4040–0005; (3) SF–424 Mandatory Family: 4040–0002; and (4) SF–424 Short Organizational Family: 4040–0003. The use of Form SF–LLL is approved by OMB under the control numbers 0348–0046. The RESTORE Council may develop additional forms as necessary.

Catalog of Federal Domestic Assistance

This notice affects all of the grant and cooperative agreement programs funded by the Council. The Catalog of Federal Domestic Assistance can be accessed at *http://www.cfda.gov.*

Jeffrey K. Roberson,

Senior Counsel, Department of Commerce.

[FR Doc. 2014–27719 Filed 11–21–14; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF AGRICULTURE

Council for Native American Farming and Ranching; Meeting

AGENCY: Office of Tribal Relations, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a forthcoming meeting of The Council for Native American Farming and Ranching (CNAFR) a public advisory committee of the Office of Tribal Relations (OTR). Notice of the meetings are provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act, as amended, (5 U.S.C. Appendix 2). This will be the second meeting of the 2014–2016 CNAFR term and will consist of, but not limited to: Hearing public comments; update on USDA programs and activities; and discussion of committee priorities. This meeting will be open to the public.

DATES: The meeting will be held on December 10th, 2014 from 2:00 p.m. to 5:45 p.m. and December 11th, 2014 from 8:30 a.m. to 5:30 p.m. The meeting will be open to the public. Note that a period for public comment will be held on December 10th, 2014 from 3:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting and public comment period will be held at the Flamingo Las Vegas, 3555 Las Vegas Blvd. South, Las Vegas, Nevada 89109 in the Laughlin II Room.

WRITTEN COMMENTS: Written comments may be submitted to: John Lowery, Designated Federal Officer, Office of Tribal Relations (OTR), 1400 Independence Ave. SW., Whitten Bldg., 500–A, Washington, DC 20250; by Fax: (202) 720–1058; or by email: *John.Lowery@osec.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Questions should be directed to John Lowery, Designated Federal Officer, Office of Tribal (OTR), 1400 Independence Ave. SW., Whitten Bldg., 500A, Washington, DC 20250; by Fax: (202) 720–1058 or email: *John.Lowery@osec.usda.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (FACA) as amended (5 U.S.C. App. 2), USDA established an advisory council for Native American farmers and ranchers. The CNAFR is a discretionary advisory committee established under the authority of the Secretary of Agriculture, in furtherance of the settlement agreement in *Keepseagle* v. *Vilsack* that was granted final approval by the District Court for the District of Columbia on April 28, 2011.

The CNAFR will operate under the provisions of the FACA and report to the Secretary of Agriculture. The purpose of the CNAFR is (1) to advise the Secretary of Agriculture on issues related to the participation of Native American farmers and ranchers in USDA farm loan programs; (2) to transmit recommendations concerning any changes to FSA regulations or internal guidance or other measures that would eliminate barriers to program participation for Native American farmers and ranchers; (3) to examine methods of maximizing the number of new farming and ranching opportunities created through the farm loan program through enhanced extension and financial literacy services; (4) to examine methods of encouraging intergovernmental cooperation to mitigate the effects of land tenure and probate issues on the delivery of USDA farm loan programs; (5) to evaluate other methods of creating new farming or ranching opportunities for Native American producers; and (6) to address other related issues as deemed appropriate.

The Secretary of Agriculture selected a diverse group of members representing a broad spectrum of persons interested in providing solutions to the challenges of the aforementioned purposes. Equal opportunity practices were considered in all appointments to the CNAFR in accordance with USDA policies. The Secretary selected the members in September 2014. Interested persons may present views, orally or in writing, on issues relating to agenda topics before the CNAFR.

Written submissions may be submitted to the contact person on or before December 4, 2014. Oral presentations from the public will be scheduled between approximately 3:00 p.m. to 5:00 p.m. on December 10th. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the issue they wish to present and the names and addresses of proposed participants by December 4, 2014. All oral presentations will be given three (3) to five (5) minutes depending on the number of participants.

OTR will also make meeting room and all agenda topics available to the public via the OTR Web site: *http://www.usda.gov/tribalrelations* no later than 10 business days before the meeting and at the meeting. In addition, the minutes from the meeting will be posted on the OTR Web site. OTR welcomes the attendance of the public at the CNAFR meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact John Lowery, at least 10 business days in advance of the meeting.

Leslie Wheelock,

Director, Office of Tribal Relations.

[FR Doc. 2014–27746 Filed 11–21–14; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–84–2014]

Foreign-Trade Zone (FTZ) 82—Mobile, Alabama; Notification of Proposed Production Activity; MH Wirth, Inc. (Offshore Drilling Riser Systems); Theodore, Alabama

The City of Mobile, Alabama, grantee of FTZ 82, submitted a notification of proposed production activity to the FTZ Board on behalf of MH Wirth, Inc. (MHWI), located in Theodore, Alabama. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 3, 2014.

The MHWI facility is located within Site 7 of FTZ 82. The facility is used for the production and repair of offshore drilling riser systems (risers, telescopic joints, test equipment and tools). Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as

described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt MHWI from customs duty payments on the foreign status components used in export production. On its domestic sales, MHWI would be able to choose the duty rate during customs entry procedures that applies to offshore drilling risers, telescopic joints, test equipment and tools (free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Rubber seals/o-rings/composite sheets; anodes; riser tool elastomers/test plugs/cylinders; riser telescopic joint packers/sleeves; riser fins; Kevlar straps; riser joint piping protectors; fasteners (bolts, screws, nuts, lock washers); riser fin bolt tensioners; hydraulic pipe/receptacles; choke and kill line receptacles; booster receptacles; riser clip connectors; steel pins; welding wire rods; and, paper documents (duty rate ranges from free to 9.0%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is January 5, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: November 17, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–27777 Filed 11–21–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–83–2014]

Foreign-Trade Zone (FTZ) 7—Mayaguez, Puerto Rico; Notification of Proposed Production Activity; IPR Pharmaceuticals, Inc. (Pharmaceutical Products); Canóvanas, Puerto Rico

The Puerto Rico Industrial Development Company, grantee of FTZ 7, submitted a notification of proposed production activity to the FTZ Board on behalf of IPR Pharmaceuticals, Inc. (IPR), located within FTZ 7, in Canóvanas, Puerto Rico. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 3, 2014.

IPR already has authority to produce certain pharmaceutical products, including Crestor® tablets, a treatment to lower cholesterol. The current request would add microcrystalline cellulose (input) to the scope of authority. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt IPR from customs duty payments on the microcrystalline cellulose used in export production. On its domestic sales, IPR would be able to choose the duty rates during customs entry procedures that apply to its finished Crestor® and other pharmaceutical products (duty free) for the foreign-status input, microcrystalline cellulose (duty rate, 5.2%). Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is January 5, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: November 17, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–27779 Filed 11–21–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–811]

Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation; Final Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 22, 2014, the Department of Commerce (the Department) published in the **Federal Register** the *Preliminary Results* of the 2012–2013 administrative review of the antidumping duty order on solid fertilizer grade ammonium nitrate (ammonium nitrate) from the Russian Federation.[1] This review covers two groups of producers/exporters of the subject merchandise, JSC Acron and its affiliate JSC Dorogobuzh (collectively, Acron) and MCC EuroChem and its affiliates OJSC NAK Azot and OJSC Nevinnomyssky Azot (collectively, EuroChem). The period of review (POR) is April 1, 2012, through March 31, 2013. We gave interested parties an opportunity to comment on the *Preliminary Results* and, based upon our analysis of the comments, we continue to find that sales of subject merchandise to the United States have not been made at prices below normal value (NV).

DATES: *Effective Date:* November 24, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 2014, the Department published the *Preliminary Results* in the **Federal Register**. In July 2014, we received a case brief from CF Industries, Inc. and El Dorado Chemical Company (collectively, the petitioners). In August 2014, we received rebuttal briefs from Acron and EuroChem. In October 2014, the Department held an ex-parte

[1] *See Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation; Preliminary Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 29417 (May 22, 2014) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

meeting with the petitioners at their request.

Scope of the Order

The merchandise subject to this order is solid, fertilizer grade ammonium nitrate products. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3102.30.00.00 and 3102.290000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise within the scope is dispositive.[2]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). 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 Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we have made no changes to Acron's or EuroChem's margin calculations.

Period of Review

The POR is April 1, 2012, through March 31, 2013.

[2] For a complete description of the scope of the order, see the memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled, ''Decision Memorandum for the Final Results of the 2012–2013 Administrative Review of the Antidumping Duty Order on Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation'' (Issues and Decision Memorandum), dated concurrently with and hereby adopted by this notice.

Final Results of the Review

We are assigning the following dumping margins to the firms listed below as follows:

Producer/exporter	Weighted-average dumping margin (percent)
JSC Acron/JSC Dorogobuzh	0.00
MCC EuroChem/OJSC NAK Azot/OJSC Nevinnomyssky Azot	0.00

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), the Department has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise and deposits of estimated duties, where applicable, in accordance with the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review pursuant to 19 CFR 351.356.8(a).

Pursuant to the *Final Modification for Reviews,*[3] because the respondents' weighted-average dumping margins are zero, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[4] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for Acron and EuroChem are less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1); accordingly, no cash deposits will be required; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 253.98 percent, the all-others rate established in the order.[5] These cash deposit requirements, when imposed, shall remain in effect until further notice.

[3] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[4] *Id.,* 77 FR at 8102.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/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.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.221(b)(5).

Dated: November 17, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

General Comments

1. Adjusting Respondents' Costs to Account for Alleged Distortions in the Price of Natural Gas
2. Level of Trade.

[FR Doc. 2014–27759 Filed 11–21–14; 8:45 a.m.]

BILLING CODE 3510–DS–P

[5] *See Termination of the Suspension Agreement on Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation and Notice of Antidumping Duty Order,* 76 FR 23569, 23570 (April 27, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting the administrative review of the antidumping duty order on magnesium metal from the People's Republic of China (''PRC''). The period of review (''POR'') is April 1, 2013, through March 31, 2014. This review covers two PRC companies, Tianjin Magnesium International, Co., Ltd. (''TMI'') and Tianjin Magnesium Metal, Co., Ltd. (''TMM''). The Department preliminarily finds that TMI and TMM did not have reviewable entries during the POR. We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* November 24, 2014.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Erin Begnal, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone: (202) 482–3965 or (202) 482–1442, respectively.

Scope of the Order

The product covered by this antidumping duty order is magnesium metal from the PRC, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this order includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes; magnesium ground, chipped, crushed, or machined into rasping, granules, turnings, chips, powder, briquettes, and other shapes; and products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an ''ASTM Specification for Magnesium Alloy'' [1] and are thus outside the scope of the existing antidumping orders on magnesium from the PRC (generally referred to as ''alloy'' magnesium).

The scope of this order excludes: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy''; [2] (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[3] The merchandise subject to this order is classifiable under items 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Background

On April 1, 2014, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on magnesium metal from the PRC for the period April 1, 2013 through March 31, 2014.[4] On April 30, 2014, U.S. Magnesium LLC (''U.S. Magnesium''), a domestic producer and Petitioner in the underlying investigation of this case, made a timely request that the Department conduct an administrative review of TMI and TMM.[5] On May 29, 2014, in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review.[6] On June 25, 2014, TMI submitted a letter to the Department certifying that it did not export magnesium metal to the United States during the POR.[7] On July 21, 2014, TMM submitted a letter to the Department certifying that it did not export magnesium metal to the United States during the POR.[8]

On August 19, 2014, we notified U.S. Customs and Border Protection (''CBP'') that we were in receipt of no-shipment certifications from TMI and TMM and requested CBP to report any contrary information within 10 days.[9] CBP did not report any contrary information. On August 29, 2014, the Department placed on the record information obtained in response to the Department's query to CBP concerning imports into the United States of subject merchandise during the POR.[10] This information indicates that there were no entries of subject

[1] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book for ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

[2] The material is already covered by existing antidumping orders. *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation,* 60 FR 25691 (May 12, 1995); and *Antidumping Duty Order: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[3] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel,* 66 FR 49349 (September 27, 2001); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not combined in liquid form and cast into the same ingot.

[4] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 79 FR 18260 (April 1, 2014).

[5] *See* letter from U.S. Magnesium, ''Magnesium Metal from the People's Republic of China: Request for Administrative Review,'' dated April 30, 2014.

[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 30809 (May 29, 2014).

[7] *See* letter from TMI, ''Magnesium Metal from the People's Republic of China; A–570–896; Certification of No Sales by Tianjin Magnesium International, Co., Ltd.,'' dated June 25, 2014, at 1.

[8] *See* letter from TMM, ''Magnesium Metal from the People's Republic of China; A–570–896; Certification of No Sales by Tianjin Magnesium Metal, Co., Ltd.,'' dated July 21, 2014, at 1.

[9] *See* Memorandum to the File, ''Magnesium Metal from the People's Republic of China: 13–14 Administrative Review: U.S. Customs and Border Protection Data,'' dated August 29, 2014, at Attachment 1 Customs Message 4231308, ''No Shipments Inquiry,'' dated August 19, 2014 (''No Shipments Memo'').

[10] *See* No Shipments Memo.

merchandise during the POR that had been exported by TMI or TMM.

Preliminary Determination of No Shipments

As noted in the ''Background'' section above, TMI and TMM submitted timely-filed certifications indicating that they had no shipments of subject merchandise to the United States during the POR. In addition, CBP did not provide any evidence that contradicts TMI's and TMM's claims of no shipments. Further, on August 29, 2014, the Department released to interested parties the results of a CBP query to corroborate TMI and TMM's no shipment claims.[11] The Department received no comments from interested parties concerning the results of the CBP query.

Based on TMI's and TMM's certifications and our analysis of CBP information, we preliminarily determine that TMI and TMM did not have any reviewable entries during the POR. In addition, the Department finds that consistent with its recently announced refinement to its assessment practice in non-market economy (''NME'') cases, it is appropriate not to rescind the review in this circumstance but, rather, to complete the review with respect to TMI and TMM and issue appropriate instructions to CBP based on the final results of the review.[12]

Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days after the due date for case briefs, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the argument not to exceed five pages, and a table of statutes, regulations, and cases cited, in accordance with 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, Room 7046 of the main Department of Commerce building. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[13] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. Additionally, pursuant to a recently announced refinement to its assessment practice in NME cases, if the Department continues to determine 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. For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

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 entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For TMI, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI in the most recently completed review of the company; (2) for previously investigated or reviewed PRC and non-PRC exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate (including TMM, which claimed no shipments, but has not been found to be separate from the PRC-wide entity), the cash deposit rate will be the PRC-wide rate of 141.49 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These 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 period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: November 17, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–27685 Filed 11–21–14; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See Id.*

[12] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) and the ''Assessment Rates'' section, below.

[13] *See* 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

National Ocean and Atmospheric Administration

Proposed Information Collection; Comment Request; Fishery Capacity Reduction Program Buyback Requests

AGENCY: National Ocean and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on

proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 23, 2015.

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 Paul Marx, (301) 427.8771 or *Paul.Marx@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a current information collection. The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) established programs to reduce excess fishing capacity by paying fishermen to surrender their vessels/permits. These fishing capacity reduction programs, or buybacks, are conducted pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, and the Magnuson-Stevens Reauthorization Act (Pub. L. 109–479). The buybacks can be funded by a Federal loan to the industry or by direct Federal or other funding. Buyback regulations are at 50 CFR Part 600.

The information collected by NMFS involves the submission of buyback requests by industry, submission of bids, referenda of fishery participants and reporting of collection of fees to repay buyback loans. For buybacks involving State-managed fisheries, the State may be involved in developing the buyback plan and complying with other information requirements. NMFS requests information from participating buyback participants to track repayments of the loans as well as ensure accurate management and monitoring of the loans. The fees recordkeeping and reporting requirements at 50 CFR parts 600.1013 through 600.1017 form the basis for the collection of information.

II. Method of Collection

Paper reports or electronic reports are required from buyback participants. Methods of submittal include mailing of paper reports, electronic submission via the Internet, and/or facsimile transmission.

III. Data

OMB Control Number: 0648–0376.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations; individuals or households; and state, local, or tribal government.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: Implementation plan, 6,634 hours; referenda votes, bids, seller/buyer reports and annual fee collection reports, 4 hours each; completion of fish ticket, 10 minutes; monthly fee collection report, 2 hours; advising holder/owner of conflict with accepted bidders' representations, 1 hour; potentially 270 hours-state approval/review of plans.

Estimated Total Annual Burden Hours: 15,838.

Estimated Total Annual Cost to Public: $1,596 in recordkeeping/reporting costs.

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: November 18, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–27646 Filed 11–21–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Ocean and Atmospheric Administration

Proposed Information Collection; Comment Request; Coral Reef Conservation Program Survey

AGENCY: National Ocean and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 23, 2015.

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 Peter Edwards, (301) 563–1145 Ext 145 or *Peter.Edwards@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

The purpose of this information collection is to obtain information from individuals in the seven United States (U.S.) jurisdictions containing coral reefs. Specifically, NOAA is seeking information on the knowledge, attitudes and reef use patterns, as well as information on knowledge and attitudes related to specific reef protection activities. In addition, this survey will provide for the ongoing collection of social and economic data related to the communities affected by coral reef conservation programs.

The Coral Reef Conservation Program (CRCP), developed under the authority of the Coral Reef Conservation Act of 2000, is responsible for programs intended to enhance the conservation of coral reefs. We intend to use the information collected through this instrument for research purposes as well as measuring and improving the results of our reef protection programs. Because

many of our efforts to protect reefs rely on education and changing attitudes toward reef protection, the information collected will allow CRCP staff to ensure programs are designed appropriately at the start, future program evaluation efforts are as successful as possible, and outreach efforts are targeting the intended recipients with useful information.

II. Method of Collection

Information will be collected in the means most efficient and effective in the individual jurisdiction. For the three years covered by this clearance we expect to use face-to-face interviews in American Samoa, and as appropriate, telephone and/or internet-based survey techniques in Hawaii and Florida, Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.

III. Data

OMB Control Number: 0648–0646.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,128.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 1,303.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

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: November 19, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–27731 Filed 11–21–14; 8:45 am]

BILLING CODE 3510–JS–P

DEPARTMENT OF COMMERCE

National Ocean and Atmospheric Administration

Proposed Information Collection; Comment Request; Shipboard Observation Form for Floating Marine Debris

AGENCY: National Ocean and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 23, 2015.

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 Sherry Lippiatt, NOAA Marine Debris Program, (510) 410–2602, *Sherry.Lippiatt@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

This data collection project will be coordinated by the NOAA Marine Debris Program, and involve recreational and commercial vessels (respondents), shipboard observers (respondents), NGOs (respondents) as well as numerous experts on marine debris observations at sea. The Shipboard Observation Form for Floating Marine Debris was created based on methods used in studies of floating marine debris by established researchers, previous shipboard observational studies conducted at sea by NOAA, and the experience and input of recreational sailors. The goal of this form is to be able to calculate the density of marine debris within an area of a known size. Additionally, this form will help collect data on potential marine debris resulting from the March 2011 Japan tsunami in order to better model movement of the debris as well as prepare (as needed) for continued debris arrival to areas around the Pacific. This form may additionally be used to collect data on floating marine debris in any water body.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0644.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; not-for profit institutions; business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 10 hours.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

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: November 18, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–27647 Filed 11–21–14; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Intent To Prepare a Draft Environmental Impact Statement for the Proposed He'eia National Estuarine Research Reserve in Kane'ohe Bay, Hawai'i

AGENCY: National Estuarine Research Reserve System, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In accordance with section 315 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451–1466), the State of Hawai'i and the National Oceanic and Atmospheric Administration (NOAA) intend to conduct two public scoping meetings on December 17, 2014, in Kane'ohe, Hawai'i, and on December 19, 2014, in Honolulu, Hawai'i, as part of NOAA's draft environmental impact statement (DEIS) and draft management plan (DMP) process to solicit comments for the preparation of a DEIS and DMP on the Proposed He'eia National Estuarine Research Reserve in Kane'ohe Bay.

DATES: December 17, 2014, at 5:00–7:00 p.m. and December 19, 2014, at 5:00–7:00 p.m.

ADDRESSES: December 17 at the King Intermediate School, 46–155 Kamehameha Hwy., Kane'ohe, HI 96744 and December 19 at the NOAA Fisheries Honolulu Service Center, 1139 N. Nimitz Hwy., Ste 220, Honolulu, HI 96817.

FOR FURTHER INFORMATION CONTACT: Contact Rebecka Arbin, Hawai'i Office of Planning, P. O. Box 2359, Honolulu, HI 96804 at (808)587–2831 or *rebecka.j.arbin@dbedt.hawaii.gov* or Joelle Gore, Acting Chief, Stewardship Division, Office for Coastal Management, National Ocean Service, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, at (301) 713–3155 ext. 177, or *Hawaii.nerr.comments@noaa.gov.*

SUPPLEMENTARY INFORMATION: The decision to be made by NOAA is whether to designate the proposed He'eia National Estuarine Research Reserve. The State of Hawai'i, through its Office of Planning, site partners and NOAA are working to determine the boundaries of the reserve, how the reserve would be managed, and the policies of the proposed reserve. These decisions will be made through an analysis process and described in the reserve management plan.

Found within the largest sheltered bay in the Hawaiian Islands, the He'eia estuary constitutes a range of diverse habitats, including uplands, wetland, and fringing coral reefs, and is representative of the estuarine habitats in the Insular biogeographic region. In addition, the site hosts numerous traditional Hawaiian practices, including an ancient Hawaiian fish pond and taro cultivation. The combination of unique traditional Hawaiian land uses and natural habitats is expected to attract a broad range of research interests from multiple scientific disciplines. In July 2012, the Governor of Hawai'i sent NOAA a letter of interest in exploring the feasibility of designating a reserve within the Hawaiian Islands based on ongoing conversations with community groups and the University of Hawai'i. In February 2013, the State of Hawai'i undertook a site selection process to determine appropriate areas of the Hawaiian Islands that might be nominated for inclusion in the reserve System. Hawai'i, working with scientists, community organizations, and the public, gathered input and suggestions to inform the selection of a potential site for consideration as a national estuarine research reserve.

On May 21, 2014, the Governor of the State of Hawai'i nominated the He'eia estuary for consideration as a Hawai'i reserve. On October 27, 2014, NOAA accepted the site nomination document for the proposed He'eia reserve and initiated planning efforts with the Hawai'i Office of Planning HIMB.

The He'eia reserve is proposed to be administered by the State of Hawaii in cooperation with the Hawaii Office of Planning, the Hawai'i Department of Land and Natural Resources, the University of Hawai'i, Hawai'i Community Development Authority, and community organizations Kako'o 'Ōiwi, Paepae o He'eia, Ko'olaupoko Hawaiian Civic Club, Kamaaina Kids, and The Nature Conservancy, with support from other state and county agencies and community members. The Hawai'i Office of Planning, in collaboration with those partners, is jointly developing an outline of a preliminary DMP. The outline is intended to identify specific needs and priorities related to research, education, and stewardship. At the public meetings, the Hawai'i Office of Planning and NOAA will provide a synopsis of the process for developing a DEIS and DMP and will solicit comments on the scope and the significant issues to be analyzed in a DEIS.

Interested parties who wish to submit suggestions or comments about the scope or content of the proposed DEIS and DMP are invited to attend the above meetings or provide comments to the Hawai'i Office of Planning or NOAA's Office for Coastal Management. Comments can be submitted to *Hawaii.nerr.comments@noaa.gov* or U.S. mail at the addresses listed below.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: November 18, 2014.

Donna Rivelli,

Deputy Chief Financial Officer, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2014–27729 Filed 11–21–14; 8:45 am]

BILLING CODE 3510–08–P

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) announces that on December 9, 2014, from 10:00 a.m. to 3:00 p.m., the Agricultural Advisory Committee (AAC) will hold a public meeting at the CFTC's Washington, DC, headquarters. The meeting will focus on, among other issues, topics related to the agricultural economy, as well as the deliverable supplies of agricultural commodities as they pertain to position limits.

DATES: The meeting will be held on Tuesday, December 9, 2014 from 10:00 a.m. to 3:00 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by December 1, 2014.

ADDRESSES: The meeting will take place in the first floor Conference Center at the Commission's headquarters, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Written statements should be submitted to: Agricultural Advisory Committee, c/o Cory Claussen, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW.,

Washington, DC 20581. Statements may also be submitted by electronic mail to: *aac@cftc.gov.* Any statements submitted in connection with the committee meeting may be made available to the public, including publication on the CFTC Web site, *www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Cory Claussen, AAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; (202) 418–5383.

SUPPLEMENTARY INFORMATION: The meeting is open to the public with seating on a first-come, first-served basis. The meeting will be recorded and posted on the CFTC Web site, *www.cftc.gov.* Members of the public may watch a live Webcast on the Commission's Web site. Members of the public may also listen to the meeting by telephone by calling a domestic toll-free or international toll or toll-free number to connect to a live, listen-only audio feed. These numbers, along with the conference and/or access codes will be posted on the CFTC Web site prior to the AAC meeting. Call-in participants should be prepared to provide their first name, last name, and affiliation. After the meeting, a transcript of the meeting will be published on the CFTC Web site, *www.cftc.gov.* Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

Authority: 5 U.S.C. Appendix 2 § 10(a)(2).

Dated: November 19, 2014.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2014–27754 Filed 11–21–14; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Secretary of Defense, Reserve Forces Policy Board, DoD.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Reserve Forces Policy Board (RFPB) will take place.

DATES: Tuesday, December 9, 2014 from 8:55 a.m. to 3:30 p.m.

ADDRESSES: The address is the Pentagon, Room 3E863, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Sabol, Designated Federal Officer, (703) 681–0577 (Voice), (703) 681–0002 (Facsimile), Email—*Alexander.J.Sabol.Civ@Mail.Mil.* Mailing address is Reserve Forces Policy Board, 5113 Leesburg Pike, Suite 601, Falls Church, VA 22041. Web site: *http://rfpb.defense.gov/.* The most up-to-date changes to the meeting can be found on the RFPB's Web site.

SUPPLEMENTARY INFORMATION: This meeting notice is being published under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to obtain, review and evaluate information related to strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the Reserve Components.

Agenda: The RFPB will hold a meeting from 8:55 a.m. until 3:30 p.m. The portion of the meeting from 8:55 a.m. to 9:45 p.m. will be open to the public and will consist of remarks to the RFPB from the three RFPB subcommittee chairs who will provide updates on the work of their respective subcommittee. The Enhancing DoD's Role in the Homeland Subcommittee plans to provide updates on the Department of Defense support of civil authorities and FEMA requirements. The Supporting & Sustaining Reserve Component Personnel Subcommittee plans to provide updates on the Survivor Benefits Program, Post 9/11 GI Bill Change Proposal, and Duty Status recommendations to the Secretary of Defense. The Ensuring a Ready, Capable, Available and Sustainable Operational Reserve Subcommittee plans to provide updates on the examination of Reserve Components ancillary training issues and medical readiness. Additionally, a readout from Reserve Junior Officer Panels will discuss the findings concerning the perspectives as revealed by a Reserve Junior Officer Panel on personnel benefits, training and readiness issues. The portion of the meeting from 9:55 a.m. to 3:30 p.m. will be closed to the public and will consist of remarks to the RFPB from invited speakers that include the Secretary of Defense; Commander, U.S. Southern Command; Chief Executive Officer, RAND Corporation; and Chairman of the RFPB. The Secretary of Defense will address future strategies for use of the Reserve Components. The Commander, U.S. Southern Command will discuss the readiness, availability and use of the National Guard and Reserve within Southern Command. The Chief Executive Officer, RAND Corporation will brief the findings and recommendations on the Active Component/Reserve Component cost, force mix, and use to address national security challenges in a constrained fiscal environment as discussed in his recent reports. The Chairman of the RFPB will discuss his analysis and opinion on the FY 2015 Budget and the impact that it will have on the readiness, availability, and future use of the National Guard and Reserve.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meeting is open to the public from 8:55 a.m. to 9:45 a.m. Seating is based on a first-come, first-served basis. All members of the public who wish to attend the public meeting must contact Mr. Alex Sabol, the Designated Federal Officer, not later than 12:00 p.m. on Wednesday, December 3, 2014, as listed in the **FOR FURTHER INFORMATION CONTACT** section. An escort may be required for attendees without appropriate DoD badges. In accordance with section 10(d) of the FACA, 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the portion of this meeting scheduled to occur from 9:55 a.m. to 3:30 p.m. will be closed to the public. Specifically, the Under Secretary of Defense (Personnel and Readiness), in coordination with the DoD FACA Attorney, has determined in writing that this portion of the meeting will be closed to the public because it is likely to disclose classified matters covered by 5 U.S.C. 552b(c)(1).

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, interested persons may submit written statements to the RFPB at any time about its approved agenda or at any time on the Board's mission. Written statements should be submitted to the RFPB's Designated Federal Officer at the address or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the RFPB until its next

meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the committee members before the meeting that is the subject of this notice. Please note that since the RFPB operates under the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the RFPB's Web site.

Dated: November 19, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–27736 Filed 11–21–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Notice of Solicitation of Applications for Stakeholder Representative Members of the Missouri River Recovery Implementation Committee

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Commander of the Northwestern Division of the U.S. Army Corps of Engineers (Corps) is soliciting applications to fill vacant stakeholder representative member positions on the Missouri River Recovery Implementation Committee (MRRIC). Members are sought to fill vacancies on a committee to represent various categories of interests within the Missouri River basin. The MRRIC was formed to advise the Corps on a study of the Missouri River and its tributaries and to provide guidance to the Corps with respect to the Missouri River recovery and mitigation activities currently underway. The Corps established the MRRIC as required by the U.S. Congress through the Water Resources Development Act of 2007 (WRDA), Section 5018.

DATES: The agency must receive completed applications and endorsement letters no later than December 29, 2014.

ADDRESSES: Mail completed applications and endorsement letters to U.S. Army Corps of Engineers, Omaha District (Attn: MRRIC), 1616 Capitol Avenue, Omaha, NE 68102–4901 or email completed applications to *info@mrric.org.* Please put ''MRRIC'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Lisa Rabbe, 816–389–3837.

SUPPLEMENTARY INFORMATION: The operation of the MRRIC is in the public interest and provides support to the Corps in performing its duties and responsibilities under the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* Sec. 601(a) of the Water Resources Development Act (WRDA) of 1986, Public Law 99–662; Sec. 334(a) of WRDA 1999, Public Law 106–53, and Sec. 5018 of WRDA 2007, Public Law 110–114. The Federal Advisory Committee Act, 5 U.S.C. App. 2, does not apply to the MRRIC.

A Charter for the MRRIC has been developed and should be reviewed prior to applying for a stakeholder representative membership position on the Committee. The Charter, operating procedures, and stakeholder application forms are available electronically at *www.MRRIC.org.*

Purpose and Scope of the Committee

1. The primary purpose of the MRRIC is to provide guidance to the Corps and U.S. Fish and Wildlife Service with respect to the Missouri River recovery and mitigation plan currently in existence, including recommendations relating to changes to the implementation strategy from the use of adaptive management; coordination of the development of consistent policies, strategies, plans, programs, projects, activities, and priorities for the Missouri River recovery and mitigation plan. Information about the Missouri River Recovery Program is available at *www.MoRiverRecovery.org.*

2. Other duties of MRRIC include exchange of information regarding programs, projects, and activities of the agencies and entities represented on the Committee to promote the goals of the Missouri River recovery and mitigation plan; establishment of such working groups as the Committee determines to be necessary to assist in carrying out the duties of the Committee, including duties relating to public policy and scientific issues; facilitating the resolution of interagency and intergovernmental conflicts between entities represented on the Committee associated with the Missouri River recovery and mitigation plan; coordination of scientific and other research associated with the Missouri River recovery and mitigation plan; and annual preparation of a work plan and associated budget requests.

Administrative Support. To the extent authorized by law and subject to the availability of appropriations, the Corps provides funding and administrative support for the Committee.

Committee Membership. Federal agencies with programs affecting the Missouri River may be members of the MRRIC through a separate process with the Corps. States and Federally recognized Native American Indian tribes, as described in the Charter, are eligible for Committee membership through an appointment process. Interested State and Tribal government representatives should contact the Corps for information about the appointment process.

This Notice is for individuals interested in serving as a stakeholder member on the Committee. Members and alternates must be able to demonstrate that they meet the definition of ''stakeholder'' found in the Charter of the MRRIC. Applications are currently being accepted to select two representatives from the stakeholder interest categories listed below:

a. Conservation Districts;
b. Hydropower;
c. Irrigation;
d. Recreation;
e. Thermal Power

Terms of stakeholder representative members of the MRRIC are three years. There is no limit to the number of terms a member may serve. Incumbent Committee members seeking reappointment do not need to re-submit an application. However, they must submit a renewal letter and related materials as outlined in the ''Streamlined Process for Existing Members'' portion of the document *Process for Filling MRRIC Stakeholder Vacancies* (*www.MRRIC.org*).

Members and alternates of the Committee will not receive any compensation from the federal government for carrying out the duties of the MRRIC. Travel expenses incurred by members of the Committee are not currently reimbursed by the federal government.

Application for Stakeholder Membership. Persons who believe that they are or will be affected by the Missouri River recovery and mitigation activities may apply for stakeholder membership on the MRRIC. Committee members are obligated to avoid and disclose any individual ethical, legal, financial, or other conflicts of interest they may have involving MRRIC. Applicants must disclose on their application if they are directly employed by a government agency or program (the term ''government'' encompasses state, tribal, and federal agencies and/or programs).

Applications for stakeholder membership may be obtained electronically at *www.MRRIC.org.* Applications may be emailed or mailed

to the location listed (see **ADDRESSES**). In order to be considered, each application must include:

1. The name of the applicant and the primary stakeholder interest category that person is qualified to represent;

2. A written statement describing the applicant's area of expertise and why the applicant believes he or she should be appointed to represent that area of expertise on the MRRIC;

3. A written statement describing how the applicant's participation as a Stakeholder Representative will fulfill the roles and responsibilities of MRRIC;

4. A written description of the applicant's past experience(s) working collaboratively with a group of individuals representing varied interests towards achieving a mutual goal, and the outcome of the effort(s);

5. A written description of the communication network that the applicant plans to use to inform his or her constituents and to gather their feedback, and

6. A written endorsement letter from an organization, local government body, or formal constituency, which demonstrates that the applicant represents an interest group(s) in the Missouri River basin.

To be considered, the application must be complete and received by the close of business on December 29, 2014, at the location indicated (see **ADDRESSES**). Applications must include an endorsement letter to be considered complete. Full consideration will be given to all complete applications received by the specified due date.

Application Review Process. Committee stakeholder applications will be forwarded to the current members of the MRRIC. The MRRIC will provide membership recommendations to the Corps as described in Attachment A of the *Process for Filling MRRIC Stakeholder Vacancies* document (*www.MRRIC.org*). The Corps is responsible for appointing stakeholder members. The Corps will consider applications using the following criteria:

- Ability to commit the time required.
- Commitment to make a good faith (as defined in the Charter) effort to seek balanced solutions that address multiple interests and concerns.
- Agreement to support and adhere to the approved MRRIC Charter and Operating Procedures.
- Demonstration of a formal designation or endorsement by an organization, local government, or constituency as its preferred representative.
- Demonstration of an established communication network to keep constituents informed and efficiently seek their input when needed.
- Agreement to participate in collaboration training as a condition of membership.

All applicants will be notified in writing as to the final decision about their application.

Certification. I hereby certify that the establishment of the MRRIC is necessary and in the public interest in connection with the performance of duties imposed on the Corps by the Endangered Species Act and other statutes.

Dated: November 13, 2014.

Brad Thompson,

Chief of Planning, Omaha District.

[FR Doc. 2014–27718 Filed 11–21–14; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Sabine Pass to Galveston Bay, TX, Coastal Storm Risk Management and Ecosystem Restoration Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The Sabine Pass to Galveston Bay, Texas, study area encompasses six coastal counties on the upper Texas Gulf coast—Orange, Jefferson, Chambers, Harris, Galveston and Brazoria. The Draft Integrated Feasibility Report and Environmental Impact Statement (DIFR–EIS) will evaluate structural and non-structural alternatives which address coastal storm risk management (CSRM) and ecosystem restoration (ER) impacts in the study area. The environmental impact study will focus on environmental and social conditions currently present and those likely to be affected by potential future impacts of storm surge and ecosystem restoration opportunities. Several major historical surge events have occurred in the study area in the past 120 years. The most notable is perhaps the 1900 Storm, which inundated most of the island city of Galveston, TX, and adjacent areas on the mainland. The storm was responsible for over eight thousand deaths and up to $30 million in property damage. Hurricane Rita in 2005 resulted in storm surge of 9.2 feet in Port Arthur, TX, and just over 8 feet in Sabine Pass. Most recently, Hurricane Ike in 2008 produced storm surges of 14 feet near Sabine Pass and 11 to 12 feet across Sabine Lake. The City of Port Arthur was spared from the impacts of storm surge thanks to its existing 14- to 17-foot hurricane flood protection system. However, the remaining southern half of Jefferson County was inundated, with estimated high water marks reaching 18 to19 feet to the south and east of High Island. The City of Galveston was protected from Hurricane Ike's high energy surge impacts by the Galveston Seawall, but much of the City of Galveston was later flooded by about 6 to 10 feet of surge coming from the bay. The City of Texas City was protected from Ike's surge impacts by its existing hurricane flood protection system. At risk within the study area are approximately 2.26 million people living within the storm-surge inundation zone, three of the nine largest oil refineries in the world, 40 percent of the nation's petrochemical industry, 25 percent of the nation's petroleum-refining capacity, and three of the ten largest U.S. seaports.

DATES: Comments on proposed DIFR–EIS will be accepted through December 24, 2014.

ADDRESSES: U.S. Army Corps of Engineers, Galveston District, P.O. Box 1229, Galveston, TX 77553–1229. Emails may be sent to *Janelle.S.Stokes@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Sheridan Willey, (409) 766–3917, Planning Lead, Plan Formulation Section, Regional Planning and Environmental Center; or Ms. Janelle Stokes, (409) 766–3039, Environmental Lead, NEPA/Cultural Resources Section, Regional Planning and Environmental Center.

SUPPLEMENTARY INFORMATION:

(1) *Background.* In 2011, the Corps of Engineers and non-Federal sponsor, the Texas General Land Office, agreed to rescope an earlier study to evaluate plans to develop CSRM and ER features over the entire six-county region covering the upper Texas coast. The study is authorized under Section 4091, Water Resources Development Act of 2007 Public Law 110–114.

(2) *Alternatives.* Structural alternatives that will be evaluated are: (1) A new surge protection system in Orange and Jefferson Counties, including small, navigable surge gates on Cow and Adams Bayous; (2) a large navigable surge gate in the Neches River near the Rainbow Bridge; and (3) reevaluation of the existing Port Arthur and Freeport Hurricane Flood Protection Systems. Non-structural measures such as targeted buy-outs, will also be evaluated. Structural and non-structural alternatives to address storm

surge impacts in the Galveston Bay system, as well as ER measures throughout the six-county study area will be evaluated programmatically, with recommendations being made for future detailed analyses of feasible alternatives.

(3) *Scoping.* In February and March of 2012, four scoping meetings were held in the cities of Beaumont, Seabrook, Galveston and Freeport, TX. The scoping process involved Federal, State and local agencies, Federally-recognized Indian tribes, and other interested persons and organizations. Comments were received for 30 days following each scoping meeting. A total of 285 ideas were collected and these were collated and screened into a detailed list of structural and non-structural CSRM and ER measures that are being considered during this study. At this time, there are no plans for an additional scoping meeting. However, input from affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties is being solicited with this notice.

(4) *Coordination.* Further coordination with environmental agencies will be conducted under the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the National Historic Preservation Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Coastal Zone Management Act under the Texas Coastal Management Program.

(5) *DIFR–EIS Preparation.* It is estimated that the DIFR–EIS will be available to the public for review and comment in August, 2015.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–27723 Filed 11–21–14; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Commission To Review the Effectiveness of the National Energy Laboratories

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Commission to Review the Effectiveness of the National Energy Laboratories (Commission). The Commission was created pursuant section 319 of the Consolidated Appropriations Act, 2014, Public Law 113–76, and in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. This notice is provided in accordance with the Act.

DATES: Monday, December 15, 2014, 10:00 a.m.–3:30 p.m.

ADDRESSES: Institute for Defense Analyses, 4850 Mark Center Drive, Room 1301, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Karen Gibson, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone (202) 586–3787; email *crenel@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Commission was established to provide advice to the Secretary on the Department's national laboratories. The Commission will review the DOE national laboratories for alignment with the Department's strategic priorities, clear and balanced missions, unique capabilities to meet current energy and national security challenges, appropriate size to meet the Department's energy and national security missions, and support of other Federal agencies. The Commission will also look for opportunities to more effectively and efficiently use the capabilities of the national laboratories and review the use of laboratory directed research and development (LDRD) to meet the Department's science, energy, and national security goals.

Purpose of the Meeting: This meeting is the fourth meeting of the Commission.

Tentative Agenda: The meeting will start at 10:00 a.m. on December 15. The tentative meeting agenda includes discussion on how the DOE Labs impact the national science and technology enterprise and further discussions on their relationship with industry. Key presenters will address and discuss these topics with comments from the public. The meeting will conclude at 3:30 p.m. The agenda will be posted when finalized and in advance of the meeting on the Lab Commission Web site: (*http://energy.gov/labcommission/commission-review-effectiveness-national-energy-laboratories*).

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Karen Gibson no later than 5:00 p.m. on Wednesday, December 10, 2014 at email *crenel@hq.doe.gov*. Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government issued identification. Individuals and representatives of organizations who would like to offer comments and suggestions may do so at the end of the meeting. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 10:00 a.m. on December 15.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Karen Gibson, U.S. Department of Energy, 1000 Independence Avenue SW., Washington DC 20585, or to email: *crenel@hq.doe.gov*.

Minutes: The minutes of the meeting will be available on the Commission Web site at: *http://energy.gov/labcommission*.

Issued in Washington, DC, on November 18, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–27742 Filed 11–21–14; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9919–53–OAR]

California State Nonroad Engine Pollution Control Standards; Diesel Engines on Commercial Harbor Craft; Request for Within-the-Scope and Full Authorization; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The California Air Resources Board (CARB) has notified the Environmental Protection Agency (EPA) that it has adopted amendments to its Commercial Harbor Craft regulation (CHC amendments). By letter dated May 28, 2014, CARB asked that EPA authorize these amendments pursuant to section 209(e) of the Clean Air Act (CAA or Act). CARB seeks confirmation that certain of the amendments are within the scope of a prior authorization issued by EPA, and that certain of the amendments require and merit a full authorization. This notice announces that EPA has tentatively scheduled a public hearing to consider California's request for authorization of the CHC amendments, and that EPA is now

accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on January 14, 2015, at 10 a.m. ET. EPA will hold a hearing only if any party notifies EPA by December 15, 2014, to express interest in presenting the Agency with oral testimony. Parties that wish to present oral testimony at the public hearing should provide written notice to David Dickinson at the email address noted below. If EPA receives a request for a public hearing, that hearing will be held at the William Jefferson Clinton Building (North), Room 5530, 1200 Pennsylvania Ave. NW., Washington, DC 20460. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and will instead consider CARB's request based on written submissions to the docket. Any party may submit written comments until February 16, 2015.

Any person who wishes to know whether a hearing will be held may call David Dickinson at (202) 343–9256 on or after December 17, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0534, by one of the following methods: Online at *http://www.regulations.gov:* Follow the Online Instructions for Submitting Comments.

- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2014–0534, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Online Instructions for Submitting Comments: Direct your comments to Docket ID No. EPA–HQ–OAR–2014–0534. EPA's policy is that all comments we receive will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA–HQ–OAR–2014–0534. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, enter, in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a Web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver and authorization **Federal Register** notices. The page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: David Dickinson, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405A) NW., Washington, DC 20460. Telephone: (202) 343–9256. Fax: (202) 343–2804. Email: *Dickinson.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. California's CHC Regulation, Prior Authorization, Within-the-Scope Request, and New Request

CARB formally approved its original CHC regulation on November 15, 2007. The original CHC regulation established in-use emission limits for in-use ferries, excursion vessels, tugboats, and towboats equipped with federal Tier 0 and Tier 1 propulsion and auxiliary marine engines. Owners and operators of these vessels were required to upgrade the engines to meet emission limits equal to or cleaner than federal Tier 2 or Tier 3 marine engine certification standards, according to a compliance schedule that was also set forth in the regulation. The compliance schedule was based on the model year of the original engine, its hours of operation, and the vessel's home port location. On December 5, 2011, EPA granted California an authorization for the original CHC regulation.[1]

CARB subsequently adopted the CHC amendments on June 24, 2010.[2] The CHC amendments are codified at title 17, California Code of Regulations (CCR), section 93118.5.[3] By letter dated May 28, 2014, CARB submitted a request to EPA pursuant to section 209(e) of the CAA, regarding authorization of its CHC amendments.[4] The CHC amendments set forth a variety

[1] 76 FR 77521 (December 5, 2011).

[2] CARB, ''Resolution 10–26,'' June 24, 2010.

[3] The corresponding low-sulfur fuel requirements for commercial harbor craft are at title 13, CCR section 2299.5.

[4] California Air Resources Board (''CARB''), ''Request for Authorization,'' May 28, 2014.

of in-use requirements, including: Extending the applicability of the CHC regulations to in-use crew and supply, barge, and dredge vessels that are equipped with Tier 0 and Tier 1 propulsion and auxiliary marine engines that operate within the Regulated California Waters;[5] deleting certain exemptions of CHC engines registered in CARB's portable equipment registration regulation or permitted by local air pollution districts; defining swing engines and clarifying certain in-use engine requirements; adding replacement engine exemptions; expanding compliance extension options; and, allowing continued use of existing engines in certain circumstances. CARB's CHC amendments that are applicable to both new and in-use engines allow the use of EPA or CARB certified off-road (also known as nonroad)[6] compression-ignition (CI) engines to comply with the new and in-use requirements for propulsion and/or auxiliary engines, and set forth a deadline for owners and operators to submit ''alternative control of emission plans.''[7] CARB seeks a full authorization for those amendments that establish emission standards, other requirements relating to the control of emissions, and accompanying enforcement provisions applicable to in-use diesel engines that are used on crew and supply, barge, and dredge vessels. CARB also seeks EPA's confirmation that the remaining CHC amendments (including those that clarify existing regulations or expand compliance flexibilities) fall within the scope of EPA's December 2011 authorization, pursuant to section 209(e) of the CAA.[8]

II. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the CAA prohibits states and local governments from adopting or attempting to enforce any standard or requirement relating to the control of emissions from new nonroad vehicles or engines. The Act also preempts states from adopting and enforcing standards and other requirements related to the control of emissions from non-new nonroad engines or vehicles. Section 209(e)(2), however, requires the Administrator, after notice and opportunity for public hearing, to authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. However, EPA shall not grant such authorization if it finds that (1) the determination of California is arbitrary and capricious; (2) California does not need such California standards to meet compelling and extraordinary conditions; or (3) California standards and accompanying enforcement procedures are not consistent with [CAA section 209].[9] In addition, other states with air quality attainment plans may adopt and enforce such regulations if the standards, and implementation and enforcement procedures, are identical to California's standards. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), that EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.[10] EPA revised these regulations in 1997.[11] As stated in the preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(iii) ''consistency'' inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[12]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.[13]

If California amends regulations that EPA has already authorized, California can seek EPA confirmation that the

[5] Regulated California Waters include all California inland waters, all California estuarine waters, and all waters within a zone 24 nautical miles seaward of the California coastline, except for specified areas along the Southern California coastline. Title 17 CCR 93118.5(d)(68).

[6] The federal term ''nonroad'' and the California term ''off-road'' are used interchangeably.

[7] CARB's CHC amendments now allow diesel engines in CHC vessels to be fueled with EPA on-road or off-road diesel fuel if a CHC is traveling from a port located outside of California which does not have CARB diesel fuel or specified alternative diesel fuels, and provided the CHC owner or operator retains records documenting the fuel purchase, location and name of the port located outside of California. CARB notes that both the original regulation (that required all CHC vessels only be fueled with CARB diesel fuel or specified alternative fuels) and the amended regulation are in-use operational controls of nonroad engines and are not preempted by section 209(e) of the Act.

[8] See CARB's authorization support document (Docket EPA–HQ–OAR–2014–0534–0003) at p. 8.

[9] EPA's review of California regulations under section 209 is not a broad review of the reasonableness of the regulations or its compatibility with all other laws. Sections 209(b) and 209(e) of the CAA limit EPA's authority to deny California requests for waivers and authorizations to the three criteria listed therein. As a result, EPA has consistently refrained from denying California's requests for waivers and authorizations based on any other criteria. In instances where the U.S. Court of Appeals has reviewed EPA decisions declining to deny waiver requests based on criteria not found in section 209(b), the Court has upheld and agreed with EPA's determination. *See Motor and Equipment Manufacturers Ass'n* v. *Nichols,* 142 F.3d 449, 462–63, 466–67 (D.C. Cir. 1998), *Motor and Equipment Manufacturers Ass'n* v. *EPA,* 627 F.2d 1095, 1111, 1114–20 (D.C. Cir. 1979). *See also* 78 FR 58090, 58120 (September 20, 2013).

[10] 59 FR 36969 (July 20, 1994).

[11] 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[12] 59 FR 36969 (July 20, 1994).

[13] *Id. See also* 78 FR 58090, 58092 (September 20, 2013).

amendments are within the scope of the previous authorization. A within-the-scope confirmation, without a full authorization review, is permissible if three conditions are met.[14] First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any ''new issues'' affecting EPA's prior authorizations.

III. EPA's Request for Comments

As stated above, EPA is offering the opportunity for a public hearing, and is requesting written comment on issues relevant to a within-the-scope analysis pertaining to CARB's amendments. Specifically, we request comment on whether California's CHC amendments: (a) Undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable federal standards; (b) affect the consistency of California's requirements with section 209 of the Act; or (c) raise any other new issues affecting EPA's previous waiver or authorization determinations.

Should any party believe that the amendments noted within CARB's request are not within the scope of the previous authorization, EPA also requests comment on whether the CARB CHC amendments meet the criteria for a full authorization. Specifically, we request comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

EPA also requests comment on whether the CHC amendments, for which CARB seeks a full authorization, meet the criteria of section 209(e) for a full authorization.

IV. Procedures for Public Participation

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until February 16, 2015. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing (if a hearing is conducted), all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA–HQ–OAR–2014–0534.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as ''Confidential Business Information'' (''CBI''). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: November 12, 2014.

Christopher Grundler,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2014–27807 Filed 11–21–14; 8:45 am]

BILLING CODE 6560–50–P

[14] *See* 78 FR 38970, 38972 (June 28, 2013).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9919–57–OAR]

California State Nonroad Engine Pollution Control Standards; Large Spark-Ignition Engines Regulation; Request for Authorization; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The California Air Resources Board (CARB) has notified the Environmental Protection Agency (EPA) that it has adopted amendments to its large spark-ignited engines regulation (LSI amendments). By letter dated June 2, 2014, CARB asked that EPA either confirm that the LSI amendments (adopted in 2008 and 2010) are within the scope of prior authorizations or that EPA issue a full authorization for those LSI amendments found not to be within the scope of prior authorizations, pursuant to section 209(e) of the Clean Air Act (CAA or Act). This notice announces that EPA has tentatively scheduled a public hearing to consider California's authorization request for the LSI amendments, and that EPA is now accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on January 14, 2015, at 10 a.m. ET. EPA will hold a hearing only if any party notifies EPA by December 15, 2014, to express interest in presenting the agency with oral testimony. Parties that wish to present oral testimony at the public hearing should provide written notice to David Dickinson at the email address noted below. If EPA receives a request for a public hearing, that hearing will be held at the William Jefferson Clinton Building (North), Room 5530, 1200 Pennsylvania Avenue NW., Washington, DC 20460. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead will consider CARB's request based on written submissions to the docket. Any party may submit written comments until February 16, 2015.

Any person who wishes to know whether a hearing will be held may call David Dickinson at (202) 343–9256 on or after December 17, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0533, by one of the following methods:

- Online at *http://www.regulations.gov:* Follow the Online Instructions for Submitting Comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
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EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA–HQ–OAR–2014–0533. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, enter, in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a Web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver and authorization **Federal Register** notices. The page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: David Dickinson, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405A) NW., Washington, DC 20460. Telephone: (202) 343–9256. Fax: (202) 343–2804. Email: *Dickinson.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. California's LSI Regulations

CARB promulgated its first LSI regulations, applicable to new LSI engines, in 1999 and they remained unchanged until the 2008 amendments.[1] EPA authorized the LSI regulations, on May 15, 2006.[2] The 1999 LSI regulations established exhaust emission standards and associated test procedures for LSI engines based upon engine displacements. The exhaust emission standards applicable to 2002 and subsequent model years (MYs) with displacements up to one liter were identical to the emission standards applicable to California small off-road engines (SORE) with engines greater than or equal to 225 cubic centimeters and have remained unchanged except CARB subsequently adopted more stringent exhaust emission standards for engines greater than 225 cubic centimeters.[3] CARB adopted its initial off-road LSI fleet operator regulations on May 25, 2006 (Fleet Operator Regulations).[4] The Fleet Operator Regulations are designed to address the hydrocarbon and nitrogen oxide emissions from existing LSI engines operating in California and require fleets to meet certain fleet average emission level standards.

CARB adopted the 2008 LSI amendments on November 21, 2008. The 2008 LSI amendments create two new engine categories below one liter displacement, with new more stringent exhaust and evaporative emission standards applicable to new engines, and provide clarification as to when CARB's off-road sport or utility regulations apply to certain LSI engines.

CARB adopted the 2010 LSI amendments on December 17, 2010. These amendments are designed to provide compliance flexibility which will allow operators to reduce their compliance costs while retaining the emission benefits associated with the original regulations.

By letter dated June 2, 2014, CARB submitted a request to EPA pursuant to section 209(e) of the CAA for authorization of its 2008 and 2010 LSI amendments. CARB seeks EPA's confirmation that these amendments fall within the scope of EPA's previous authorization, or, in the alternative, a full authorization.

II. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the CAA prohibits states and local governments from adopting or attempting to enforce any standard or requirement relating to the control of emissions from new nonroad vehicles or engines. The Act also preempts states from adopting and enforcing standards and other requirements related to the control of emissions from non-new nonroad engines or vehicles. Section 209(e)(2), however, requires the Administrator, after notice and opportunity for public hearing, to authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. However, EPA shall not grant such authorization if it finds that (1) the

[1] Title 13, California Code of Regulations, sections 2430–2439.

[2] 71 FR 29623 (May 15, 2006).

[3] EPA granted an authorization for these amendments at 71 FR 75536 (December 15, 2006). CARB also adopted amendments establishing more stringent exhaust emission standards for engines equal to or greater than one liter in 2007 and EPA granted an authorization for these amendments at 77 FR 20388 (April 4, 2012).

[4] EPA granted an authorization for these regulations at 77 FR 20388 (April 4, 2012).

determination of California is arbitrary and capricious; (2) California does not need such California standards to meet compelling and extraordinary conditions; or (3) California standards and accompanying enforcement procedures are not consistent with [CAA section 209].[5] In addition, other states with air quality attainment plans may adopt and enforce such regulations if the standards, and implementation and enforcement procedures, are identical to California's standards. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.[6] EPA revised these regulations in 1997.[7] As stated in the preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(iii) ''consistency'' inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[8]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the Federal and state testing procedures impose inconsistent certification requirements.[9]

If California amends regulations that EPA has already authorized, California can seek EPA confirmation that the amendments are within the scope of the previous authorization. A within-the-scope confirmation, without a full authorization review, is permissible if three conditions are met.[10] First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable Federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any ''new issues'' affecting EPA's prior authorizations.

III. EPA's Request for Comments

As stated above, EPA is offering the opportunity for a public hearing, and is requesting written comment on issues relevant to a within-the-scope analysis. Specifically, we request comment on whether California's LSI amendments: (a) Undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards; (b) affect the consistency of California's requirements with section 209 of the Act; or (c) raise any other new issues affecting EPA's previous waiver or authorization determinations.

Should any party believe that the amendments are not within the scope of the previous authorization, EPA also requests comment on whether the LSI amendments meet the criteria for a full authorization. Specifically, we request comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious; (b) whether California needs such standards to meet compelling and extraordinary conditions; and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

IV. Procedures for Public Participation

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until February 16, 2015. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA–HQ–OAR–2014–0533.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as ''Confidential Business Information'' (''CBI''). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR part 2.

[5] EPA's review of California regulations under section 209 is not a broad review of the reasonableness of the regulations or its compatibility with all other laws. Sections 209(b) and 209(e) of the Clean Air Act limit EPA's authority to deny California requests for waivers and authorizations to the three criteria listed therein. As a result, EPA has consistently refrained from denying California's requests for waivers and authorizations based on any other criteria. In instances where the U.S. Court of Appeals has reviewed EPA decisions declining to deny waiver requests based on criteria not found in section 209(b), the Court has upheld and agreed with EPA's determination. *See Motor and Equipment Manufacturers Ass'n* v. *Nichols,* 142 F.3d 449, 462–63, 466–67 (D.C. Cir.1998), *Motor and Equipment Manufacturers Ass'n* v. *EPA,* 627 F.2d 1095, 1111, 1114–20 (D.C. Cir. 1979). *See also* 78 FR 58090, 58120 (September 20, 2013).

[6] 59 FR 36969 (July 20, 1994).

[7] 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request to authorize California to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[8] 59 FR 36969 (July 20, 1994).

[9] *Id. See also* 78 FR 58090, 58092 (September 20, 2013).

[10] *See* 78 FR 38970, 38972 (June 28, 2013).

If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: November 12, 2014.

Christopher Grundler,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2014–27801 Filed 11–21–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Special Commission Meeting; Friday, October 24, 2014

October 17, 2014.

The Federal Communications Commission will hold a Special Commission Meeting on the subject listed below on Friday, October 24, 2014. The meeting is scheduled to commence at 2:30 p.m. in Room TW–C305, at 445 12th Street SW., Washington, DC.

Item No.	Bureau	Subject
1	ENFORCEMENT	TITLE: Enforcement Bureau Action. SUMMARY: The Commission will consider whether to take an enforcement action.

Additional information concerning this meeting may be obtained from Mark Wigfield, Office of Media Relations, (202) 418–0253; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by email at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–27564 Filed 11–21–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 14–14]

Mark Barr v. Ocean Trade Lines, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Mark Barr, hereinafter ''Complainant,'' against Ocean Trade Lines, Inc., hereinafter ''Respondent.'' Complainant states that he is a resident of the United Kingdom. Complainant alleges that Respondent is a non-vessel-operating common carrier (NVOCC) licensed by the Commission with its primary place of business in Florida.

Complainant alleges that Respondent has violated the Shipping Act, 46 U.S.C. 41102(c), 41104(2), 41104(3), 41104(4), in connection with a contract for shipment of a sailboat from Port Everglades, FL to Southampton UK. Complainant alleges that the sailboat was not transported by Respondent and Respondent did not refund the freight charges to Complainant.

Complainants seeks reparations in the amount of $16,239, plus interest and reasonable attorneys fees; payment of additional amounts if violations of 46 U.S.C. 41104(3) are found; ''a determination whether Ocean Trade Lines should be ordered to cease and desist from all such practices; . . . a determination whether the OTI license of Ocean Trade Lines should be suspended or revoked, as provided in 46 U.S.C. 40903(A); and . . . such other relief or orders as the Commission may determine.''

The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov/14–14.*

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by November 18, 2015 and the final decision of the Commission shall be issued by May 19, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2014–27690 Filed 11–21–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan 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 application also will 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 HOLA (12 U.S.C. 1467a(e)). 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 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). 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 December 19, 2014.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Cape Bancorp, Inc., and Cape Bank, both in Cape May Court House, New Jersey; to acquire 100 percent of the voting shares of Colonial Financial Services, Inc., and Colonial Bank Federal Savings Bank, both in Vineland, New Jersey.

Board of Governors of the Federal Reserve System, November 19, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–27765 Filed 11–21–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 09, 2014.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Peoples State Bancorp, Inc., through its subsidiary, Peoples State Bank of Munising, both in Munising, Michigan proposes to reduce its ownership in Lasco Development Corporation, Marquette, Michigan, to less than 100 percent. Lasco Development Corporation engages in the activity of data processing for financial institutions.

Board of Governors of the Federal Reserve System, November 19, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–27766 Filed 11–21–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice and request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, the FTC is seeking public comments on its request to OMB for a three-year extension of the Trade Regulation Rule entitled Labeling and Advertising of Home Insulation (R-value Rule or Rule). That clearance expires on December 31, 2014.

DATES: Comments must be received by December 24, 2014.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''R-value Rule: FTC File No. R811001'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/rvaluerulepra2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Hampton Newsome, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Mail Code CC–9528, 600 Pennsylvania Ave. NW., Washington, DC 20580, (202) 326–2889.

SUPPLEMENTARY INFORMATION:

Title: R-value Rule, 16 CFR part 460.

OMB Control Number: 3084–0109.

Type of Review: Extension of a currently approved collection.

Abstract: The R-value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation signifies the insulation's degree of resistance to the flow of heat. This information tells consumers how well a product is likely to perform as an insulator and allows consumers to determine whether the cost of the insulation is justified.

On August 13, 2014, the Commission sought comment on the information collection requirements in the R-value Rule. 79 FR 47461. No comments were received. The Commission did receive one non-germane filing that we have referred to the agency's Consumer Response Center for further action. As required by OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment.

Estimated Annual Hours Burden: 129,656 hours.

Likely Respondents and Estimated Burden:

Installation manufacturers, installers, new home builders/sellers, dealers and retailers.

(a) Installation manufacturers.

- Testing by installation manufacturers—15 new products/year × 2 hours each = 30 hours; and
- Disclosures by installation manufacturers—[(144 manufacturers × 20 hours) + (6 largest manufacturers × 80 hours each] = 3,360 hours.
- Recordkeeping by installation manufacturers—150 manufacturers × 1 hour each = 150 hours.

(b) Installers.

- Disclosures by retrofit installers (manufacturer's insulation fact sheet)—2 million retrofit installations/year × 2 minutes each = 66,667 hours.
- Disclosures by installers (advertising)—1,615 installers × 1 hour each = 1,615 hours.
- Recordkeeping by installers—1,615 installers × 5 minutes each = 134 hours.

(c) New home builders/sellers, dealers.

- Disclosures by new home sellers—924,000 new home sales/year × 30 seconds each = 7,700 hours.

(d) Retailers.

- Disclosures by retailers—[25,000 retailers × 1 hour each (fact sheets) + 25,000 retailers × 1 hour each (advertising disclosure) = 50,000 hours.

Frequency of Response: Periodic.

Total Annual Labor Cost: $2,571,000 per year (solely related to labor costs and rounded to the nearest thousand) [approximately $810 for testing, based on 30 hours for manufacturers (30 hours × $27 per hour for skilled technical personnel); $3,976 for manufacturers' and installers' compliance with the Rule's recordkeeping requirements, based on 284 hours (284 hours × $14 per hour for clerical personnel); $47,040 for manufacturers' compliance with third-party disclosure requirements, based on 3,360 hours (3,360 hours × $14 per hour for clerical personnel); and $2,519,640 for disclosure compliance by installers, new home sellers, and retailers (125,982 hours × $20 per hour for sales persons).]

Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 24, 2014. Write ''R-value Rule: FTC File No. R811001'' on

your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, 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, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you are required 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 comment online, or to send it to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/rvaluerulepra2,* 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 file your comment on paper, write ''R-value Rule: FTC File No. R811001'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 24, 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.shtm.*

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2014–27721 Filed 11–21–14; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 132 3219]

True Ultimate Standards Everywhere, Inc., Doing Business as TRUSTe, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 17, 2014.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/trusteconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''True Ultimate Standards Everywhere, Inc., Doing Business As TRUSTe, Inc.—Consent Agreement; File No. 132 32193'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/trusteconsent* by following the instructions on the Web-based form. If you prefer to file your comment on paper, write ''True Ultimate Standards Everywhere, Inc., Doing Business As TRUSTe, Inc.—Consent Agreement; File No. 132 32193'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jamie Hine (202–326–2188), Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 17, 2014), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 17, 2014. Write ''True Ultimate Standards Everywhere, Inc., Doing Business As TRUSTe, Inc.—Consent Agreement; File No. 132 32193'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to

the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

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

If you file your comment on paper, write ''True Ultimate Standards Everywhere, Inc., Doing Business As TRUSTe, Inc.—Consent Agreement; File No. 132 32193'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 17, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing an order from True Ultimate Standards Everywhere, Inc. (''TRUSTe'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission again will review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's marketing and distribution of a variety of online privacy seals (''seals'') for companies to display on their Web sites. The FTC complaint alleges that respondent violated Section 5(a) of the FTC Act by falsely representing to consumers the frequency with which it reviews and verifies the practices of companies displaying its Web site and mobile seals. Specifically, the complaint alleges that from June 1997 until January 2013, respondent failed to conduct annual recertifications for almost 1,000 companies holding respondent's TRUSTed Web sites, COPPA/Children's Privacy, EU Safe Harbor, TRUSTed Cloud, TRUSTed Apps, TRUSTed Data, and TRUSTed Smart Grid seals. In addition, the complaint alleges that respondent provided to its sealholders the means and instrumentalities to misrepresent that respondent is a non-profit corporation. The FTC complaint describes, with specificity, that following respondent's transition to a for-profit corporation in July 2008, respondent recertified numerous clients whose privacy policies continued to describe TRUSTe as a non-profit entity.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits respondent from misrepresenting (1) the steps respondent takes to evaluate, certify, review, or recertify a company's privacy practices; (2) the frequency with which respondent evaluates, certifies, reviews, or recertifies a company's privacy practices; (3) the corporate status of respondent and its independence; and (4) the extent to which any person or entity is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy program sponsored by respondent. Part II of the proposed order prohibits respondent from providing to any person or entity the means and instrumentalities (including any required or model language for use in any privacy policy or statement) to misrepresent any of the same items in Part I of the proposed order.

Parts III and IV of the proposed order contain additional reporting requirements with respect to respondent's COPPA/Children's Privacy seal. First, the proposed order expands respondent's COPPA recordkeeping and reporting requirements to ten years. Second, the proposed order requires respondent to report (1) the number of new seals it awards; (2) how it assesses the fitness of members; and (3) any additional steps it takes to monitor compliance with the safe harbor requirements. Third, the proposed order expands respondent's COPPA requirement to retain consumer complaints and descriptions of disciplinary actions to include consumer complaints related to respondent and its safe harbor program participants as well as all documents related to disciplinary actions taken by respondent. Fourth, the proposed order imposes additional COPPA recordkeeping requirements, such as a requirement that respondent retain detailed explanations of assessments of new and existing applicants in any COPPA safe harbor program.

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Part V of the proposed order requires respondent to pay $200,000 to the United States Treasury as disgorgement.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint order or to modify in any way the proposed order's terms.

By direction of the Commission, Commissioner Ohlhausen voting ''yes,'' consistent with the views expressed in her partial dissent.

Donald S. Clark,

Secretary.

Statement of Chairwoman Edith Ramirez, Commissioner Julie Brill, and Commissioner Terrell McSweeny

We write to express our strong support for the complaint and consent order in this case.

The Commission unanimously supports Count I of the complaint in this matter, which is of paramount importance, in light of TRUSTe's unique role in increasing consumer trust in the global marketplace and ensuring the effectiveness of relevant self-regulatory frameworks. TRUSTe operates privacy-related self-regulatory and oversight programs for businesses and offers certified privacy seals for program participants, including (1) COPPA/Children's Privacy, which certifies compliance with the Children's Online Privacy Protection Act and implementing regulations; (2) EU Safe Harbor, which certifies compliance with the U.S.-EU Safe Harbor Framework; (3) TRUSTed Apps, which certifies the privacy practices of mobile applications; and (4) APEC Privacy, which certifies compliance with the Asia-Pacific Economic Cooperation Cross-Border Privacy Rules System.[1]

In Count I, the Commission alleges that TRUSTe promised consumers it would annually recertify its self-regulatory program participants for compliance with TRUSTe's privacy program requirements, but that, in many instances, it failed to do so. Annual recertification is a cornerstone of the service TRUSTe provides. It helps ensure that companies (1) continue to follow TRUSTe's program requirements, (2) do not make material changes to their practices or policies without appropriate consent, and (3) periodically consider the impact of technology and marketplace developments in their privacy practices. TRUSTe did not fulfill its obligations; today's order helps to ensure that TRUSTe will do so in the future. Consumers who see the TRUSTe seal on a Web site or mobile app should be confident that a trusted third party has kept its promise to review and vouch for the privacy practices of that Web site or mobile app.

We also believe that Count II represents an appropriate use of ''means and instrumentalities'' liability. At the time TRUSTe provided model language for its clients' privacy policies stating that TRUSTe was a nonprofit entity, there is no question that the statement was true. However, after TRUSTe informed clients of its for-profit status in 2008, many clients neglected to update their policies and continued to represent that TRUSTe was a nonprofit entity. These ongoing representations by TRUSTe's clients clearly became deceptive once TRUSTe converted to a for-profit entity. Yet for five years, TRUSTe continued to recertify some companies that included this deceptive statement, that TRUSTe itself had disseminated, in their privacy policies. TRUSTe was well-positioned to rectify the misrepresentation about its own corporate status—it could have elected simply not to recertify the companies in question until the misrepresentation was cured. It failed to take this straightforward step and instead continued to bless the language at issue by giving the companies its seal of approval.

In *Shell Oil Company* and *FTC* v. *Magui Publishers, Inc.,* which Commissioner Ohlhausen cites in her statement, the Commission concluded that by providing customers with deceptive statements, the respondent furnished the means and instrumentalities for its clients to engage in deceptive acts or practices.[2] In this case, although TRUSTe disclosed to clients its change in status, it continued to recertify privacy policies using language TRUSTe had itself supplied about its corporate status that was no longer true. TRUSTe's recertification of these inaccurate privacy policies is the conduct we take aim at—it provided a stamp of approval of a false representation which TRUSTe's clients then passed along to consumers via their Web sites. As such, TRUSTe provided its clients with the means and instrumentalities to deceive others. The application of means and instrumentalities liability in this case is consistent with the principle underlying *Shell* and *Magui Publishers,* namely, that one who places the means of deception in the hands of another is also liable for the deception under Section 5.[3] The inclusion of this count is particularly appropriate here, given TRUSTe's unique position in the privacy self-regulatory ecosystem. Companies that purport to hold their clients accountable to protect consumer privacy should themselves be held to an equally high standard.

Partial Dissent of Commissioner Maureen K. Ohlhausen

I support Count I of the complaint in this matter because of TRUSTe's unique position of consumer trust as a third party certifier. However, I do not support the use of ''means and instrumentalities'' liability in Count II of the complaint and dissent as to that Count.

TRUSTe was initially organized in 1997 as a non-profit. Before July 2008, TRUSTe required every certified client Web site to include in its privacy policy a description of TRUSTe stating in part, ''TRUSTe is [a] non-profit organization.'' On July 3, 2008, TRUSTe changed its corporate form from non-profit to for-profit. The company announced the change to its clients and requested that all clients update the relevant privacy policy language on their Web sites. Some clients did not update their Web sites. When TRUSTe recertified such Web sites, TRUSTe would typically request, but not require, that the client update their privacy policy to reflect the change to for-profit status.

Count II of our complaint alleges that by recertifying Web sites containing privacy policies that inaccurately describe TRUSTe as a non-profit, TRUSTe provided the means and instrumentalities to its clients to misrepresent that TRUSTe was a non-profit corporation. The majority's statement argues that TRUSTe, by ''recertify[ing] a statement that was untrue,'' provided to its clients the means and instrumentalities to deceive consumers.[1]

[1] TRUSTe's APEC Privacy certification program was not the subject of the allegations in the complaint. TRUSTe became an ''Accountability Agent'' for the APEC Cross-Border Privacy Rules System in June 2013, and issued its first certification under that program in August 2013.

[2] *In the Matter of Shell Oil Co.,* 128 F.T.C. 749 (1999); *FTC* v. *Magui Publishers, Inc.,* No. 89–3818RSWL(GX), 1991 WL 90895 (C.D. Cal. Mar. 28, 1991), *aff'd* 9 F.3d 1551 (9th Cir. 1993).

[3] Commissioner Ohlhausen suggests that the allegations underlying Count II would be more appropriately viewed through the lens of secondary ''aiding and abetting'' liability. Regardless of whether one could construct alternative theories of liability, our concern is with TRUSTe's own actions. As discussed above, the deception here was the result of TRUSTe's own actions.

[1] *In the Matter of True Ultimate Standards Everywhere, Inc.,* FTC File No. 1323219, Statement of Chairwoman Edith Ramirez, Commissioner Julie

I disagree with this use of means and instrumentalities. To be liable of deception under means and instrumentalities requires that the party *itself* must make a misrepresentation, as the Commission detailed in *Shell Oil Company*.[2] According to the majority in that case, ''[T]he means and instrumentalities doctrine is intended to apply in cases . . . where the originator of the **unlawful material** is not in privity with consumers'' and ''it is well settled law that the originator is liable if it passes on a **false or misleading representation** with knowledge or reason to expect that consumers may possibly be deceived as a result.'' [3] For example, in *FTC* v. *Magui Publishers, Inc.,* the court found the defendant directly liable for providing the means and instrumentalities to violate Section 5 when it sold Salvador Dali prints with forged signatures to retail customers, who then sold the prints to consumers.[4]

Unlike *Shell* and *Magui Publishers,* the statement that TRUSTe provided to its clients was indisputably truthful at the time. During the period in which TRUSTe required client privacy policies to state that TRUSTe was a non-profit, TRUSTe was, in fact, a non-profit. Once TRUSTe changed to for-profit status, it no longer required clients to state its non-profit status and actively encouraged clients to correct their privacy policies. TRUSTe did not pass to clients any false or misleading representations regarding its for-profit status. Nor was TRUSTe's recertification of Web sites a misrepresentation of TRUSTe's non-profit status to its clients; during recertification TRUSTe again clearly communicated its for-profit status to clients by requesting that its clients update their privacy policies. Because TRUSTe accurately represented its non-profit status to its clients, TRUSTe cannot be primarily liable for deceiving consumers under a means and instrumentalities theory.

TRUSTe's alleged recertifications of untrue statements are more properly analyzed as secondary liability for aiding and abetting.[5] In *Magui Publishers* the court found that the defendant forgers were not only directly liable for their own misstatements, but also secondarily liable for the retailers' fraudulent misrepresentations to consumers because defendants ''supplied their deceptive art work, certificates and promotional materials to their retail customers with full knowledge these customers would use the materials to deceive consumers.'' [6] The court explained that aiding and abetting has three components: ''(1) The existence of an independent primary wrong; (2) actual knowledge by the alleged aider and abettor of the wrong and of his or her role in furthering it; and (3) substantial assistance in the commission of the wrong.'' [7]

It is not clear that TRUSTe's clients committed an independent primary wrong. However, TRUSTe certainly had knowledge of the misstatements in the privacy policies and of TRUSTe's role in facilitating those misstatements. And, arguably, its certifications may have provided substantial assistance in deceiving consumers. Regardless, because TRUSTe never misrepresented its corporate status, TRUSTe's actions regarding its corporate status at most comprise aiding and abetting its clients' actions.

Perhaps all this seems like legal hairsplitting, but it is not. Under the Supreme Court's decision in *Central Bank of Denver* v. *First Interstate Bank of Denver,*[8] the FTC ''may well be precluded from bringing Section 5 cases under an aiding and abetting theory.'' [9] By prosecuting activities more properly analyzed as aiding and abetting under the guise of means and instrumentalities liability, I am concerned that we are stepping beyond the limits the Supreme Court has established. I therefore dissent from Count II.

[FR Doc. 2014–27733 Filed 11–21–14; 8:45 am]

BILLING CODE 6750–01–P

Brill, and Commissioner Terrell McSweeny, at 2 (Nov. 17, 2014).

[2] *In the Matter of Shell Oil Co.,* 128 F.T.C. 749 (1999).

[3] *Id.* at *10 (Public Statement of Chairman Pitofsky, Commissioner Anthony and Commissioner Thompson) (emphasis added). Similarly, Commissioner Orson Swindle's dissent stated that under FTC precedent, ''means and instrumentalities is a form of primary liability in which the respondent was using another party as the conduit for disseminating **the respondent's misrepresentations** to consumers.'' *Id.* at *14–15 (Dissenting Statement of Commissioner Orson Swindle) (emphasis added). Swindle's dissent likewise emphasized that a defendant ''may not be held primarily liable unless it has actually made a misrepresentation.'' *Id.* (quoting *In re JWP Inc. Securities Lit.,* 928 F. Supp. 1239, 1256 (S.D.N.Y. 1996)). *See also FTC* v. *Magui Publishers, Inc.,* Civ. No. 89–3818RSWL(GX), 1991 WL 90895, at *14, (C.D. Cal. 1991), *aff'd,* 9 F.3d 1551 (9th Cir. 1993) (''One who places in the hands of another a means or instrumentality to be used by another to deceive the public in violation of the FTC Act is directly liable for violating the Act.'').

[4] *Magui Publishers, Inc.,* 1991 WL 90895, at *17.

[5] ''[A] respondent who has provided assistance to another party that has made misrepresentations is at most secondarily liable—in particular, for aiding and abetting another's misrepresentations.'' *Shell Oil Co.,* 128 F.T.C. 749, *15 (1999) (Swindle Dissent) (citing *Wright* v. *Ernst & Young LLP,* 152 F.3d 169, 175 (2d Cir. 1998), *cert. denied,* 119 S.Ct. 870 (1999); *Shapiro* v. *Cantor*, 123 F.3d 717, 720 (2d Cir. 1997); *Anixter* v. *Home-Stake Production Co.,* 77 F.3d 1215, 1225 (10th Cir. 1996) (''the critical element separating primary from aiding and abetting violations is the existence of a representation, made by the defendant.'')).

[6] *Magui Publishers, Inc.,* 1991 WL 90895, at *15.

[7] *Id.* at *14.

[8] *Cent. Bank, N.A.* v. *First Interstate Bank, N.A.,* 511 U.S. 164 (1994).

[9] *Shell Oil Co.,* 128 F.T.C. 749, *19 (Swindle Dissent).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2014–0015]

Request for Comment on Draft Vaccines Adverse Event Reporting System (VAERS) 2.0 Form

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of request for public comment.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), is publishing this notice requesting public comment on the proposed VAERS 2.0 form, which is intended to replace the current VAERS–1 form (*https://vaers.hhs.gov/resources/vaers_form.pdf*). CDC and the U.S. Food and Drug Administration (FDA) co-administer the Vaccines Adverse Event Reporting System (VAERS), a post-licensure (i.e., after vaccines have been licensed by the FDA and are being used in the community) reporting system that accepts submitted reports of adverse events that occur after vaccination from healthcare providers, manufacturers, and the public. Healthcare providers and vaccine manufacturers are required to submit VAERS reports. The National Childhood Vaccine Injury Act of 1986, section 2125 of the Public Health Service Act (42 U.S.C. 300aa–25) authorized VAERS. The current VAERS form has been used since 1990.

DATES: Written comments must be received on or before January 23, 2015.

ADDRESSES: You may submit comments, identified by docket number CDC–2014–0015 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* You may also submit written comments to the following address: Centers for Disease Control and Prevention, (CDC), National Center for Emerging and Zoonotic Infectious Diseases, Division of Healthcare Quality Promotion, Immunization Safety Office, Attn: VAERS 2.0 form Docket No. CDC–

2014–0015, 1600 Clifton Rd. NE., Mailstop A–07, Atlanta, Georgia, 30333.

Instructions: All submissions received must include the agency name and docket number. All relevant comments received will be posted without change to *http://regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* All materials submitted will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Standard Time, at 1600 Clifton Road NE., Atlanta, Georgia 30333. Please call ahead to (404) 639–4000 and ask for a representative from Immunization Safety Office to schedule your visit. You should be aware that this office is in a Federal government building; therefore, Federal security measures are applicable. For additional information, please see Roybal Campus Security Guidelines under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Tiffany Suragh; Centers for Disease Control and Prevention, National Center for Emerging and Zoonotic Infectious Diseases, Division of Healthcare Quality Promotion, Immunization Safety Office, l600 Clifton Road NE., Mailstop D–26; Atlanta, Georgia, 30329–4018; Telephone: (404) 639–4000.

SUPPLEMENTARY INFORMATION: VAERS is an important and critical ''early warning system'' in the federal vaccine safety infrastructure for identifying adverse events after receipt of childhood, adolescent, and adult vaccines licensed for use in the United States (US). Healthcare providers and vaccine manufacturers are required under section 2125(b) of the Public Health Service Act (42 U.S.C. 300aa–25(b)) to file VAERS reports regarding the occurrence of any event set forth in the Vaccine Injury Table which occurs within 7 days of the administration of any vaccine set forth in the Table or within such longer period as is specified in the Table and the occurrence of any contraindicating reaction to a vaccine which is specified in the manufacturer's package insert. VAERS also accepts reports on adverse events following receipt of other vaccines. Patients, parents and others aware of adverse events can also file VAERS reports. Although VAERS is not designed to assess if a vaccine caused an adverse event, VAERS provides CDC and FDA with important early information that might signal a potential problem. If the VAERS data suggest a possible association between an adverse event and vaccination, the relationship will be further assessed. In recent years VAERS has received approximately 30,000 US reports annually.

VAERS is a mandated activity for the U.S. Department of Health and Human Services (HHS) and VAERS data are used by federal agencies, state health officials, health care providers, manufacturers, and the public, therefore it is important to maximize the usefulness of this system. The information collected by the proposed VAERS 2.0 form will be similar to that on the current VAERS–1 form so historical comparisons can be made; however, the changes in the draft VAERS 2.0 form should improve reporting efficiency and data quality. VAERS 2.0 offers standardized responses, clearer instructions and guidance, and improved online reporting. Select questions have been updated, with questions added, removed, and reorganized to decrease response burden and maximize usability. The draft VAERS 2.0 form can be found at *http://www.regulations.gov.*

During the development of the draft VAERS 2.0 form, CDC and FDA sought input from key stakeholders in the federal government, state health officials involved in vaccine safety and vaccine programs, and other public health partners. In addition, the VAERS 2.0 form was presented to three federal advisory committees, the Advisory Commission on Childhood Vaccines (September 5, 2014), the National Vaccine Advisory Committee (September 9, 2014), and the Advisory Committee on Immunization Practices (October, 2014) and was tested with potential reporters (e.g., physicians, nurses, pharmacists, patients, and parents). All public comments will be reviewed and considered prior to finalizing the VAERS 2.0 form.

Roybal Campus Security Guidelines: The Edward R. Roybal Campus is the headquarters of the U.S. Centers for Disease Control and Prevention and is located at 1600 Clifton Road NE., Atlanta, Georgia. The Immunization Safety Office is in a Federal government building; therefore, Federal security measures are applicable.

In planning your arrival time, please take into account the need to park and clear security. All visitors must enter the Roybal Campus through the entrance on Clifton Road; the guard force will direct visitors to the designated parking area. Upon arrival at the facility, visitors must present government issued photo identification (e.g., a valid federal identification badge, state driver's license, state non-driver's identification card, or passport). Non-United States citizens must complete the required security paperwork prior to the visit date and must present a valid passport, visa, Permanent Resident Card, or other type of work authorization document upon arrival at the facility. All persons entering the building must pass through a metal detector. Visitors will be issued a visitor's ID badge at the entrance to Building 19 and will be escorted to a room to view the available materials. All items brought to HHS/CDC are subject to inspection.

Dated: November 18, 2014.

Ron A. Otten,

Acting Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2014–27678 Filed 11–21–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10407 and CMS–R–245]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HSS.

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 (the 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 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates 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 must be received by January 23, 2015.

ADDRESSES: When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

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:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10407 Summary of Benefits and Coverage and Uniform Glossary

CMS–R–245 Medicare and Medicaid Programs OASIS Collection Requirements as Part of the CoPs for HHAs and Supporting Regulations

Under the Paperwork Reduction Act (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 requires federal agencies to publish a 60-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.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Summary of Benefits and Coverage and Uniform Glossary; *Use:* Section 2715 of the Public Health Service Act directs the Department of Health and Human Services (HHS), the Department of Labor (DOL), and the Department of the Treasury (collectively, the Departments), in consultation with the National Association of Insurance Commissioners (NAIC) and a working group comprised of stakeholders, to ''develop standards for use by a group health plan and a health insurance issuer in compiling and providing to applicants, enrollees, and policyholders and certificate holders a summary of benefits and coverage explanation that accurately describes the benefits and coverage under the applicable plan or coverage.'' To implement these disclosure requirements, collection of information requests relate to the provision of the following: Summary of benefits and coverage, which includes coverage examples; a uniform glossary of health coverage and medical terms; and a notice of modifications. *Form Number:* CMS–10407 (OMB control number 0938–1146); *Frequency:* Annual; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 126,500; *Number of Responses:* 41,153,858; *Total Annual Hours:* 322,411. (For policy questions regarding this collection, contact Heather Raeburn at 301–492–4224.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs OASIS Collection Requirements as Part of the CoPs for HHAs and Supporting Regulations; *Use:* The Outcome and Assessment Information Set (OASIS) data set is currently mandated for use by Home Health Agencies (HHAs) as a condition of participation (CoP) in the Medicare program. Since 1999, the Medicare CoPs have mandated that HHAs use the OASIS data set when evaluating adult non-maternity patients receiving skilled services. The OASIS is a core standard assessment data set that agencies integrate into their own patient-specific, comprehensive assessment to identify each patient's need for home care that meets the patient's medical, nursing, rehabilitative, social, and discharge planning needs.

The Office of Management and Budget (OMB) approved the OASIS–C1 information collection request on February 6, 2014. We originally planned to use OASIS–C1 to coincide with the original implementation of ICD–10 on October 1, 2014. However, on April 1, 2014, the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93) was enacted. This legislation prohibits CMS from adopting ICD–10 coding prior to October 1, 2015. Because OASIS–C1 is based on ICD–10 coding, it is not possible to implement OASIS–C1 prior to October 1, 2015, when ICD–10 is implemented. The passage of the PAMA Act left us with the dilemma of how to collect OASIS data in the interim, until ICD–10 is implemented.

The OASIS–C1/ICD–9 version is an interim version of the OASIS–C1 data item set that was created in response to the legislatively mandated ICD–10 delay. There are five items in OASIS–C1 that require ICD–10 codes. In the OASIS–C1/ICD–9 version, these items have been replaced with the corresponding items from OASIS–C that use ICD–9 coding. The OASIS–C1/ICD–9 version also incorporates updated clinical concepts, modified item wording and response categories and improved item clarity. In addition, the OASIS–C1/ICD–9 version includes a significant decrease in provider burden that was accomplished by the deletion of a number of non-essential data items from the OASIS–C data item set. *Form Number:* CMS–R–245 (OMB control number: 0938–0760); *Frequency:* Occasionally; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 12,014; *Total Annual Responses:* 17,268,890; *Total Annual Hours:* 15,305,484. (For policy questions regarding this collection contact Cheryl Wiseman at 410–786–1175).

Dated: November 19, 2014.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–27756 Filed 11–21–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.623]

Announcement of the Award of a Single-Source Expansion Supplement Grant to National Safe Place in Louisville, KY

AGENCY: Family and Youth Services Bureau (FYSB), ACYF, ACF, DHHS.

ACTION: Notice of the award.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), Division of Adolescent Development and Support (DADS) announces the award of a single-source expansion supplement grant of $610,000 to Safe Place in Louisville, KY, to support costs associated with the expansion of the scope of approved activities under their award for the Runaway and Homeless Youth Training and Technical Assistance Center (RHYTTAC).

DATES: The award will support activities from August 1, 2014 through September 29, 2014.

FOR FURTHER INFORMATION CONTACT: Christopher Holloway, Central Office Program Manager, Runaway and Homeless Youth Program, Division of Adolescent Development and Support, Family and Youth Services Bureau, 1250 Maryland Avenue SW., Suite 800, Washington, DC 20024; Telephone: 202–205–9560; Email: *Christopher.Holloway@acf.hhs.gov*

SUPPLEMENTARY INFORMATION: The expansion supplement award will allow National Safe Place to:

- Assist runaway and homeless youth (RHY) organizations with understanding and responding to the impact of toxic stress in the workplace through the creation of an annotated resource directory and distribution of other materials related to Toxic Stress Awareness and Response.
- Provide training and technical assistance (T & TA) to RHY grantees on enhancing sustainability and for the development of an RHY Sustainability Toolkit containing an extensive compilation of generalized information for sustainability of RHY organizations.
- Extend the Human Trafficking (HTR3) project to build upon and expand efforts in assisting programs with making the transition from understanding how to recognize and respect the victims of human trafficking to responding to the diverse needs of victims through the development of effective organizational practices and community collaborations.

Using evidence-based practices derived from the best available research, professional expertise, and input from youth and families, the Runaway and Homeless Youth Training and Technical Assistance Center (RHYTTAC), operated by the National Safe Place, serves as the centralized national resource for FYSB-funded RHY grantees. Training and technical assistance services are directed to assisting RHY grantees in engaging in continuous quality improvement of their services and to assist them in building their organizational capacity to effectively serve RHY with a focus on helping the nation's network of RHY service providers boost ''protective factors'' for their clients.

Statutory Authority: Runaway and Homeless Youth Act, 42 U.S.C. 5701 through 5752, amended by the Reconnecting Homeless Youth Act of 2008, Public Law 110–378.

Christopher Beach,

Senior Grants Policy Specialist, Office of Administration, Division of Grants Policy.

[FR Doc. 2014–27738 Filed 11–21–14; 8:45 am]

BILLING CODE 4184–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0329]

Fees for Human Drug Compounding Outsourcing Facilities Under the FD&C Act; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act.'' The guidance is intended for entities that compound human drugs and elect to register as outsourcing facilities under the Federal Food, Drug, and Cosmetic Act (FD&C Act), as added by the Drug Quality and Security Act (DQSA). Entities that elect to register as outsourcing facilities must pay certain fees to be considered outsourcing facilities. This guidance describes the annual establishment fee, the reinspection fee, annual adjustments to fees required by law, how to submit payment, the effect of failure to pay fees, and how to qualify as a small business to obtain a reduction of the annual establishment fee.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document. Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jonathan Gil, Food and Drug Administration, 10001 New Hampshire Ave., Silver Spring, MD 20903, 301–796–7900.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act.'' On November 27, 2013, President Obama signed the DQSA (Pub. L. 113–54) into law. The DQSA added a new section 503B to the FD&C Act (21 U.S.C. 353B) that created a category of entities called ''outsourcing facilities.'' Section 503B(d)(4) of the FD&C Act defines an outsourcing facility, in part, as a facility that complies with all of the requirements of section 503B, including registering with FDA as an outsourcing facility and paying associated fees. If the conditions outlined in section 503B(a) of the FD&C Act are satisfied, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from certain sections of the FD&C Act, including section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use) and section 505 (21 U.S.C. 355) (concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)). Drugs compounded in outsourcing facilities are not exempt from the requirements of section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)) (concerning current

good manufacturing practice for drugs). This guidance describes in detail the fee types and amounts an entity must pay to satisfy the fee requirements of sections 503B and 744K of the FD&C Act to be deemed an outsourcing facility and maintain its status as an outsourcing facility, the adjustments to the fees required by law, how to qualify as a small business to obtain a reduction of the annual establishment fee, how and when to submit payment to FDA, the effect of failure to pay fees, and fee-related dispute resolution.

On April 1, 2014 (79 FR 18297), FDA announced the availability of the draft version of this guidance. The public comment period closed on June 2, 2014. One comment was received from the public, and FDA carefully considered that comment as it finalized the guidance. Some of the issues raised relate to matters that FDA intends to address in other policy documents and were not directly pertinent to the topics addressed in this guidance. During finalization of the guidance, FDA made both clarifying changes and minor editorial changes to the guidance and accompanying form. For example, FDA clarified that it intends to issue an invoice for reinspection fees within 14 calendar days of the close of the reinspection, and that the reinspection fee must be paid within 30 calendar days of the date of the invoice.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on fees associated with human drug compounding outsourcing facilities. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons can submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments can be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Paperwork Reduction Act of 1995

This guidance contains collections of information that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information have been approved under OMB control number 0910–0776.

IV. Electronic Access

Persons with access to the Internet can obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: November 18, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–27692 Filed 11–21–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1428]

Electronic Product Reporting for Human Drug Compounding Outsourcing Facilities; Draft Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the availability of a revised draft guidance entitled ''Electronic Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' The revised draft guidance addresses provisions in the Federal Food, Drug, and Cosmetic Act (the FD&C Act) added by the Drug Quality and Security Act (DQSA) and updates reporting instructions for drug compounders that choose to register as outsourcing facilities. Such compounders must report information on the drugs they have compounded in Structured Product Labeling (SPL) format using FDA's electronic submissions system. This revised draft guidance supersedes a draft guidance entitled ''Interim Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.''

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the Agency considers your comments on this revised draft guidance, submit either electronic or written comments on the revised draft guidance by January 23, 2015. Submit either electronic or written comments concerning the collection of information proposed in the revised draft guidance by January 23, 2015.

ADDRESSES: Submit written requests for single copies of the revised draft guidance document to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revised draft guidance.

Submit electronic comments on the revised draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lysette Deshields, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3100.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry entitled ''Electronic Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' In the **Federal Register** of December 4, 2013 (78 FR 72897), FDA issued a notice announcing the availability of an initial draft of this guidance entitled ''Interim Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.'' That draft guidance addressed new provisions in the FD&C Act added by the DQSA and set forth an interim submission method for human drug compounders that choose to register as outsourcing facilities.

The comment period on the initial draft guidance ended on February 3, 2014. FDA received six comments on the draft. In response to received comments or on its own initiative, FDA made the following changes and updates in the revised draft guidance: (1) Modified the scope of the guidance to refer to product reports submitted in SPL format; (2) clarified the following elements required in a product report: ''Strength of the active ingredient per unit,'' ''package description,'' and

''number of individual units produced''; (3) included language that discusses the time period during which outsourcing facilities must submit product reports; (4) included the appropriate SPL document type category for outsourcing facilities submitting a product report and a reference to detailed instructions on how to submit information using SPL; (5) clarified that reports submitted under section 503B(b)(2) of the FD&C Act (21 U.S.C. 353b(b)(2)) are exempt from inspection unless the Secretary finds that such an exemption would be inconsistent with the protection of the public health; and (6) made grammatical and other minor editorial changes for clarity.

In some cases, received comments raised issues that were not directly pertinent to the topics addressed in the draft. This revised draft guidance explains that registered outsourcing facilities must provide reports to FDA on compounded drugs in SPL format using FDA's electronic submissions system. It supersedes the draft guidance entitled ''Interim Product Reporting for Human Drug Compounding Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.''

Section 503B(b)(2)(B) of the FD&C Act provides that a facility that elects to register with FDA as an outsourcing facility is required to report to FDA information about the drugs compounded at that outsourcing facility in the form and manner as FDA may ''prescribe by regulation or guidance.'' Congress gave FDA explicit statutory authority to establish binding requirements on this topic in guidance. Therefore, this guidance is not subject to the usual restrictions in FDA's good guidance practice regulations (*e.g.,* the requirements that guidances not establish legally enforceable responsibilities and that guidances prominently display a statement of the document's nonbinding effect); see 21 CFR 10.115(d)(1)).

As provided in section 503B of the DQSA, this revised draft guidance explains the form and manner in which registered outsourcing facilities are required to submit drug reporting information. This revised draft guidance, when finalized, will prescribe the form and manner for submitting drug product reports to FDA under section 503B of the FD&C Act and will have binding effect under section 503B(b)(2)(B). Until this draft guidance is finalized, FDA will accept drug product reports submitted in accordance with the form and manner described in FDA's initial draft guidance on this subject. However, FDA strongly encourages outsourcing facilities to submit drug product reports as described in this revised draft guidance.

Elsewhere in this issue of the **Federal Register**, FDA is making available a final guidance on registration for human drug compounding outsourcing facilities under section 503B of the FD&C Act.

II. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (the 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 that they conduct or sponsor. ''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 provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing this notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this document, FDA invites comments on the following topics: (1) Whether the proposed information collected is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimated burden of the proposed information collected, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of information collected on the respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Under the revised draft guidance, registered outsourcing facilities must submit to FDA a report identifying all drugs compounded by the facility during the previous 6-month period. The report must be submitted upon initial registration as an outsourcing facility, once in June, and once in December of each year. The report must include the following information for all drugs compounded at the outsourcing facility during the previous 6-month period:

- The active ingredient and strength of active ingredient per unit
- The source of the active ingredient (bulk or finished)
- The National Drug Code (NDC) number of the source drug or bulk active ingredient, if available
- The dosage form and route of administration
- The package description
- The number of individual units produced
- The NDC number of the final product, if assigned

Product reports must be submitted to FDA electronically in SPL format, as described in the revised draft guidance. Outsourcing facilities can request a waiver from the electronic submission process by submitting a written request to FDA explaining why the use of electronic means is not reasonable for them.

Based on our familiarity with outsourcing facilities, we estimate that annually a total of approximately 50 outsourcing facilities (''number of respondents'' in table 1, row 1) will submit to FDA at the time of initial registration a report identifying all drugs compounded in the facility. We also estimate that these outsourcing facilities will submit a total of approximately 50 reports for compounded drugs containing the information specified in the draft guidance (''total annual responses'' in table 1, row 1). We estimate that preparing and submitting this information electronically will take approximately 2 hours per report (''average burden per response'' in table 1, row 1). We expect to receive no more than one waiver request from this electronic submission process (''total annual responses'' in table 1, row 2), and each request should take approximately 1 hour to prepare and submit to us (''average burden per response'' in table 1, row 2).

We also estimate that a total of approximately 50 outsourcing facilities (''number of respondents'' in table 2, row 1) will submit to FDA a report twice each year identifying all drugs compounded at the facility. We estimate that these outsourcing facilities will submit a total of approximately 50 reports in December and 50 reports in June containing the information specified in the draft revised guidance (''total annual responses'' in table 2, row 1). We estimate that preparing and submitting this information electronically will take approximately 2 hours per report (''average burden per response'' in table 2, row 1). We expect to receive no more than one waiver request from the electronic submission process (''total annual responses'' in table 2, row 2), and each request should take approximately 1 hour to prepare and submit to us (''average burden per response'' in table 2, row 2).

TABLE 1—ESTIMATED ONE-TIME REPORTING BURDEN [1]

Product reporting for compounding outsourcing facilities	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission of Initial Product Report	50	1	50	2	100
Waiver Request from Electronic Submission of Initial Product Report	1	1	1	1	1
Total					101

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Product reporting for compounding outsourcing facilities	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission of December Product Report	50	1	50	2	100
Submission of June Product Report	50	1	50	2	100
Waiver Request from Electronic Submission of Product Reports	1	1	1	1	1
Total					201

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Comments

Interested persons can submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments can be viewed at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: November 18, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–27691 Filed 11–21–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1429]

Registration of Human Drug Compounding Outsourcing Facilities Under Section 503B of the FD&C Act; Final Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry entitled ''Registration of Human Drug Compounding Outsourcing Facilities Under Section 503B of the FD&C Act.'' The guidance addresses new provisions in the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Drug Quality and Security Act (DQSA). The guidance is intended to assist human drug compounders that elect to register as outsourcing facilities in registering, re-registering, or de-registering with FDA. The guidance provides information on how an outsourcing facility should submit facility registration information electronically in structured product labeling (SPL) format using FDA's electronic submission system. This guidance reflects the Agency's current thinking on the issues addressed by the guidance.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the final guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the final guidance document. Submit electronic comments on the final guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Soo Jin Park, Drug Registration and Listing Team, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–3100.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Registration of Human Drug Compounding Outsourcing Facilities Under Section 503B of the FD&C Act.'' This guidance is being issued consistent with the new authority conferred to FDA in the DQSA (Pub. L. 113–54). In that legislation, Congress created a new category for certain facilities that

compound human drugs called ''outsourcing facilities.'' Section 503B(d)(4) of the FD&C Act (21 U.S.C. 353B(d)(4)) defines an outsourcing facility, in part, as a facility that complies with all of the requirements of section 503B, including registering with FDA as an outsourcing facility and paying associated fees. If the conditions outlined in section 503B(a) of the FD&C Act are satisfied, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from certain sections of the FD&C Act, including section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use) and section 505 (21 U.S.C. 355) (concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)). Drugs compounded in outsourcing facilities are not exempt from the requirements of section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice for drugs). This guidance is intended to assist compounding facilities that wish to register as outsourcing facilities to register with FDA and discusses the process for registering, re-registering, and de-registering.

In the **Federal Register** of December 4, 2013 (78 FR 72899), FDA issued a notice announcing the availability of the draft version of this guidance. That draft guidance set forth an interim and electronic submission method for human drug compounders that elect to register as outsourcing facilities. The comment period on the draft guidance ended on February 3, 2014. FDA received nine comments on the draft guidance. Some of the received comments raised issues that were not directly pertinent to the topics addressed in this guidance. FDA intends to consider those comments as they relate to issues being addressed in other policy documents being developed by the Agency.

In response to received comments or on its own initiative, FDA made the following changes as it finalized this guidance: (1) We included a phone number for a point of contact; (2) we deleted reference to an alternative interim registration method; (3) we added information on how a registered outsourcing facility can de-register; (4) we clarified what registration information will be made public; (5) we clarified the standard to be used to grant a waiver of the electronic submission requirements; and (6) we made grammatical and other minor editorial changes to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act

This guidance contains collections of information that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information have been approved under OMB control number 0910–0777.

III. Comments

Interested persons can submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments can be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: November 18, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–27693 Filed 11–21–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2011–D–0360 and FDA–2011–D–0357]

Framework for Regulatory Oversight of Laboratory Developed Tests; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Framework for Regulatory Oversight of Laboratory Developed Tests (LDTs).'' The purpose of this workshop is to discuss FDA's proposal for a risk-based framework for addressing the regulatory oversight of a subset of *in vitro* diagnostic devices (IVDs) referred to as laboratory developed tests (LDTs), which are intended for clinical use and designed, manufactured and used within a single laboratory, and provide an additional opportunity for public comment

Dates and Times: The 2-day public workshop will be held on January 8, 2015, from 8:30 a.m. to 5:30 p.m. and on January 9, 2015 from 8:30 a.m. to 5:30 p.m.

Location: The public workshop will be held at the Natcher Center at the National Institutes of Health Campus, 9000 Rockville Pike, Bldg. 45, Auditorium, Bethesda, MD 20814. For parking and security information, please refer to *http://www.nih.gov/about/visitor/.*

Contact Person: Allen Webb, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm 5675, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–402–4217, *LDTframework@fda.hhs.gov.*

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by December 12, 2014, at 4 p.m. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the public workshop will be provided beginning at 8 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan, (email: *Susan.Monahan@fda.hhs.gov* or phone: 301–796–5661) no later than December 19, 2014.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this meeting/public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, email, and telephone number. If you are unable to register online, please contact Susan Monahan (see *Registration.*) Registrants will receive confirmation after they have been accepted and will be notified if they are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements and connection access information after registration and prior to the meeting. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.) The Webcast will be recorded and posted on FDA's Web site after the meeting.

Requests for Oral Presentations: This public workshop includes topic-focused public comment sessions. During online registration you may indicate if you wish to present during a public comment session, and which topics you wish to address. FDA has included general topics in this document. FDA will do its best to accommodate requests to make public comment. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the focused sessions. Following the close of registration, FDA will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by December 17, 2014. All requests to make oral presentations must be received by the close of registration on December 12, 2014. If selected for presentation, any presentation materials must be emailed to Allen Webb (see *Contact Person*) no later than January 6, 2015. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Comments: In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public workshop topics. The deadline for submitting comments related to this public workshop is February 2, 2015.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II of this document, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list).

SUPPLEMENTARY INFORMATION:

I. Background

In 1976, Congress enacted the Medical Device Amendments (MDA), which amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to create a comprehensive system for the regulation of medical devices intended for use in humans. At that time, the definition of a device was amended to make explicit that it encompassed in vitro diagnostic devices (IVDs): ''The term 'device'. . .means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article. . . .'' (section 201(h) of the FD&C Act (21 U.S.C. 321(h)). The definition of device applies equally to IVDs manufactured by conventional device manufacturers and those manufactured by laboratories. An IVD, therefore, meets the device definition irrespective of where and by whom it is manufactured.

Since the implementation of the MDA of 1976, FDA has exercised enforcement discretion so that the Agency has generally not enforced applicable provisions under the FD&C Act and FDA regulations with respect to LDTs, a subset of IVDs that are intended for clinical use and designed, manufactured, and used within a single laboratory.

In 1976, LDTs were mostly manufactured in small volumes by local laboratories. Many laboratories manufactured LDTs that were similar to well-characterized, standard diagnostic devices, as well as other LDTs that were intended for use in diagnosing rare diseases or for other uses to meet the needs of a local patient population. LDTs at the time tended to rely on the manual techniques used by laboratory personnel. LDTs were typically used and interpreted directly by physicians and pathologists working within a single institution that was responsible for the patient. In addition, historically, LDTs were manufactured using components that were legally marketed for clinical use (*i.e.,* general purpose reagents, immunohistochemical stains, and other components marketed in compliance with FDA regulatory requirements).

Although some laboratories today still manufacture LDTs in this ''traditional'' manner, the landscape for laboratory testing in general, and LDTs along with it, has changed dramatically since 1976. Today, LDTs are often used in laboratories that are independent of the healthcare delivery entity. Additionally, LDTs are frequently manufactured with components and instruments that are not legally marketed for clinical use and also rely more heavily on complex, high-tech instrumentation and software to generate results and clinical interpretations. Moreover, technological advances have increased the use of diagnostic devices in guiding critical clinical management decisions for high-risk diseases and conditions, particularly in the context of personalized medicine.

Business models for laboratories have also changed since 1976. With the advent of overnight shipping and electronic delivery of information (*e.g.,* device results), a single laboratory can now easily provide device results nationally and internationally. Today, many new LDT manufacturers are large corporations that nationally market a limited number of complex, high-risk devices, in contrast to 1976 when hospital or public health laboratories used a wide range of devices that were generally either well characterized and similar to standard devices; used to diagnose rare diseases; or designed specifically to meet the needs of their local patients. Together, these changes

have resulted in a significant shift in the types of LDTs developed, the business model for developing them, and the potential risks they pose to patients.

Because of changes in the complexity and use of LDTs and the associated increased risks, as described earlier, FDA believes the policy of general enforcement discretion towards LDTs is no longer appropriate. To initiate this step toward greater oversight, FDA held a 2-day public meeting on July 19 and 20, 2010, to provide a forum for stakeholders to discuss issues and concerns surrounding greater oversight of LDTs. Comments submitted to the public docket for the July 19 and 20, 2010, public meeting were reviewed and, as appropriate, incorporated into FDA's current proposed framework for regulatory oversight of LDTs. FDA's July 31, 2014, Notification to Congress concerning the Agency's intent to issue the draft guidance, ''Framework for Regulatory Oversight of Laboratory Developed Tests (LDTs)'' (Framework draft guidance document), and the accompanying draft guidance, ''FDA Notification and Medical Device Reporting for Laboratory Developed Tests (LDTs),'' was made publicly available, and these draft guidance documents were subsequently issued on October 3, 2014. See 79 FR 59776 and 79 FR 59779 (October 3, 2014). These documents describe a risk-based framework for addressing the regulatory oversight of LDTs, including FDA's priorities for enforcing premarket and postmarket requirements for LDTs as well as the process by which FDA intends to phase in enforcement of FDA regulatory requirements for LDTs over time. As outlined in the Framework draft guidance document, FDA proposes to continue to exercise enforcement discretion for all applicable regulatory requirements for LDTs used solely for forensic (law enforcement) purposes as well as certain LDTs for transplantation when used in certified, high-complexity histocompatibility laboratories. Additionally, FDA proposes to exercise enforcement discretion for applicable premarket review requirements and quality systems (QS) requirements, but enforce other applicable regulatory requirements, including registration and listing (with the option to provide notification instead) and adverse event reporting, for low-risk LDTs (class I devices), LDTs for rare diseases, Traditional LDTs and LDTs for Unmet Needs, as described in the Framework draft guidance document. For other high- and moderate-risk LDTs, FDA proposes to enforce applicable regulatory requirements, including registration and listing (with the option to provide notification instead) and adverse event reporting, and phase in enforcement of premarket and QS requirements in a risk-based manner.

With the publication of the draft guidances, FDA announced a public comment period soliciting feedback on all aspects of the guidance documents as well as on the following specific issues: (1) Factors for ''Traditional LDT'' and appropriate level of enforcement discretion for such tests; (2) factors for considering LDTs for rare diseases; (3) manufacture and use of LDTs solely within a healthcare system as a risk mitigation supporting some continued enforcement discretion; (4) timeframe for phase-in enforcement of QS regulation requirements for those LDTs called in for enforcement of premarket review requirements early in the implementation period; and (5) the appropriateness of a single notification for the same LDT manufactured by multiple labs owned by a single entity.

FDA intends to use this public workshop as a forum for open discussion with all stakeholders regarding these specific issues as well as other considerations for how to best balance patient safety and patient access in developing the finalized framework in a manner that best serves public health.

II. Topics for Discussion at the Public Workshop

Issues to be considered during the sessions include:

Session 1: Components of a Test and LDT Labeling Considerations

- What components do FDA cleared/approved tests and LDTs typically include?
- What labeling considerations should be taken into account for LDTs?
- How does LDT labeling affect and not affect physician consultation with the laboratory?

Session 2: Clinical Validity/Intended Use

- What is clinical validity and how is it demonstrated for IVDs, including LDTs?
- How are clinical claims or intended use related to clinical validity?
- What types of modifications may affect the intended use or significantly affect the performance of a test?

Session 3: Categories for Continued Enforcement Discretion

- As a factor for consideration of continued enforcement discretion for premarket review and QS regulation requirements for LDTs for rare diseases, the proposed framework for LDTs relies on the definition of a humanitarian use device (HUD) in 21 CFR 814.102(a)(5). Under this definition, an IVD may qualify for HUD designation when the number of persons in the United States who may be tested with the device is fewer than 4,000 per year. Is this an appropriate factor for LDTs for rare diseases? If not, what factor should FDA consider for LDTs for rare diseases?
- Should enforcement discretion be limited to tests for rare diseases that meet the definition of an LDT (a test designed, manufactured and used within a single laboratory)?
- Are the following three factors the appropriate controls to mitigate risks due to Traditional LDTs so that continued enforcement discretion is appropriate with respect to premarket review and quality system requirements whether the test is: (1) An LDT (designed, manufactured and used within a single laboratory); (2) comprised of only components and instruments that are legally marketed for clinical use, which have a number of regulatory controls in place, including reporting of adverse events; and (3) interpreted by laboratory professionals who are appropriately qualified and trained as required by the CLIA (Clinical Laboratory Improvement Amendments) regulations (see, *e.g.,* 42 CFR 493.1449), without the use of automated instrumentation or software for interpretation? Are these three factors also sufficient to support continued enforcement discretion in full (*i.e.,* for all regulatory requirements rather than just for premarket review and quality system requirements) for this category of LDTs? Should FDA instead consider different factors?
- FDA has proposed the following three factors for consideration of continued enforcement discretion for premarket review and QS requirements for LDTs for Unmet Needs whether: (1) The device meets the definition of an LDT (a test designed, manufactured and used by a single laboratory); (2) there is no FDA cleared or approved IVD available for that specific intended use; and (3) the LDT is both manufactured and used by a healthcare facility laboratory (such as one located in a hospital or clinic) for a patient that is being diagnosed and/or treated at that same healthcare facility or within

that facility's healthcare system. Are these factors appropriate and/or sufficient to both mitigate risks and to provide patient access if warranted? Should FDA use different factors to best balance patient safety and patient access?

- For the categories of Traditional LDTs and LDTs for Unmet Needs, one of the factors for enforcement discretion is whether the LDT is both manufactured and used by a healthcare facility laboratory (such as one located in a hospital or clinic) for a patient that is being diagnosed and/or treated at that same healthcare facility, or within the facility's healthcare system. To further clarify this factor, the Framework draft guidance document explains that ''healthcare system'' refers to a collection of hospitals that are owned and operated by the same entity and that share access to patient care information for their patients, such as, but not limited to, drug order information, treatment and diagnosis information, and patient outcomes. If this is an appropriate factor to use, are the considerations about which types of facilities would or would not be included within a healthcare system as defined by the draft guidance appropriate? Is there an alternative definition of healthcare system that would be more appropriate?
- Do the FDA-proposed categories for continued enforcement discretion appropriately encompass the LDTs that should remain under enforcement discretion? Should the scope of proposed categories be broadened or narrowed? If so, how? Should additional categories for continued enforcement discretion be added or proposed categories removed? If so, which categories? For any new proposed categories, what are the appropriate factors in considering enforcement discretion?
- Is the information provided detailed enough for laboratories to make a determination that their LDT falls within one of these categories of continued enforcement discretion?

Session 4: Notification and Adverse Event Reporting (MDRs)

- Will notification be adequate to provide FDA, laboratories, providers, patients, and other members of the public a comprehensive list of what tests are currently available for a specific intended use?
- Would it be sufficient to allow laboratory networks (*i.e.,* more than one laboratory under the control of the same parent entity) that offer the same test in multiple laboratories throughout their network to submit a single notification for that test?
- Are there certain types of LDTs for which the Agency should neither enforce requirements for registration and listing nor request notification in lieu of registration and listing?
- How can FDA leverage other information in the community to reduce the information collection associated with notification for laboratories while still obtaining sufficient information to inform the LDT classification and prioritization process?

Session 5: Public Process for Classification and Prioritization

- How should FDA structure the advisory panels that will be convened to provide input to help FDA classify LDTs and prioritize them for enforcement of FDA premarket review requirements?
- Which stakeholders should be able to present relevant information or views at the panel meetings to discuss the classification and prioritization of LDTs?
- What factors should be considered in determining LDT classification and risk?
- How should the advisory panel process weigh these factors when providing input for classifying LDTs and prioritizing LDTs for enforcement of FDA premarket review requirements?

Session 6: Quality System Regulation

- How can laboratories best leverage their current processes and procedures, implemented to meet CLIA accreditation requirements, to meet the FDA QS regulation requirements in the least burdensome manner?
- Are there FDA QS requirements that differ from CLIA requirements that FDA should continue not to enforce for laboratories that make LDTs?
- What additional resources will laboratories need in order to assist them with implementation of the QS regulation?
- What is the appropriate timeframe for phase-in enforcement of QS regulation requirements in general and for design controls specifically?

Dated: November 17, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–27713 Filed 11–21–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1818]

New Clinical Trials Demographic Data; Availability for Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for public comment of Demographic Subgroup Data for FDA Approved Products on FDA's Internet Web site. This new posting implements Action 3.1 from Priority 3 of the Food and Drug Administration Safety and Innovation Act (FDASIA) Section 907 Action Plan designed to improve the availability and transparency of clinical trial demographic subgroup data. FDA is requesting comments on the format, content, and overall usability of the site to determine whether this approach is user friendly to the public.

DATES: Submit electronic or written comments on the content by January 23, 2015.

ADDRESSES: Submit electronic comments on the Web page to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Laurie Haughey, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 240–402–6511, *Laurie.Haughey@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of clinical trial demographic data for consumers on FDA's Internet Web site at *www.fda.gov/drugtrialssnapshot.*

On July 9, 2012, the President signed FDASIA (Pub. L. 112–144) into law. Section 907 of FDASIA requires that FDA report on and address certain information regarding clinical trial participation by demographic subgroups and subset analysis of the resulting data. Specifically, section 907(a) of FDASIA requires the Secretary of Health and Human Services (the Secretary), acting through the FDA Commissioner, to publish on FDA's Internet Web site a report ''addressing the extent to which clinical trial participation and the inclusion of safety and effectiveness

data by demographic subgroups including sex, age, race, and ethnicity, is included in applications submitted to the FDA,'' and provide such publication to Congress. The report, entitled ''Reporting of Inclusion of Demographic Subgroups in Clinical Trials and Data Analysis in Applications for Drugs, Biologics, and Devices,'' was posted on FDA's Internet Web site in August 2013 and is available at *http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/FDASIA/ucm356316.htm.*

Section 907(b) of FDASIA further requires the Secretary, again acting through the Commissioner, to publish an action plan on FDA's Internet Web site and provide such publication to Congress. The action plan is to contain recommendations, as appropriate, to improve the completeness and quality of analyses of data on demographic subgroups in summaries of product safety and effectiveness and in labeling; on the inclusion of such data, or the lack of availability of such data in labeling; and on ways to improve public availability of such data to patients, health care providers, and researchers. These recommendations are to include, as appropriate, a determination that distinguishes between product types and applicability. The action plan is due not later than 1 year after the publication of the report described previously. The action plan entitled ''FDA Action Plan to Enhance the Collection and Availability of Demographic Subgroup Data'' was published in August 2014 and is available at *http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/FDASIA/ucm356316.htm.*

Priority three of the action plan aims to make demographic data more available and transparent by, amongst other things, posting demographic composition and analysis by subgroup in pivotal clinical studies for FDA-approved medical products. The first iteration of FDA's publication of this data is available at *www.fda.gov/drugtrialssnapshot.*

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: November 19, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–27732 Filed 11–21–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Assessing an Online Process To Study the Prevalence of Drugged Driving in the U.S.: Development of the Drugged Driving Reporting System

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Harold Perl, Ph.D., Chief, Prevention Research Branch, Division of Epidemiology, Services & Prevention Research, NIDA, 6001 Executive Blvd., Rockville, MD 20852 or call this non-toll-free number (301) 443–6504, or email your request, including your address to: *hperl@nida.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Proposed Collection: Assessing an Online Process to Study the Prevalence of Drugged Driving in the U.S: Development of the Drugged Driving Reporting System. Type of Information Collection Request: 0925–NEW. National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH).

Need and Use of Information Collection: The study seeks to provide an improved understanding of the prevalence of drugged driving among adult drivers in the U.S and will assess the effectiveness of the online survey implementation process. The primary objectives of the study are to: (a) To provide comprehensive data on drugged driving; (b) determine if the Drugged Driving Survey Instrument (DDS) is an effective and accurate measure of drugged driving among licensed U.S. Drivers aged 18 and older; and, (c) to assess the effectiveness of the survey implementation process, including various levels of incentives for participation to determine the appropriate/optimal incentive amount needed to obtain the desired number of total survey respondents within the timeframe within which survey data will be collected. The findings will provide valuable information concerning various aspects of substance use and driving behavior, including: (1) Demographic information about drivers who do and do not drive while impaired by medication and/or drugs (*e.g.* age, zip code, type of driver's license); (2) which drugs/medications are most likely to be used while driving; (3) drivers' beliefs and attitudes toward drugged driving. OMB approval is requested for 2 years. There are no direct costs to respondents other than their time. The total annualized estimated burden hours are 750.

Study material	Type of respondent	Number of respondents	Responses per respondent	Hours per response	Annual hour burden
Drugged Driving Survey	Drivers (18 years of age or older) ...	3,750	1	12/60	750

Dated: November 18, 2014.

Genevieve deAlmeida,

Project Clearance Liaison, National Institute on Drug Abuse.

[FR Doc. 2014–27760 Filed 11–21–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request Electronic Prior Approval Submission System (ePASS) (NHLBI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung and Blood Institute (NHLBI), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Suzanne White, 6701 Rockledge, Office of Grants Management, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Dr., MSC 7926, Bethesda, MD 20892–7926, or call non-toll-free number 301–435–0166, or Email your request, including your address to *whitesa@nhlbi.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Electronic Prior Approval Submission System (ePASS), 0925—New, National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose and use of the information collection for this project is to collect and track certain requests (such as budget modifications or undertaking particular activities) from NIH grantees in an electronic format. This new electronic system, ePASS (electronic Prior Approval Submission System), will enable grantees to have a standard way to submit requests for their projects per NIH policy. The grantee will initiate a request for a certain action as required by NIH policy: Use of unobligated balances/carryover, change of PI, change of effort, Training Grant (NRSA) waivers, significant rebudgeting, 2nd and 3rd no cost extensions, and change of scope. These are all prior approvals as required by the NIH Grants Policy, and need to be reviewed and approved by the NHLBI. ePASS will provide a template to ensure that all specific points are addressed and documented in the official grant file. All information is submitted via the internet, tracked in ePASS, and the documentation will automatically be forwarded to the official grant file. The system will ensure that individuals authorized by the grantee are submitting requests and that the appropriate NIH staff is receiving the requests. The requests will be template driven so that the grantee is including the minimally required information, thus eliminating the usual back and forth to obtain missing information. Forms will have automatic fill-in capability that will reduce typos in grant numbers and PI names, further reducing approval time. Reminders will be sent to NIH staff within ePASS based on roles to ensure timely responses to the grantee. The system will facilitate email communication with applicants by automatic notifications when applications are received and when NIH has made a determination regarding a request (approval issued or request denied with explanation for denial).

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 470.

A.12–1—ESTIMATES OF HOUR BURDEN

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
NHLBI Grantees	940	1	30/60	470

Dated: November 12, 2014.

Lynn Susulske,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–27762 Filed 11–21–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of Autologous Tumor Infiltrating Lymphocyte Adoptive Cells for the Treatment of Metastatic Melanoma

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to the current licensee, Lion Biotechnologies, Inc., which is located in Woodland Hills, California to practice the inventions embodied in the following patent applications and applications claiming priority to these applications:

1. U.S. Provisional Patent Application No. 61/237,889, filed August 26, 2009 entitled ''Adoptive cell therapy with young T cells'' (HHS Ref No. E–273–2009/0–US–01);
2. U.S. Patent No. 8,383,099 issued February 26, 2013 entitled ''Adoptive cell therapy with young T cells'' (HHS Ref No. E–273–2009/0–US–02);
3. U.S. Patent Application No. 13/742,541 filed January 16, 2013 entitled ''Adoptive cell therapy with young T cells'' (HHS Ref No. E–273–2009/0–US–03);
4. U.S. Provisional Patent Application No. 61/466,200 filed March 22, 2011 entitled ''Methods of growing tumor infiltrating lymphocytes in gas-permeable containers'' (HHS Ref No. E–114–2011/0–US–01);
5. PCT Application No. PCT/US2012/029744 filed March 20, 2012 entitled ''Methods of growing tumor infiltrating lymphocytes in gas-permeable containers'' (HHS Ref No. E–114–2011/0–US–01);
6. U.S. Patent Application No. 13/424,646 filed May 20, 2012 entitled ''Methods of growing tumor infiltrating lymphocytes in gas-permeable containers'' (HHS Ref No. E–114–2011/0–US–01);

The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the use of the Licensed Patent Rights to develop, manufacture, distribute, sell and use autologous tumor infiltrating lymphocyte adoptive cell therapy products for the treatment of metastatic melanoma as a stand-alone therapy.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before December 24, 2014 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Whitney A. Hastings, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 451–7337; Facsimile: (301) 402–0220; Email: *hastingw@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: Isolating cells from the tumor infiltrating lymphocytes (TIL) of a patient tumor sample provides a suitable initial lymphocyte culture for further in vitro manipulations. NIH scientists have discovered that taking the isolated cells through one cycle of rapid expansion (including exposure to IL–2), rather than multiple cycles, yields lymphocyte cultures with higher affinity and longer persistence in patients. In addition, they have found that through the use of gas permeable (GP) flasks, they could obtain large quantities of highly reactive TIL from patient tumor samples for anti-cancer immunotherapy. If an adoptive T cell transfer immunotherapy is to gain regulatory approval and successfully treat a wide array of patients, it will need to be rapid, reliable, and technically simple. One of the most critical factors to this approach is the generation of effective lymphocyte cultures that will rapidly and repeatedly attack the target cells when infused into patients.

The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 17, 2014.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–27680 Filed 11–21–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed 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 materials, 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 Drug Abuse Special Emphasis Panel Production, Analysis, and Distribution of Cannabis and Related Materials (7793).

Date: December 2, 2014.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 435–1439, *lf33c.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.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: November 18, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–27669 Filed 11–21–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the

National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Heart, Lung, and Blood Advisory Council.

Date: February 10, 2015.

Open: 8:00 a.m. to 1:00 p.m.

Agenda: To discuss program policies and issues, including the NHLBI Advisory Council Asthma Expert Working Group's report on Asthma Guidelines Needs Assessment. The Working Group's draft report can be found at *http://www.nhlbi.nih.gov/health/resources/lung/nhlbac-asthma-report.htm* and comments may be submitted to *Asthma_Needs_Assessment_Comments@nhlbi.nih.gov* by January 5, 2015.

Place: National Institutes of Health, Building 31, 6th Floor, C Wing, 31 Center Drive, Bethesda, MD 20892.

Closed: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 6th Floor, C Wing, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Stephen C. Mockrin, Ph.D., Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435–0260, *mockrins@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 18, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–27671 Filed 11–21–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the NIH Scientific Management Review Board (SMRB). On December 15, 2014, the SMRB will deliberate findings and recommendations developed by the SMRB Working Group on Pre-college Engagement in Biomedical Science. The Working Group has considered approaches to optimize NIH's pre-college programs and initiatives that both align with the NIH mission and ensure a continued pipeline of biomedical science students and professionals. SMRB members will also discuss preliminary findings and recommendations for streamlining NIH's grant review, award, and management process while maintaining proper oversight. Panel discussions will be held with grantees and other stakeholders.

The NIH Reform Act of 2006 (Pub. L. 109–482) provides organizational authorities to HHS and NIH officials to: (1) Establish or abolish national research institutes; (2) reorganize the offices within the Office of the Director, NIH including adding, removing, or transferring the functions of such offices or establishing or terminating such offices; and (3) reorganize, divisions, centers, or other administrative units within an NIH national research institute or national center including adding, removing, or transferring the functions of such units, or establishing or terminating such units. The purpose of the SMRB is to advise appropriate HHS and NIH officials on the use of these organizational authorities and identify the reasons underlying the recommendations.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. Times are subject to change.

Name of Committee: Scientific Management Review Board (SMRB).

Date: December 15, 2014.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: At this meeting, SMRB members will deliberate findings and recommendations developed by the Working Group on Pre-college Engagement in Biomedical Science. The Working Group on the NIH Grant Review, Award, and Management Process will report their preliminary findings and recommendations on ways to streamline the process, and grantees and other stakeholders will share insights regarding the effectiveness and feasibility of the recommendations. Time will be allotted on the agenda for public comment. Sign up for public comments will begin approximately at 8:00 a.m. on December 15, 2014, and will be restricted to one sign-in per person. In the event that time does not allow for all those interested to present oral comments, any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person.

Place: National Institutes of Health, Building 31, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Juanita Marner, Office of Science Policy, Office of the Director, NIH, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, *smrb@mail.nih.gov,* (301) 435–1770.

The meeting will also be webcast. The draft meeting agenda and other information about the SMRB, including information about access to the webcast, will be available at *http://smrb.od.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate

Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: November 18, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–27672 Filed 11–21–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Resource-Related Research Project (R24).

Date: December 15, 2014.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 5601 Fishers Lane 3F100, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane Room 3F40A, Bethesda, MD 20892–7616, 301–496–3775, *unferrc@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 17, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–27674 Filed 11–21–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel; NIBIB SBIR HD Review (2015/05).

Date: February 2, 2015.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Rm. 960, Bethesda, MD 20892, (301) 496–8775, *grossmanrs@mail.nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; NIBIB BP RFA Review (2015/05).

Date: March 11, 2015.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Plaza, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Rm. 960, Bethesda, MD 20892, (301) 451–8775, *grossmanrs@mail.nih.gov.*

Dated: November 18, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–27668 Filed 11–21–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: January 23, 2015.

Open: 9:00 a.m. to 12:15 p.m.

Agenda: Report from the Institute Director, other Institute Staff and presentations of task force reports.

Place: The William F. Bolger Center, Franklin Building, Classroom 1, 9600 Newbridge Drive, Potomac, MD 20854.

Closed: 1:15 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The William F. Bolger Center, Franklin Building, Classroom 1, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: William J. Heetderks, MD, Ph.D., Acting Associate Director, Office of Research Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 221, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/*

NACBIB.htm, where an agenda and any additional information for the meeting will be posted when available.

Dated: November 17, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–27673 Filed 11–21–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 of Neurological Disorders and Stroke Special Emphasis Panel; PD Planning Grant Review.

Date: December 10, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–3562, *neuhuber@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 18, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–27666 Filed 11–21–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Time-Sensitive Obesity Applications.

Date: December 17, 2014.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 18, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–27667 Filed 11–21–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed 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 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Neuroscience Information Framework Applications—RFA–DA–15–009 (U24).

Date: December 15, 2014.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–3086, *ruizjf@nida.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: November 18, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–27670 Filed 11–21–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2014–0059]

The Critical Infrastructure Partnership Advisory Council

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Quarterly Critical Infrastructure Partnership Advisory Council membership update.

SUMMARY: The Department of Homeland Security (DHS) announced the establishment of the Critical Infrastructure Partnership Advisory Council (CIPAC) in a **Federal Register** Notice (71 FR 14930–14933) dated March 24, 2006, which identified the purpose of CIPAC, as well as its membership. This notice provides: (i) Quarterly CIPAC membership updates; (ii) instructions on how the public can obtain the CIPAC membership roster and other information on the council; and (iii) information on recently completed CIPAC meetings.

FOR FURTHER INFORMATION CONTACT: Renee Murphy, Designated Federal Officer, Critical Infrastructure Partnership Advisory Council, Sector Outreach and Programs Division, Office of Infrastructure Protection, National Protection and Programs Directorate, U.S. Department of Homeland Security, 245 Murray Lane, Mail Stop 0607, Arlington, VA 20598–0607; telephone: (703) 603–5083; email: *CIPAC@dhs.gov*.

Responsible DHS Official: Renee Murphy, Designated Federal Officer for the CIPAC.

SUPPLEMENTARY INFORMATION:

Purpose and Activity: The CIPAC facilitates interaction between government officials and representatives of the community of owners and/or operators for each of the critical infrastructure sectors defined by Presidential Policy Directive (PPD) 21 and identified in *National Infrastructure Protection Plan 2013: Partnering for Critical Infrastructure Security and Resilience*. The scope of activities covered by the CIPAC includes: Planning; coordinating among government and critical infrastructure owner and operator partners; implementing security and resilience program initiatives; conducting operational activities related to critical infrastructure security and resilience measures, incident response, and recovery; reconstituting critical infrastructure assets and systems from both manmade and naturally occurring events; and sharing threat, vulnerability, risk mitigation, business continuity information, best practices, and lessons learned at the unclassified level and as necessary, the classified secret level with current clearance holders.

Organizational Structure: CIPAC members are organized into 16 critical infrastructure sectors. Each of these sectors has a Government Coordinating Council (GCC) whose membership includes: (i) A lead Federal agency that is defined as the Sector-Specific Agency; (ii) all relevant Federal, State, local, tribal, and/or territorial government agencies (or their representative bodies) whose mission interests also involve the scope of the CIPAC activities for that particular sector; and (iii) a Sector Coordinating Council (SCC) whose membership includes critical infrastructure owners and/or operators or their representative trade associations.

CIPAC Membership: CIPAC Membership may include:

(i) Critical Infrastructure (CI) owner and operator members of a DHS-recognized Sector Coordinating Council (SCC), including their representative trade associations or equivalent organization members of a SCC as determined by the SCC.

(ii) Federal, State, local, and tribal governmental entities comprising the members of the GCC for each sector, including their representative organizations; members of the State, Local, Tribal, and Territorial Government Coordinating Council; and representatives of other federal agencies with responsibility for CI activities.

CIPAC membership is organizational. Multiple individuals may participate in CIPAC activities on behalf of a member organization as long as member representatives are not federally registered lobbyists.

CIPAC Membership Roster and Council Information: The current roster of CIPAC members are published on the CIPAC Web site (*http://www.dhs.gov/cipac*) and is updated as the CIPAC membership changes. Members of the public may visit the CIPAC Web site at any time to view current CIPAC membership, as well as the current and historic lists of CIPAC meetings and agendas.

Dated: November 3, 2014.

Renee Murphy,

Designated Federal Officer for the CIPAC.

[FR Doc. 2014–27689 Filed 11–21–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2014–0973; OMB Control Number 1625–0077]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of an extension of a currently approved collection: 1625–0077, Security Plans for Ports, Vessels, Facilities, Outer Continental Shelf Facilities and Other Security-Related Requirements. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 23, 2015.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2014–0973] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICR(s) are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), ATTN Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents. Contact Ms. Cheryl Collins, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of

the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval of revisions of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2014–0973], and must be received by January 23, 2015. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2014–0973], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2014–0973'' in the ''Search'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Search'' box insert ''USCG–2014–0973'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

1. *Title:* Security Plans for Ports, Vessels, Facilities, Outer Continental Shelf Facilities and Other Security-Related Requirements.

OMB Control Number: 1625–0077.

Summary: This information collection is associated with the maritime security requirements mandated by the Maritime Transportation Security Act (MTSA) of 2002. Security assessments, security plans and other security-related requirements are found in Title 33 CFR chapter I, subchapter H, and 33 CFR parts 120 and 128.

Need: This information is needed to determine if vessels and facilities are in compliance with certain security standards.

Forms: CG–6025 and CG–6025A.

Respondents: Vessel and facility owners and operators.

Frequency: On occasion.

Burden Estimate: The estimated burden remains 1,108,043 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 12, 2014.

Thomas P. Michelli,

U.S. Coast Guard, Acting Chief Information Officer.

[FR Doc. 2014–27830 Filed 11–21–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0121]

Agency Information Collection Activities: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, Extension, Without Change, of a Currently Approved Collection

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on August 13, 2014, at 79 FR 47470, allowing for a 60-day public comment period. USCIS did not receive any comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 24, 2014. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0121.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that

is available via the link in the footer of *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Comments

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households, Businesses and Organizations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 30,000 respondents × (.50) 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 15,000 annual burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2134; Telephone 202–272–8377.

Dated: November 13, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–27753 Filed 11–21–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0072]

Agency Information Collection Activities: Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100, NACARA), Form I–881; Extension, Without Change, of a Currently Approved Collection

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on August 21, 2014, at 79 FR 49529, allowing for a 60-day public comment period. USCIS did receive two comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 24, 2014. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0072.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Comments

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100, NACARA).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–881; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or

households. Form I–881 is used by a nonimmigrant to apply for suspension of deportation or special rule cancellation of removal. The information collected on this form is necessary in order for USCIS to determine if it has jurisdiction over an individual applying for this release as well as to elicit information regarding the eligibility of an individual applying for release.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–881 is approximately 1,197 and the estimated hour burden per response is 12 hours per response; and the estimated number of respondents providing biometrics is 1,674 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is approximately 16,323 hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2134; Telephone 202–272–8377.

Dated: November 18, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–27725 Filed 11–21–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0032]

Agency Information Collection Activities: Application for Waiver of Grounds of Excludability, Form I–690; Revision of a Currently Approved Collection

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on September 19, 2014, at 79 FR 56384, allowing for a 60-day public comment period. USCIS received a comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 24, 2014. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0032.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Comments

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Excludability.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–690; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. USCIS will use this form to determine whether applicants are eligible for admission to the United States under sections 210 and 245A of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 22 responses (Form I–690) at approximately 3 hours per response; 11responses (Supplement 1) at approximately 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 88 burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2134; Telephone 202–272–8377.

Dated: November 18, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–27730 Filed 11–21–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0049]

Agency Information Collection Activities: Request for Verification of Naturalization, Form N–25; Revision of a Currently Approved Collection

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on August 8, 2014, at 79 FR 46446, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 24, 2014. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0049.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Comments

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection. This is a change from the type of information collection request identified in the 60-day **Federal Register** Notice published at 79 FR 46446 on August 8, 2014.

(2) *Title of the Form/Collection:* Request for Verification of Naturalization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–25; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, local or Tribal Government. This form will allow U.S. Citizenship and Immigration Services (USCIS) to obtain verification from the courts that a person claiming to be a naturalized citizen has, in fact, been naturalized.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–25 is 1,000 and the estimated hour burden per response is .25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 250 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $500.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2134; Telephone 202–272–8377.

Dated: November 18, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–27744 Filed 11–21–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0067]

Agency Information Collection Activities: Application for Asylum and for Withholding for Removal, Form I–589; Extension, Without Change, of a Currently Approved Collection

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on August 21, 2014, at 79 FR 49527, allowing for a 60-day public comment period. USCIS did receive two comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 24, 2014. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the

agency name and the OMB Control Number 1615–0067.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Comments

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Asylum and for Withholding for Removal.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–589; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–589 is necessary to determine whether an alien applying for asylum and/or withholding of removal in the United States is classified as refugee, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–589 is approximately 157,372 and the estimated hour burden per response is 12 hours per response; and the estimated number of respondents providing biometrics is 97,152 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is approximately 2,002,132 hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2134; Telephone 202–272–8377.

Dated: November 18, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–27727 Filed 11–21–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0018]

Agency Information Collection Activities: Application for Permission To Reapply for Admission Into the United States After Deportation or Removal, Form I–212; Revision of a Currently Approved Collection

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on July 16, 2014, at 79 FR 41585, allowing for a 60-day public comment period. USCIS did receive a comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 24, 2014. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0018.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Comments

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–212; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information provided on Form I–212 is used by USCIS to adjudicate applications filed by aliens requesting consent to reapply for admission to the United States after deportation, removal or departure, as provided under section 212 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,160 responses at 2 hours per response; 100 responses (biometrics) at 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,437 annual burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2134; Telephone 202–272–8377.

Dated: November 18, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–27728 Filed 11–21–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0075]

Agency Information Collection Activities: Drawback Process Regulations

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Drawback Process Regulations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before December 24, 2014 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (79 FR 56596) on September 22, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Drawback Process Regulations.

OMB Number: 1651–0075.

Form Number: CBP Forms 7551, 7552 and 7553.

Abstract: The collections of information related to the drawback process are required to implement provisions of 19 CFR, part 191, which provides for a refund of duty for certain merchandise that is imported into the United States and subsequently exported. If the requirements set forth in Part 191 are met, claimants may file for a refund of duties using CBP Form 7551, *Drawback Entry.* CBP Form 7552, *Delivery Certificate for Purposes of Drawback,* is used to record a transfer of merchandise from a company other than the importer of record and is also used each time a change to the imported merchandise occurs as a result of a manufacturing operation. CBP Form 7553, *Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback,* is used to notify CBP if an exportation, destruction, or return of the imported merchandise will take place. The information collected on these forms is authorized by 19 U.S.C. 1313(l). The drawback forms are accessible at *http://www.cbp.gov/newsroom/publications/forms.*

Current Actions: This submission is being made to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

CBP Form 7551, Drawback Entry

Estimated Number of Respondents: 6,000.

Estimated Number of Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 120,000.

Estimated Time per Response: 35 minutes.

Estimated Total Annual Burden Hours: 70,000.

CBP Form 7552, Delivery Certificate for Drawback

Estimated Number of Respondents: 2,000.

Estimated Number of Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 40,000.

Estimated Time per Response: 33 minutes.

Estimated Total Annual Burden Hours: 22,000.

CBP Form 7553, Notice of Intent To Export, Destroy or Return Merchandise for Purposes of Drawback

Estimated Number of Respondents: 150.

Estimated Number of Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 3,000.

Estimated Time per Response: 33 minutes.

Estimated Total Annual Burden Hours: 1,650.

Dated: November 19, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–27774 Filed 11–21–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–97]

30-Day Notice of Proposed Information Collection: Budget-Based Rent Increases

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* December 24, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Colette Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 3, 2014.

A. Overview of Information Collection

Title of Information Collection: Budget Based Rent Increases.

OMB Approval Number: 2502–0324.

Type of Request: Extension.

Form Number: HUD–92457–a.

Description of the need for the information and proposed use: Budget Worksheet will be used by HUD Field staff, along with other information submitted by owners, as a tool for determining the reasonableness of rent increases. The purposes of the worksheet and the collection of budgetary information are to allow owners to plan for expected increases in expenditures.

Respondents: owners and project managers of HUD subsidized properties.

Estimated Number of Respondents: 2,134.

Estimated Number of Responses: 2,134.

Frequency of Response: Annually.

Average Hours per Response: 5 hours 20 minutes.

Total Estimated Burdens: 11,374.

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: November 18, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–27776 Filed 11–21–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–99]

30-Day Notice of Proposed Information Collection: Application for Displacement/Relocation/Temporary Relocation Assistance for Persons

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* December 24, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has

submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 18, 2014.

A. Overview of Information Collection

Title of Information Collection: Application for displacement/relocation/temporary relocation assistance for persons.

OMB Approval Number: 2506–0016.

Type of Request: Extension of currently approved collection.

Form Number: HUD–40030, HUD–40054, HUD–40055, HUD–40056, HUD–40057, HUD–40058, HUD–40061, and HUD–40072.

Description of the need for the information and proposed use: Application for displacement/relocation assistance for persons (families, individuals, businesses, nonprofit organizations and farms) displaced by, or temporarily relocated for, certain HUD programs. No changes are being made for Forms HUD–40030, HUD–40054, 40055, HUD–40056, HUD–40057, HUD–40058, HUD–40061, and HUD–40072.

Respondents: Individuals, households, businesses, farms, non-profits, state, local and tribal governments.

Estimated Number of Respondents: 37,800.

Estimated Number of Responses: 61,800.

Frequency of Response: 3.

Average Hours per Response: .8.

Total Estimated Burdens: 56,000 (no change).

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: November 18, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–27794 Filed 11–21–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–98]

30-Day Notice of Proposed Information Collection: Land Survey Report for Insured Multifamily Projects

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* December 24, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 13, 2014 (79 FR 47475).

A. Overview of Information Collection

Title of Information Collection: Land Survey Report for Insured Multifamily Projects.

OMB Approval Number: 2502–0010.

Type of Request: Extension of currently approved collection.

Form Number: HUD–92457.

Description of the need for the information and proposed use: The information collected on the ''Certificate of Actual Cost'' form provides HUD with information to determine whether the sponsor has mortgage insurance acceptability and to prevent windfall profits. It provides a base for evaluating housing programs, labor costs, and physical improvements in connection with the construction of multifamily housing.

Respondents: Non-profit business.

Estimated Number of Respondents: 216.

Estimated Number of Responses: 432.

Frequency of Response: 2.

Average Hours per Response: 216.

Total Estimated Burdens: 216.

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: November 18, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–27795 Filed 11–21–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5600–FA–38]

Announcement of Funding Awards for the Border Community Capital Initiative Fiscal Year 2013

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Border Community Capital Initiative. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Jackie L. Williams, Ph.D., Director, Office of Rural Housing and Economic Development, Office of Community Planning and Development, 451 Seventh Street SW., Room 7137, Washington, DC 20410–7000; telephone (202) 708–2290 (this is not a toll free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Funds used for the Border Community Capital Initiative were appropriated to the Office of Rural Housing and Economic Development in Annual Appropriations between 1999 and 2009 (Public Laws 105–276; 106–74; 106–377; 107–73; 108–7; 108–199; 108–447; 109–115; 110–5; 110–161; and/or 111–8) and subsequently recaptured from or surrendered by underperforming or nonperforming grantees. The competition was announced in the **Federal Register** (FR Doc. FR–5600–N–38) on Tuesday, February 26, 2013. Applications were rated and selected for funding on the basis of selection criteria contained in that notice.

The Catalog of Federal Domestic Assistance number for this Border Community Capital Initiative program is 14.266. The Border Capital Community Initiative is designed to support local rural nonprofits and federally recognized Indian tribes serving colonias for lending and investing activities in affordable housing, small businesses, and/or community facilities, and for securing additional sources of public and private capital for these activities. Eligible applicants for the Border Community Capital Initiative are local rural nonprofits and federally recognized Indian Tribes with demonstrated experience in lending or investing for affordable housing, small business development, and/or community facilities. Such applicants may be certified CDFIs, but CDFI certification is not required. The funds made available under this program were awarded competitively, through a selection process conducted by HUD.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A to this document.

Dated: November 19, 2014.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

Appendix A

FY 2013 BORDER COMMUNITY CAPITAL INITIATIVE PROGRAM GRANTEES

Grantee	State	Amount awarded
Accion Texas, Inc	TX	$800,000.00
Affordable Homes of South Texas, Inc	TX	600,000.00
Community Resource Group, Inc	AR	200,000.00
International Sonoran Desert Alliance	AZ	200,000.00
Tierra Del Sol Housing Corporation	NM	200,000.00

[FR Doc. 2014–27790 Filed 11–21–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Fund: 133D5670LC, Fund Center: DS10100000 Functional Area: DLCAP0000.000000 WBS: DX.10120]

Land Buy-Back Program for Tribal Nations Under Cobell Settlement

AGENCY: Office of the Deputy Secretary, Interior.

ACTION: Notice.

SUMMARY: The Land Buy-Back Program for Tribal Nations has released its 2014 Status Report that details what the Program has been doing to execute terms of the Cobell Settlement. The Program continues to actively engage tribes and individuals across Indian Country to raise awareness of the Program and will host a listening session on March 19, 2015, in Laveen, Arizona. We hope to receive feedback on the Report from tribes and individuals.

DATES: The listening session will take place on March 19, 2015, at the Vee Quiva Hotel, 15091 South Komatke Lane, Laveen, AZ 85339. Comments must be received by April 20, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Treci Johnson, Public Relations Specialist, Land Buy-Back Program for Tribal Nations, (202) 208–6916.

SUPPLEMENTARY INFORMATION:

I. Background

The Land Buy-Back Program for Tribal Nations (Buy-Back Program or Program) is the Department of the Interior's (Department) collaborative effort with Indian Country to realize the historic opportunity afforded by the *Cobell* Settlement—a $1.9 billion Trust Land Consolidation Fund—to compensate individuals who willingly choose to transfer fractional land interests to tribal nations for fair market value. Directly following final approval of the Settlement in December 2012 and early consultations in 2011, the Department established the Buy-Back Program and published an Initial Implementation Plan in light of consultation that occurred in 2011 and 2012. The Department released an Updated Implementation Plan in November 2013 after several rounds of additional government-to-government consultation with tribes and feedback on the Initial Implementation Plan.

The Department is currently implementing the Buy-Back Program at multiple locations across Indian Country. Thus far, the Program has made $754 million in offers to individual landowners and paid more

than $209 million directly to more than 16,000 individuals that decided to sell fractional interests. This has restored the equivalent of more than 350,000 acres to tribes. Our working relationships with tribes (12 cooperative agreements or other arrangements to date) and continued outreach to landowners are important elements of continued progress.

II. Listening Session

The purpose of the upcoming listening session is to gather input from tribes in order for the Department to continue to refine its land consolidation processes, and engage individual landowners who may have questions about the Program. An agenda and RSVP information will be announced closer to the date of the event.

III. Seeking Tribal Input

The Buy-Back Program is committed to continuous consultations throughout the life of the Program in compliance with the letter and spirit of Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) and Secretarial Order 3314 (Department of the Interior Policy on Consultation with Indian Tribes).

At the beginning of 2013, Department officials conducted extensive tribal consultations on the following:

(1) Developing an efficient, fair process for landowners of fractionated interests to participate in the Buy-Back Program;

(2) Identifying and maximizing opportunities for tribal involvement; and

(3) Offering tribes flexibility to execute Program requirements in the manner best suited for the unique needs of each community.

While the Department welcomes feedback related to any aspect of the Program, the following areas are of particular interest:

• Implementation at Less-Fractionated Locations. There are about 110 less-fractionated locations that contain approximately 10 percent of the outstanding fractional interests. The Program continues to explore ways for additional less-fractioned locations to participate in buy-back efforts in an efficient and cost-effective manner. For example, the Buy-Back Program has received requests from tribes for reimbursement of past and future purchases of fractionated interests acquired under tribal or other land consolidation efforts. To date, no reimbursement requests have been awarded through the Buy-Back Program. Until the Program renders a decision on such reimbursement requests, no reimbursement requests will be granted, and tribes should not proceed with that expectation. The Program encourages the submission of comments or ideas on whether and how reimbursements might work.

• Whereabouts Unknown. Whereabouts unknown (WAU) is the term used to describe IIM account holders without current address information on file with OST. The Settlement provides for an outreach effort to locate landowners whose whereabouts are unknown as of the date of final approval of the Settlement. The Program has not exercised WAU purchases thus far and is seeking input from tribes and individuals on whether and how it should implement the provision. Since the Program's inception, the focus has been locating WAU through outreach efforts so the individuals can receive and consider an offer.

• Improvements. Where structural improvements exist on a tract, a number of issues may complicate the acquisition of fractional interests in the tract. While the Program does not intend to acquire structural improvements, which are non-trust property, the Program seeks additional feedback from landowners and tribes about acquiring interests in tracts with structural improvements, including instances in which the Program might choose to acquire interests. For example, the Program might make offers for interests in a tract with non-residential structural improvements (*e.g.,* a tract only with an uninhabited agricultural shed or hay barn), but not on tract where residences are located unless the tribe has a policy or resolution in place ensuring that residents' interests are recognized and protected.

• Public Domain. Under the Settlement, fractional interests acquired by the Program are to be immediately held in trust or restricted status for the recognized tribe that exercises jurisdiction over the land. When identifying the locations with fractional interests that may be consolidated, the Program excludes land area names that include the term public domain or off reservation because use of these terms indicate that there may be no recognized tribe that exercises jurisdiction over the land. The Program has encouraged feedback, however, on the list of locations in its 2012 and 2013 implementation plans. Since then, the Program has received feedback from several tribes suggesting that certain land areas should be included. The Program is now seeking general feedback on whether and if so how the Program should incorporate public domain or off reservation land areas into the Program, including any suggested standards or processes that could be applied.

IV. Additional Resources

The Land Buy-Back Program for Tribal Nations 2014 Status Report and additional information about the Buy-Back Program is available at: *http://www.doi.gov/buybackprogram*. In addition, landowners can contact their local Fiduciary Trust Officer or call Interior's Trust Beneficiary Call Center at (888) 678–6836.

Dated: November 19, 2014.

Michael L. Connor,

Deputy Secretary.

[FR Doc. 2014–27773 Filed 11–21–14; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N208; FXES11130000–xxx–FF08E00000]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for the Santa Ana Sucker (Catostomus santaanae)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft recovery plan for the Santa Ana sucker for public review and comment. The draft recovery plan includes recovery objectives and criteria, and specific actions necessary to achieve recovery and removal of the species from the Federal List of Endangered and Threatened Wildlife. We request review and comment on this draft recovery plan from local, State, and Federal agencies, and the public.

DATES: We must receive any comments on the draft recovery plan on or before January 23, 2015.

ADDRESSES: You may obtain a copy of the draft recovery plan from our Web site at *http://www.fws.gov/endangered/species/recovery-plans.html.* Alternatively, you may contact the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008 (telephone 760–431–9440).

FOR FURTHER INFORMATION CONTACT: Mendel Stewart, Field Supervisor, at the above street address or telephone number (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria specified in section 4(a)(1) of the Act. The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

We listed Santa Ana sucker (*Catostomus santaanae*) throughout its entire range on April 12, 2000 (71 FR 19686). The species is endemic to the Los Angeles, San Gabriel, and Santa Ana River Basins in southern California. Santa Ana sucker is a small, short-lived member of the sucker family of fishes (Catostomidae), named so primarily because of the downward orientation and anatomy of its mouth parts, which allow it to consume algae, small invertebrates, and other organic matter with its fleshy, protrusible (extendable) lips.

The primary threat to Santa Ana sucker is ongoing, rangewide hydrological modifications, which lead to degradation and loss of habitat. Additionally, isolation by impassable barriers or unsuitable habitat limits gene flow within the watersheds, thus increasing the vulnerability of small occurrences to a range of stochastic (random) factors.

Recovery Plan Goals

The purpose of a recovery plan is to provide a framework for the recovery of species so that protection under the Act is no longer necessary. A recovery plan includes scientific information about the species and provides criteria that enable us to gauge whether downlisting or delisting the species is warranted. Furthermore, recovery plans help guide our recovery efforts by describing actions we consider necessary for each species' conservation and by estimating time and costs for implementing needed recovery measures.

The ultimate goal of this recovery plan is to recover Santa Ana sucker so that it can be delisted. To meet the recovery goal, the following objectives have been identified:

(1) Develop and implement a rangewide monitoring protocol to accurately and consistently document populations, occupied habitat, and threats.

(2) Conduct research projects specifically designed to inform management actions and recovery.

(3) Increase the abundance and develop a more even distribution of Santa Ana sucker within its current range by reducing threats to the species and its habitat.

(4) Expand the range of the Santa Ana sucker by restoring habitat (if needed), and reestablishing occurrences within its historical range.

As the Santa Ana sucker meets reclassification and recovery criteria, we will review its status and consider it for removal from the Federal List of Endangered and Threatened Wildlife.

Request for Public Comments

We request written comments on the draft revised recovery plan described in this notice. All comments received by the date specified in the **DATES** section will be considered in development of a final recovery plan for Santa Ana sucker. You may submit written comments and information by mail or in person to the Carlsbad Fish and Wildlife Office at the address in the **ADDRESSES** section.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We developed our recovery plan under the authority of section 4(f) of the Act, 16 U.S.C. 1533(f). We publish this notice under section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 18, 2014.

Paul B. McKim,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2014–27757 Filed 11–21–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0098]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; COPS Application Package

AGENCY: Community Oriented Policing Services (COPS) Office, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Community Oriented Policing Services (COPS) Office, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 23, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kimberly J. Brummett, Program Specialist, Department of Justice, Community Oriented Policing Services (COPS) Office, 145 N Street NE., Washington, DC 20530 (202–353–9769).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,*

permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection, with change; comments requested.

2. *The Title of the Form/Collection:* COPS Application Package.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice, Community Oriented Policing Services (COPS) Office.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked to complete the COPS Application Package. The COPS Application Package includes all of the necessary forms and instructions that an applicant needs to review and complete to apply for COPS grant funding. The package is used as a standard template for all COPS programs.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5000 respondents annually will complete the form within 11 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 55,000 total annual burden hours associated with this collection. It is estimated that respondents will take 11 hours to complete a questionnaire. The burden hours for collecting respondent data sum to 55,000 hours (5000 respondents × 11 hours = 55,000 hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: November 19, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–27717 Filed 11–21–14; 8:45 am]

BILLING CODE 4410–AT–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[14–122]

Notice of Centennial Challenges Cube Quest Challenge

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: This notice is issued in accordance with 51 U.S.C. 20144(c).

The Cube Quest (CQ) Challenge is scheduled and teams that wish to compete may now register. Centennial Challenges is a program of prize competitions to stimulate innovation in technologies of interest and value to NASA and the nation. The Cube Quest Challenge is a prize competition designed to encourage development of new technologies or application of existing technologies in unique ways to advance cubsat communication and propulsion systems. NASA is providing the prize purse.

DATES: Challenge registration opens December 2, 2014 and the competition will conclude one year after the NASA Provided launch opportunity is launched for the challenge.

ADDRESSES: The Cube Quest Challenge will be conducted in the cis-lunar and trans-lunar locations in space.

FOR FURTHER INFORMATION CONTACT: To register for or get additional information regarding the Cube Quest Challenge, please visit: *http://www.nasa.gov/cubequestchallenge.* For general information on the NASA Centennial Challenges Program please visit: *http://www.nasa.gov/challenges.* General questions and comments regarding the program should be addressed to Sam Ortega, Centennial Challenges Program, NASA Marshall Space Flight Center, Huntsville, AL 35812. Email address: *hq-stmd-centennialchallenges@mail.nasa.gov.*

SUPPLEMENTARY INFORMATION:

Summary

Competitors will design, build, and launch a cubesat to a lunar distance and or beyond. Prizes will be awarded for; putting a cubesat into a stable lunar orbit, communicating the largest amount of data from the lunar distance in a 30 minute time frame and in a 28 day time frame, communicating the largest amount of data from 4,000,000 kilometers from Earth in a 30 minute time frame and in a 28 day time frame, for being the last cube sat communicating and for communicating from the furthest distance from Earth.

I. Prize Amounts

The total Cube Quest prize purse is $5,00,000 (five million U.S. dollars). Prizes will be offered for entries that meet specific requirements detailed in the Rules.

II. Eligibility

To be eligible to win a prize, competitors must:

(1) Register and comply with all requirements in the rules,

(2) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States,

(3) Not be a Federal entity or Federal employee acting within the scope of their employment.

III. Rules

The complete rules for the Cube Quest Challenge can be found at: *http://www.nasa.gov/cubequest.*

Cheryl Parker,

NASA Federal Register Liaison Officer.

[FR Doc. 2014–27714 Filed 11–21–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2015–013]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before December 24, 2014 to be assured of consideration.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167; or electronically mailed to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement

should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on September 3, 2014 (79 FR 52372). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (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 the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Researcher Application.

OMB number: 3095–0016.

Agency form number: NA Form 14003.

Type of review: Regular.

Affected public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal, State, Local or Tribal Government.

Estimated number of respondents: 18,487.

Estimated time per response: 8 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 2,465 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.8. The collection is an application for a research card. Respondents are individuals who wish to use original archival records in a NARA facility. NARA uses the information to screen individuals, to identify which types of records they should use, and to allow further contact.

Dated: November 17, 2014.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2014–27739 Filed 11–21–14; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Extend an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and Request for Comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection. The NSF will publish periodic summaries of proposed projects.

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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received by January 23, 2015 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

For Additional Information or Comments: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Earned Doctorates.

OMB Approval Number: 3145–0019.

Expiration Date of Approval: June 30, 2016.

Type of Request: Intent to seek approval to extend an information collection for three years.

1. *Abstract:* Established within the National Science Foundation by the America COMPETES Reauthorization Act of 2010 § 505, codified in the National Science Foundation Act of 1950, as amended, the National Center for Science and Engineering Statistics (NCSES) serves as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, and research and development for use by practitioners, researchers, policymakers, and the public. The Survey of Earned Doctorates (SED) is part of an integrated survey system that collects data on individuals in an effort to provide information on science and engineering education and careers in the United States.

The SED has been conducted annually since 1958 and is jointly sponsored by six Federal agencies (the National Science Foundation, National Institutes of Health, U.S. Department of Education, U.S. Department of Agriculture, National Endowment for the Humanities, and National Aeronautics and Space Administration) in order to avoid duplication. It is an accurate, timely source of information on one of our Nation's most important resources—highly educated individuals. Data are obtained via Web survey or paper questionnaire from each person earning a research doctorate at the time they receive the degree. Data are collected on their field of specialty, educational background, sources of support in graduate school, debt level, postgraduation plans for employment, and demographic characteristics.

The Federal government, universities, researchers, and others use the information extensively. The National Science Foundation, as the lead agency, publishes statistics from the survey in several reports, but primarily in the annual publication series, ''Doctorate Recipients from U.S. Universities.'' These reports are available on the NSF Web site.

The survey will be collected in conformance with the Privacy Act of 1974. Responses from individuals are voluntary. NSF will ensure that all individually identifiable information collected will be kept strictly confidential and will be used for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

2. *Expected Respondents:* A total response rate of 92% of the 51,008 persons who earned a research doctorate was obtained in academic year 2012. This level of response rate has been consistent for several years. Based on the historical trend, in 2016 approximately 56,000 individuals are

expected to receive research doctorates from U.S. institutions. Using the past response rate, the number of respondents in 2016 is estimated to be 51,520 (56,000 doctorate recipients × 0.92 response rate). Similarly, the number of individuals expected to earn research doctorates in 2017 is estimated to be about 57,000; hence, the number of respondents in 2017 is estimated to be 52,440 (57,000 × 0.92).

3. *Estimate of Burden:* The Foundation estimates that, on average, 20 minutes per respondent will be required to complete the survey. The annual respondent burden for completing the SED is therefore estimated at 17,173 hours in 2016 (51,520 respondents × 20 minutes) and 17,480 hours in 2017 (based on 52,440 respondents).

In addition to the actual survey, the SED requires the collection of administrative data from participating academic institutions. The Institutional Coordinator at the institution helps distribute the Web survey link (and paper surveys when necessary), track survey completions, and submit information to the SED survey contractor. Based on focus groups conducted with Institutional Coordinators, it is estimated that the SED demands no more than 1% of the Institutional Coordinator's time over the course of a year, which computes to 20 hours per year per Institutional Coordinator (40 hours per week × 50 weeks per year × .01). With about 570 programs expected to participate in the SED in 2016 and 2017, the estimated annual burden to Institutional Coordinators of administering the SED is 11,400 hours.

Therefore, the total annual information burden for the SED is estimated to be 28,573 hours in 2016 (17,173 + 11,400) and 28,880 hours in 2017 (17,480 + 11,400). This is higher than the last annual estimate approved by OMB due to the increased number of respondents (doctorate recipients).

Dated: November 18, 2014.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2014–27654 Filed 11–21–14; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; 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: Advisory Committee for Environmental Research and Education (virtual) (#9487).

Dates: January 20, 2015; 2:00 p.m.–5:00 p.m.

Place: Stafford I, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Linda Deegan, National Science Foundation, Suite 655, 4201 Wilson Blvd., Arlington, Virginia 22230. Email: *ldeegan@nsf.gov.*

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda: Discuss development of the Decadal Vision for Environmental Research and Education document.

Dated: November 18, 2014.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2014–27655 Filed 11–21–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0244]

Guidelines for Evaluating the Effects of Light-Water Reactor Coolant Environments in Fatigue Analyses of Metal Components

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–1309, ''Guidelines for Evaluating the Effects of Light-Water Reactor Coolant Environments in Fatigue Analyses of Metal Components.'' This guide, Revision 1 of Regulatory Guide 1.207 has been revised to consolidate, update, and replace previous NRC staff guidance on the effects of light-water reactor coolant environments on the fatigue lives of nuclear power plant components. This proposed revision provides an alternative to previous guidance provided for new reactors in Revision 0 of this guide, as well as to previous guidance provided for license renewal of operating reactors in the Generic Aging Lessons Learned (GALL) Report and the Standard Review Plan for License Renewal (SRP–LR). This guide supports reviews of applications for new nuclear reactor construction that are licensed under the NRC's regulations.

DATES: Submit comments by January 23, 2015. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0244. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: 3WFN 06A–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Gary L. Stevens; telephone: 301–251–7569, email: *Gary.Stevens@nrc.gov;* and Steve Burton; telephone: 301–415–7000 email: *Stephen.Burton@nrc.gov.* Both are staff of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0244 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0244. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the

individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The DG is available electronically in ADAMS under Accession No. ML14171A584.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0244 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The DG, entitled, ''Guidelines for Evaluating the Effects of Light-Water Reactor Coolant Environments in Fatigue Analyses of Metal Components'' is temporarily identified by its task number, DG–1309. This DG–1309 is proposed Revision 1 of Regulatory Guide 1.207. The DG describes methods and procedures that the NRC staff considers acceptable for use in determining the acceptable fatigue lives of components evaluated by a cumulative usage factor (CUF) calculation in accordance with the fatigue design rules in Section III, ''Rules for Construction of Nuclear Power Plant Components,'' of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (hereinafter Code) with consideration of the effects of light-water reactor coolant environments. This DG supports reviews of applications for new nuclear reactor construction permits or operating licenses under part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR); design certifications under 10 CFR part 52 and combined licenses under 10 CFR part 52 that do not cite a standard design; and renewed operating licenses under 10 CFR part 54.

This revision consolidates, updates, and replaces previous NRC staff's guidance on the effects of light-water reactor coolant environments on the fatigue lives of nuclear power plant components. This revision provides an alternative to previous guidance for new reactors provided in Revision 0 of this guide, as well as previous guidance provided for pursuing license renewal of operating reactors in the GALL Report and the SRP–LR.

III. Backfitting and Issue Finality

This DG describes methods and procedures that the NRC staff considers acceptable for use in determining the acceptable fatigue lives of components evaluated by a cumulative usage factor (CUF) calculation in accordance with the fatigue design rules in Section III, ''Rules for Construction of Nuclear Power Plant Components,'' of the ASME Code. This DG supports reviews of applications for new nuclear reactor construction permits or operating licenses under 10 CFR part 50; design certifications under 10 CFR part 52 and combined licenses under 10 CFR part 52 that do not cite a standard design; and renewed operating licenses under 10 CFR part 54. This DG may also be used by existing holders of combined licenses and operating licenses, in accordance with their existing licensing basis and applicable regulatory requirements.

This DG, if finalized, would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52, ''Licenses, Certifications and Approvals for Nuclear Power Plants.'' Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under part 52. Neither the Backfit Rule nor the issue finality provisions under part 52—with certain exclusions discussed below—were intended to apply to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever a combined license applicant references a part 52 license (*i.e.,* an early site permit or a manufacturing license) and/or part 52 regulatory approval (*i.e.,* a design certification rule or design approval). The NRC staff does not, at this time, intend to impose the positions represented in the DG in a manner that is inconsistent with any issue finality provisions in these part 52 licenses and regulatory approvals. If, in the future, the NRC staff seeks to impose a position in this DG in a manner which does not provide issue finality as described in the applicable issue finality provision, then the NRC staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Existing licensees and applicants of final design certification rules will not be required to comply with the positions set forth in this draft regulatory guide, unless the licensee or design certification rule applicant seeks a voluntary change to its licensing basis with respect to the effects of light-water reactor coolant environments on the fatigue lives of nuclear power plant components by means of a cumulative usage factor, and where the NRC determines that the safety review of the licensee's request must include consideration of the effects of light-water reactor coolant environments on the fatigue lives of nuclear power plant components. Further information on the staff's use of the DG, if finalized, is contained in the DG under Section D. Implementation.

Dated at Rockville, Maryland, this 18th day of November 2014.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2014–27712 Filed 11–21–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8943; ASLBP No. 08–867–02–OLA–BD01]

Crow Butte Resources, Inc.; License Renewal for the in Situ Leach Facility, Crawford, Nebraska

Notice of Atomic Safety and Licensing Board Reconstitution

Pursuant to 10 CFR 2.313(c) and 2.321(b), the Atomic Safety and Licensing Board (Board) in the above-captioned license renewal proceeding for the In Situ Leach Facility, Crawford, Nebraska is hereby reconstituted by appointing Administrative Judge Richard E. Wardwell to serve on the Board in place of Administrative Judge Richard F. Cole.

All correspondence, documents, and other materials shall continue to be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302 *et seq.*

Issued at Rockville, Maryland, this 18th day of November 2014.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2014–27792 Filed 11–21–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0235; EA–14–181]

In the Matter of CB&I AREVA MOX Services, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; extension of construction authorization completion date and administrative changes.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Order for CB&I AREVA MOX Services (MOX Services, Licensee) (formerly known as Shaw AREVA MOX Services, LLC). The Licensee holds Construction Authorization (CA) CAMOX–001 which authorizes the construction of a Mixed Oxide Fuel Fabrication Facility (MFFF) at the U.S. Department of Energy (DOE) Savannah River Site in Aiken, South Carolina. The MFFF is currently partially completed.

DATES: *Effective Date:* November 13, 2014.

ADDRESSES: Please refer to Docket ID NRC–2014–0235 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0235. Address questions about NRC dockets to Carol Gallagher; telephone 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For questions about this Order, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents and Access Management System (ADAMS): You may obtain publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–200–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at NRC's PDR, Room 01–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: David Tiktinsky, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9155; email: *David.Tiktinsky@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 18th day of November 2014.

For the Nuclear Regulatory Commission.

Merritt Baker,

Acting Branch Chief, Fuel Manufacturing Branch, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.

In the Matter of: SHAW AREVA MOX SERVICES, LLC (Mixed Oxide Fuel Fabrication Facility), Docket No. 70–3098, Construction Authorization No. CAMOX–001 EA–14–181 Order Approving Extension of Construction Authorization and Administrative Changes

I.

CB&I AREVA MOX Services (MOX Services, Licensee) (formerly known as Shaw AREVA MOX Services, LLC) holds Construction Authorization (CA) CAMOX–001 which authorizes the construction of a Mixed Oxide Fuel Fabrication Facility (MFFF) at the U.S. Department of Energy (DOE) Savannah River Site in Aiken, South Carolina. The MFFF is currently partially completed.

On May 12, 2014 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML14132A342), MOX Services filed a request for an extension of the CA completion date for the MFFF to March 30, 2025. MOX Services stated in its application that the extension is necessary to provide adequate time to complete construction of the MFFF. The construction authorization for the MFFF was originally issued on March 30, 2005, for a term of 10 years. MOX Services also stated in their May 12, 2014, request that various factors have contributed to the need for an extension of the CA. The factors include: (a) The MFFF is unique and is the first facility of this type to be licensed in the United States under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70; (b) annual funding/appropriations supporting construction activities have been less that the projected funding profile for several years; (c) requirements of nuclear procurements coupled with a shortage of qualified vendors have resulted in delayed delivery of components; (d) a shortage of qualified construction workers has resulted in longer durations for key construction activities, and (e) a 2-year delay between issuance of the CA and the start of nuclear construction.

In May 2014, MOX Services determined that, in order to bound the potential completion date of the facility with respect to the dependence of annual congressional funding, the CA's term should be extended to March 30, 2025.

In addition, the staff has made two administrative changes to the CA. The first change is a name change based on a letter from MOX Services dated August 15, 2014 (ML14227A556). The second change is a housekeeping amendment consisting of the removal of the list of submittals incorporated by reference in Attachment A of the CA, which have since been incorporated into the CA, environmental report, and the license application to possess and use radioactive material.

II.

The U.S. Nuclear Regulatory Commission (NRC) reviewed the request dated May 12, 2014, for an extension of time for the CA. MOX Services has demonstrated ''good cause'' for an extension to the CA because: (a) The proposed extension will not expand the scope of any work to be performed that is not already allowed by the existing construction authorization; (b) the licensee's factors for needing an extension to the CA were beyond their control and are logical; (c) the time requested is reasonable based on the uncertainty of funding for construction. The extension will grant the MOX Services or licensee additional time to complete construction in accordance with the previously approved CA. The requested extension does not impact the staffs' previous finding that the design basis of the Principal Structures, Systems and Components and the quality assurance program provide reasonable assurance against natural phenomena and the consequences of potential accidents as stated in the Revision 0 of the CA. The staff has also made two administrative changes to the CA. The first change is a name change based on a letter from MOX Services dated August 15, 2014 (ML14227A556). The name change does not reflect any change of direct or indirect control of the company or any other change in management, operation or security. The name of the company will now be known as CB&I AREVA MOX Services instead of Shaw AREVA MOX Services. The second change consists of the removal of the list of submittals incorporated by reference in Attachment A of the CA. This change is being made as a housekeeping item to avoid any potential confusion regarding commitments in the CA. All of the commitments, representations and statements made in the referenced documents were incorporated into the construction authorization request, environmental report, and the license application to possess and use radioactive material. Therefore, the conditions in Sections 3A and 3C of the CA supersede the references included in Attachment A, and the attachment is no longer needed. The attachment to the CA has therefore been deleted.

The NRC staff has prepared an environmental assessment for the CA extension and made a finding of no significant impact, which was published in the **Federal Register** on October 23, 2014 (79 FR 63442). The NRC staff previously evaluated the environmental impacts of construction and operation of this facility. In January 2005, the NRC staff issued NUREG–1767, ''Final Environmental Impact Statement on the Construction and Operation of a Proposed Mixed Oxide Fuel Fabrication Facility at the Savannah River Site, South Carolina (Vol. 1: ML050240233; Vol. 2: ML050240250) (FEIS). The FEIS stated that after weighing the costs and benefits of the proposed action and comparing alternatives, the staff concluded that (a) the applicable environmental requirements set forth in FEIS Chapter 6, and (b) the proposed mitigation measures discussed in FEIS Chapter 5, would eliminate or substantially lessen any potential environmental impacts associated with the proposed action. The staff also concluded that the overall benefits of the proposed MOX facility outweigh its disadvantages and costs. The NRC staff determined that extending the construction completion date will not have significant effect on the quality of the human environment and therefore, an environmental impact statement for the proposed action would not be prepared.

For further details regarding this action, see MOX Service's letter dated May 12, 2014, and the NRC staff's letter and safety evaluation report (ADAMS Accession No. ML14225A705).

III.

In accordance with 10 CFR 2.202, the Licensee, and any other person adversely affected by this Order, may submit an answer to this Order within twenty (20) days of its publication in the **Federal Register**. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty (20) days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If an answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee, or other adversely affected person, relies and the reasons as to why the Order should not have been issued. If a person other than the Certificate Holder requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d). The scope of a CA extension proceeding is limited to direct challenges to the CA holder's asserted reasons that show ''good cause'' justification for the delay.

If a hearing is requested by a Certificate Holder or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or any written approval of an extension of time in which to request a hearing, the provisions of this Order shall be final 20 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in this Order shall be final when the extension expires if a hearing request has not been received.

IV.

Described in 10 CFR 2.302 are the requirements for filing of documents. All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-

issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial filing requesting authorization to continue to use alternate format and transmission of documents. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 16th Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

V.

Copies of the application to extend the expiration date in the CA for the MFFF are available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, MD 20852. The application may be accessed in ADAMS through the NRC Library at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession No. ML14132A342. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by email to *PDR.Resource@nrc.gov*.

VI.

IT IS HEREBY ORDERED THAT the completion date for CA No. CAMOX–001 is extended from March 30, 2015, to March 30, 2025, the company name is changed to CB&I AREVA MOX Services, and Attachment A of the CA has been deleted.

Dated at Rockville, Maryland, this 13th day of November 2014.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2014–27796 Filed 11–21–14; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2013–59; Order No. 2252]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing of a contingency pricing adjustment to an outstanding International Business Reply Service Competitive Contract 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 25, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On November 14, 2014, the Postal Service filed notice of a contingency pricing adjustment pursuant to an outstanding International Business Reply Service Competitive Contract 3 (IBRS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of a notice to the customer of the pricing adjustment, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2013–59 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than November 25, 2014. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2013–59 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than November 25, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–27677 Filed 11–21–14; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Prices Under Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, November 14, 2014 (Notice).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 10A–1; SEC File No. 270–425, OMB Control No. 3235–0468.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 10A–1 (17 CFR 240.10A–1) implements the reporting requirements in Section 10A of the Exchange Act (15 U.S.C. 78j–1), which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law No. 104–67, 109 Stat 737. Under section 10A and Rule 10A–1 reporting occurs only if a registrant's board of directors receives a report from its auditor that (1) there is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. If the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board.

Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 (15 USC 78a, *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*).

It is estimated that Rule 10A–1 results in an aggregate additional reporting burden of 10 hours per year. The estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

There are no recordkeeping retention periods in Rule 10A–1. Because of the one business day reporting periods, recordkeeping retention periods should not be significant.

Filing the notice or report under Rule 10A–1 is mandatory once the conditions noted above have been satisfied. Because these notices and reports discuss potential illegal acts, they are considered to be investigative records and are kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the information discussed in this notice at *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Pamela Dyson, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 18, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27694 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 17Ac2–1, SEC File No. 270–95, OMB Control No. 3235–0084.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17Ac2–1 (17 CFR 240.17Ac2–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17Ac2–1, pursuant to Section 17A(c) of the Exchange Act, generally requires transfer agents to register with their Appropriate Regulatory Agency (''ARA''), whether the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision, and to amend their registrations if the information becomes inaccurate, misleading, or incomplete.

Rule 17Ac2–1, pursuant to Section 17A(c) of the Exchange Act, generally requires transfer agents for whom the Commission is the transfer agent's Appropriate Regulatory Agency (''ARA''), to file an application for registration with the Commission on Form TA–1 and to amend their registrations under certain circumstances.

Specifically, Rule 17Ac2–1 requires transfer agents to file a Form TA–1 application for registration with the Commission where the Commission is their ARA. Such transfer agents must also amend their Form TA–1 if the existing information on their Form TA–1 becomes inaccurate, misleading, or incomplete within 60 days following the date the information became inaccurate, misleading or incomplete. Registration filings on Form TA–1 and amendments thereto must be filed with the Commission electronically, absent an exemption, on EDGAR pursuant to Regulation S–T (17 CFR 232).

The Commission annually receives approximately 174 filings on Form TA–1 from transfer agents required to register as such with the Commission. Included in this figure are approximately 164 amendments made annually by transfer agents to their Form TA–1 as required by Rule 17Ac2–1(c) to address information that has become inaccurate, misleading, or incomplete and approximately 10 new applications by transfer agents for registration on Form TA–1 as required by Rule 17Ac2–1(a). Based on past submissions, the staff estimates that on average approximately twelve hours are required for initial completion of Form TA–1 and that on average one and one-half hours are required for an amendment to Form TA–1 by each such firm. Thus, the subtotal burden for new applications for registration filed on Form TA–1 each year is 120 hours (12 hours times 10 filers) and the subtotal burden for amendments to Form TA–1 filed each year is 246 hours (1.5 hours times 164 filers). The cumulative total is 366 burden hours per year (120 hours plus 246 hours).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 18, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27695 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–31338; File No. 812–13980]

TPG Specialty Lending, Inc., et al.; Notice of Application

November 18, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to sections 57(a)(4) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

SUMMARY: *Summary of Application:* Applicants request an order to permit a business development company (''BDC'') to co-invest in portfolio companies with affiliated investment funds.

APPLICANTS: TPG Specialty Lending, Inc. (the ''Company''); TSL Advisers, LLC (''TSL Advisers''); TPG Opportunities Partners II (A), L.P., TPG Opportunities Partners II (B), L.P., TPG Opportunities Partners II (C), L.P., TPG Opportunities Partners III (A), L.P., TPG Opportunities Partners III (B), L.P., TPG Opportunities Partners III (C), L.P., Super TAO MA, L.P., TSSP Adjacent Opportunities Partners, L.P., TSSP Adjacent Opportunities Partners (A), L.P., TPG Partners VI, L.P., TPG FOF VI–A, L.P., and TPG FOF VI–B, L.P. (together, the ''Existing Affiliated Funds''); and, TPG Opportunities Advisers, LLC, TPG Opportunities II Management, LLC, TPG Opportunities III Management, LLC, TSSP Adjacent Opportunities Management, LLC, TPG Capital Advisors, LLC, and TPG VI Management, LLC (collectively, ''Existing Advisers to Affiliated Funds'').

DATES: *Filing Dates:* The application was filed on November 23, 2011, and amended on April 23, 2013, September 17, 2013, January 23, 2014, May 6, 2014, and September 11, 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 December 15, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, 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 St. NE., Washington, DC 20549–1090. Applicants: TPG Capital Advisors, LLC, 301 Commerce Street, Suite 3300, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870 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. The Company is a Delaware corporation organized as a closed-end management investment company that has elected to be regulated as a BDC under section 54(a) of the Act.[1] The Company's Objectives and Strategies[2] are to generate current income and capital appreciation through direct investments in senior secured loans, mezzanine loans and, to a lesser extent, equity securities, of U.S. domiciled Middle Market Issuers.[3] The Company is managed under the direction of a board of directors (''Board'') consisting of five members, three of whom are not ''interested persons'' as defined in section 2(a)(19) of the Act (''Independent Directors'').[4] TSL Advisers, a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''), serves as investment adviser to the Company.

2. Each of the Existing Affiliated Funds is a private investment fund relying on the exception from the definition of ''investment company'' under the Act provided in section 3(c)(1) or 3(c)(7). The Existing Advisers to Affiliated Funds serve as the investment advisers to the Existing Affiliated Funds. Each of the Existing Advisers to Affiliated Funds is organized as a Delaware limited liability company and registered as an investment adviser under the Advisers Act.

3. Applicants state that TSL Advisers and the Existing Advisers to Affiliated Funds are under common control because they are each under the indirect control of David Bonderman and James Coulter (the ''TPG Founders'').[5]

4. Applicants seek an order (''Order'') to permit the Company, on the one hand, and any Affiliated Fund,[6] on the other hand, to participate in the same Origination Opportunities and Follow-On Investments where such participation would otherwise be prohibited under section 57(a)(4) and the rules under the Act (''Co-Investment Program''). ''Co-Investment Transaction'' means any transaction in an Origination Opportunity or any Follow-On Investment in which the Company (or any Wholly-Owned Investment Subsidiary of the Company, defined below) participated together with one or more Affiliated Funds in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in an Origination Opportunity or Follow-On Investment in which the Company (or any Wholly-Owned Investment Subsidiary) could not participate together with an Affiliated Fund without obtaining and relying on the Order.[7] An ''Origination Opportunity'' is (a) an investment opportunity wherein the investing fund would underwrite and provide the initial funding for a loan to a Middle Market Issuer (as opposed to purchasing the loan from another party) and (b) any related opportunity to invest in equity, options, warrants, conversion rights or other equity-related instruments as part of the same transaction. A ''Follow-On Investment'' is any investment in an issuer in which the Company and one or more Affiliated Funds have completed a Co-Investment Transaction (defined below) and in which the Company remains invested at the time the investment opportunity arises.

5. Applicants state that, pursuant to written policies and procedures that each of the Advisers has adopted, the Company has the right to determine its level of participation in an Origination Opportunity or an opportunity for Follow-On Investment before the Advisers allocate any portion of such opportunity to another client. According to Applicants, this means that the Company may choose to participate to the full extent of an Origination Opportunity or opportunity for Follow-On Investment, with the Affiliated Funds receiving no allocation of that opportunity, or may choose a lower amount of participation, with the remainder of the opportunity only then being offered to the Affiliated Funds. This arrangement is referred to in the application as the Company's ''Allocation Preference.''[8] Applicants state that the Company disclosed the Allocation Preference to investors in its private placement memorandum and registration statement on Form N–2, and represent that the Allocation Preference will not be changed.

6. Applicants represent that each Adviser has adopted procedures to ensure that each Origination Opportunity identified by any Adviser and each Follow-On investment is first offered to the Company. Applicants state that the first step once an investment opportunity is identified by any Adviser is for the Legal Department to be advised of the opportunity and assess whether the investment opportunity is within the Company's Allocation Preference.[9] Applicants assert that the determinations and referral process is an objective and mechanical process with no discretion involved.[10] The Company will not be

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] The Company's ''Objectives and Strategies'' means its investment objectives and strategies, as described in its registration statement on Form N–2, other filings the Company has made with the Commission under the Securities Act of 1933 (the ''Securities Act''), or under the Securities Exchange Act of 1934, as amended, and the Company's reports to shareholders.

[3] Applicants define ''Middle Market Issuers'' as companies that have annual earnings before interest, income taxes, depreciation and amortization of $10 million to $250 million.

[4] No Independent Director will have any direct or indirect financial interest in any Co-Investment Transaction or any interest in any portfolio company, other than an interest (if any) in the securities of the Company.

[5] Applicants represent that the TPG Founders are the sole shareholders of the ultimate general partner of entities that indirectly hold all of the voting power of each Adviser.

[6] ''Affiliated Fund'' means any Existing Affiliated Fund or any entity (a) whose investment adviser is an Adviser, (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, and (c) will have investment objectives and strategies similar to those of the Company or an Existing Affiliated Fund. The term ''Adviser'' means TSL Advisers and the Existing Advisers to Affiliated Funds, and any future investment adviser that controls, is controlled by or under common control with TSL Advisers and is registered under the Advisers Act.

[7] All existing entities that currently intend to rely upon 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 application.

[8] A Follow-On Investment may not itself fall within the definition of an Origination Opportunity; however, applicants intend to treat any additional investments in an issuer in the same manner as the Origination Opportunity giving rise to the Follow-On Investment. Applicants believe that once the Company has an investment in an issuer pursuant to an Origination Opportunity, it is fair and appropriate for any additional investments in such issuer under the Co-Investment Program to be subject to the Company's Allocation Preference.

[9] The term ''Legal Department'' refers to the supervised persons (as defined by the Advisers Act) of the Advisers who provide legal services and advice to the Advisers. Applicants state that, as a group of entities under common control, the Advisers all share the services of the Legal Department. As such, the Legal Department acts on behalf of the Advisers, and actions taken, or not taken, and determinations made by the Legal Department for purposes of complying with the terms and conditions of this application will be attributed to each of the Advisers.

[10] Applicants represent that, as part of the Advisers' written policies and procedures, the Legal

Continued

obligated to invest, or co-invest, when Origination Opportunities or Follow-On Investments are referred to it.

7. Once the Legal Department has determined that an opportunity is an Origination Opportunity or potential Follow-On Investment, TSL Advisers will make an independent determination of the appropriateness of the investment for the Company, as required under condition 1. If TSL Advisers deems the Company's participation in such investment to be appropriate, it will then determine an appropriate size of the Company's investment. In selecting investments for the Company, TSL Advisers will consider only the Objectives and Strategies, investment policies, investment positions, capital available for investment, and other pertinent factors applicable to the Company. Although the Company has an Allocation Preference over all Origination Opportunities and Follow-On Investments, the Affiliated Funds have investment strategies that could result in particular Origination Opportunities being attractive and appropriate for one or more of them as well as for the Company. Under the Co-Investment Program, if the amount of the investment opportunity were to exceed the amount TSL Advisers determined was appropriate for the Company to invest, then the excess amount would be offered to one or more Affiliated Funds as a Potential Co-Investment Transaction. When determining if an Affiliated Fund should participate in a Potential Co-Investment Transaction offered to it, the applicable Adviser will review the Potential Co-Investment Transaction for each Affiliated Fund that it advises based only upon the investment objectives, investment policies, investment position, capital available for investment, and other pertinent factors applicable to that particular investing entity.

8. Other than pro rata dispositions as provided in condition 6, and after making the determinations required in conditions 1 and 2(a), TSL Advisers will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act (''Eligible Directors''), and the ''required majority,'' as defined in section 57(o) of the Act (''Required Majority''), will approve each Co-Investment Transaction prior to any investment by the Company.

Department's determination with regard to each investment opportunity will be documented in TSL Adviser's allocation log.

9. With respect to the pro rata dispositions provided in condition 6, the Company may participate in a pro rata disposition without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of the Company and the participating Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition, as the case may be; and (ii) the Board has approved the Company's participation in pro rata dispositions as being in the best interests of the Company. If the Board does not so approve, any such dispositions will be submitted to the Company's Eligible Directors. The Board may at any time rescind, suspend or qualify its approval of pro rata dispositions with the result that all dispositions must be submitted to the Eligible Directors.

10. Applicants state that the Company may, from time to time, form one or more Wholly-Owned Investment Subsidiaries.[11] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with an Affiliated Fund because it would be a company controlled by the Company for purposes of section 57(a)(4) and rule 17d-1. Applicants request that each Wholly-Owned Investment Subsidiary be permitted to participate in Co-Investment Transactions in lieu of the Company and that the Wholly-Owned Investment Subsidiary's participation in any such transaction be treated, for purposes of the requested order, as though the Company were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Subsidiary would have no purpose other than serving as a holding vehicle for the Company's investments and, therefore, no conflicts of interest could arise between the Company and the Wholly-Owned Investment Subsidiary. The Company's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Subsidiary's participation in a Co-Investment Transaction, and the Company's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Subsidiary in the Company's place. If the Company proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subsidiaries, the Board will also be informed of, and take into consideration, the relative participation of the Company and the Wholly-Owned Investment Subsidiary.

[11] The term ''Wholly-Owned Investment Subsidiary'' means an entity (a) whose sole business purpose is to hold one or more investments on behalf of the Company; (b) that is wholly-owned by the Company (with the Company at all times holding, beneficially and of record, 100% of the voting and economic interests); (c) with respect to which the Company's Board has the sole authority to make all determinations with respect to participation under the conditions of the application; (d) that does not pay a separate advisory fee, including any performance-based fee, to any person; and (e) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC (or a company controlled by such BDC) in contravention of rules as prescribed by the Commission. Under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by, or under common control with a BDC is subject to section 57(a)(4). Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 applies to joint transactions with the Company because it is a BDC.

2. Rule 17d–1 under the Act prohibits affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Co-Investment Transactions would be prohibited by section 57(a)(4) and rule 17d–1 without a prior exemptive order of the Commission to the extent that the Affiliated Funds fall within the category of persons described by section 57(b) vis-à-vis the Company. Applicants state that Company's ability to complete Co-Investment Transactions in portfolio companies will increase favorable investment opportunities for the Company.

4. Applicants believe that Co-Investment Transactions would necessarily be fair to the Company because they would only occur if TSL Advisers determined that the investment opportunity exceeded the Company's desired investment in the

opportunity. Applicants believe that the proposed terms and conditions will ensure that the terms on which Co-Investment Transactions may be made are consistent with the participation of the Company being on a basis that is neither different from nor less advantageous than other participants, thus protecting the shareholders of the Company from being disadvantaged, and are consistent with the purposes intended by the policies and provisions of the Act.

Applicants' Conditions

Applicants agree that the Order granting the requested relief will be subject to the following conditions:

1. The Company will receive an Allocation Preference with respect to all Origination Opportunities and potential Follow-On Investments. The Advisers will ensure that TSL Advisers and the Company are notified of all Origination Opportunities. Each time TSL Advisers considers a Potential Co-Investment for the Company, it will make an independent determination of the appropriateness of the investment for the Company in light of the Company's then-current circumstances.

2. (a) If TSL Advisers deems the Company's participation in any Potential Co-Investment Transaction to be appropriate for the Company, it will then determine an appropriate level of investment for the Company.

(b) The Company has the right to participate in the Potential Co-Investment Transaction to the full extent TSL Advisers deems appropriate, and the participating Affiliated Funds will be allocated the remaining excess amount.

(c) After making the determinations required in conditions 1 and 2(a) above, TSL Advisers will distribute written information concerning the Potential Co-Investment Transaction, including the amounts proposed to be invested by the Affiliated Funds, to the Eligible Directors for their consideration. The Company will co-invest with one or more Affiliated Funds only if, prior to the Company's and any Affiliated Fund's participation in the Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching in respect of the Company or its shareholders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) The interests of the shareholders of the Company; and

(B) the Company's then-current Objectives and Strategies;

(iii) the investment by the Affiliated Fund(s) would not disadvantage the Company, and participation by the Company is not on a basis different from or less advantageous than that of an Affiliated Fund; provided that, if an Affiliated Fund, but not the Company, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event will not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Company's Board with respect to the actions of the director or the information received by the board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that the Affiliated Fund or any affiliated person of an Affiliated Fund receives in connection with the right of the Affiliated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the Affiliated Fund (which may, in turn, share its portion with its affiliated persons) and the Company in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Company will not benefit any Adviser, Affiliated Fund or any affiliated person thereof (other than the participating Affiliated Funds), except (A) to the extent permitted by condition 12, (B) to the extent permitted by section 17(e) or 57(k) of the Act, as applicable, (C) in the case of fees or other compensation described in condition 2(c)(iii)(C), or (D) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction.

3. The Company has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. Except for Follow-On Investments made in accordance with condition 7, the Company will not invest in reliance on the Order in any issuer in which any Affiliated Fund or any affiliated person of an Affiliated Fund is an existing investor.

5. The Company will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for the Company as for the participating Affiliated Funds. The grant to an Affiliated Fund, but not the Company, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 5, if conditions 2(c)(iii)(A), (B) and (C) are met.

6. (a) If any of the Affiliated Funds elects to sell, exchange or otherwise dispose of an interest in a security that was acquired by the Company and such Affiliated Fund in a Co-Investment Transaction, then:

(i) The relevant Adviser will notify the Company of the proposed disposition at the earliest practical time; and

(ii) TSL Advisers will formulate a recommendation as to participation by the Company in the disposition.

(b) The Company will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Fund(s).

(c) The Company may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of the Company and each participating Affiliated Fund in such disposition is proportionate to its outstanding investment in the issuer immediately preceding the disposition; (ii) the Board has approved as being in the best interests of the Company the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, TSL Advisers will provide its written recommendation as to the Company's participation to the Eligible Directors, and the Company will participate in such disposition solely to the extent that a Required Majority determines that it is in the Company's best interests.

(d) The Company and each participating Affiliated Fund will bear its own expenses in connection with any such disposition.

7. (a) If any Affiliated Fund desires to make a Follow-On Investment then:

(i) The relevant Adviser will notify the Company of the proposed transaction at the earliest practical time; and

(ii) TSL Advisers will formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by the Company.

(b) The Company has the right to participate in the Follow-On Investment to the full extent TSL Advisers deems appropriate, and the participating Affiliated Funds will be allocated the remaining excess amount.

(c) TSL Advisers will provide its written recommendation as to the Company's participation to the Eligible Directors, and the Company will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Company's best interest.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

8. The Independent Directors will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by an Affiliated Fund that the Company participated in and investments made by an Affiliated Fund that the Company considered but declined to co-invest in, so that the Independent Directors may determine whether all investments made during the preceding quarter, including those investments that the Company considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Directors will consider at least annually the continued appropriateness for the Company of participating in new and existing Co-Investment Transactions.

9. The Company will maintain the records required by section 57(f)(3) of the Act as if each of the investments permitted under these conditions were approved by the Required Majority under section 57(f).

10. No Independent Director will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act) of any of the Affiliated Funds.

11. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers to Affiliated Funds under their respective investment advisory agreements with the Affiliated Funds, be shared by the Company and the Affiliated Funds in proportion to the relative amounts of the securities to be acquired, held or disposed of, as the case may be.

12. Any transaction fee (including any break-up fees or commitment fees but excluding broker's fees contemplated section 17(e) or 57(k) of the Act, as applicable), received in connection with a Co-Investment Transaction will be distributed to the Company and the Affiliated Funds on a pro rata basis based on the amount they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by such investment adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the Company and the Affiliated Funds based on the amount they invest in such Co-Investment Transaction. None of the Affiliated Funds, Advisers, nor any affiliated person of the Company will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Company and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of the Advisers, investment advisory fees paid in accordance with the Company's and the Affiliated Funds' respective investment advisory agreements).

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27696 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–52; File No. S7–11–14]

Privacy Act of 1974: Systems of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notice to revise two existing systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission (''Commission'' or ''SEC'') proposes to revise two existing systems of records, ''Administrative Proceeding Files (SEC–36)'', last published in the **Federal Register** Volume 62 FR 47884 (September 11, 1997) and ''Information Pertaining or Relevant to SEC Regulated Entities and Their Activities'' (SEC–55), last published in the **Federal Register** Volume 75 FR 35853 (June 23, 2010).

DATES: The proposed system will become effective January 5, 2015 unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before December 24, 2014.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–11–14 on the subject line.

Paper Comments

Send paper comments in triplicate to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number S7–11–14. This file number should be included on the subject line if email is used. To help 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/other.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Todd Scharf, Acting Chief Privacy Officer, Office of Information Technology, 202–551–8800.

SUPPLEMENTARY INFORMATION:

The Commission proposes to revise two existing systems of records, ''Administrative Proceeding Files (SEC–36),'' and ''Information Pertaining or Relevant to SEC Regulated Entities and Their Activities (SEC–55).''

The Administrative Proceedings Files (SEC–36) records are used in any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity. The SEC–36 system of records contains records on individuals that are involved in administrative proceedings before the SEC, including participants, witnesses, attorneys, and SEC employees. Substantive changes to SEC–36 have been made to the following sections: (1) Categories of Individuals, to clarify specific individuals covered in the records; (2) Categories of Records, to add specific data elements collected on individuals, to include, names, addresses, email addresses, telephone numbers, and fax numbers; (3) Purpose, to state the purpose of the system, which was omitted in the last publication; (4) Authority for Maintenance of the System, to add additional regulatory authority authorizing the collection of information; (5) Routine Uses, to clarify categories of users in two routine uses located at numbers 2 and 13, to delete one routine use previously located at number 2, and to expand by seven routine uses located at numbers 1, 4, and 19–23; and (6) Storage, to expand to include electronic media. Additional minor administrative changes have been made to the Record Source Categories, Retrievability and Safeguards sections, to clarify internal handling practices for the records; and to the Notification, Access and Contesting Procedures sections, to update the Commission's current address.

The Information Pertaining or Relevant to SEC Regulated Entities and Their Activities (SEC–55) records are used by SEC personnel in connection with their official functions, including but not limited to, conducting examinations for compliance with federal securities law, investigating possible violations of federal securities laws, and other matters relating to SEC regulatory and law enforcement functions. Substantive changes to SEC–55 have been made to the following sections: (1) Name, to clarify the type of records in the system; (2) Categories of Individuals, to clarify the specific individuals covered in the system of records; (3) Categories of Records, modified to include specific data elements collected on individuals, name, address, telephone number, and email address; and (4) Routine Uses, to expand by one new routine use located at number 22. Additional minor administrative changes have been made to the Safeguards section, to clarify internal handling practices for the records; and to the System Manager(s) and Address Section, to update the Commission's current address.

The Commission has submitted a report of the revised systems of records to the appropriate Congressional Committees and to the Director of the Office of Management and Budget (''OMB'') as required by 5 U.S.C. 552a(r) (Privacy Act of 1974) and guidelines issued by OMB on December 12, 2000 (65 FR 77677).

Accordingly, the Commission is proposing to revise two existing systems of records to read as follows:

SEC–36

SYSTEM NAME:

Administrative Proceeding Files.

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on all individuals that are involved in administrative proceedings before the SEC, including, participants, witnesses, attorneys, SEC employees, contractors, students, interns, volunteers, affiliates, and others working on behalf of the SEC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include the names, addresses, email addresses, telephone numbers, and fax numbers of individuals named as participants; witnesses; attorneys; SEC employees and others working on behalf of the SEC. Additionally, records include orders for proceedings, answers, motions, responses, orders, offers of settlement and other pleadings, transcripts of all hearings and documents introduced as evidence therein; other relevant documents; and correspondence relating to proceedings.

PURPOSE(S):

The records in this system may be utilized in any proceeding where the Federal securities laws are in issue or in which the Commission or past or present members of its staff is a party or otherwise involved in an official capacity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 77h(e), 77u, 78v, 78o(b), 80a–40, and 80b–12; the Commission's Rules of Practice, 17 CFR 201.100–900 and the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100–1106.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552 a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.

3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.

4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.

5. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

7. To a bar association, state accountancy board, or other federal, state, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.

8. To a federal, state, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

9. To a federal, state, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100–900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100–1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.

12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

14. In reports published by the Commission pursuant to authority granted in the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).

15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.

16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735–1 to 200.735–18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

18. To members of Congress, the press and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction. In matters involving public proceedings, most of the records are available to the public.

19. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78c(a)(47), as amended.

20. To respond to subpoenas in any litigation or other proceeding.

21. To a trustee in bankruptcy.

22. To members of Congress, the General Accountability Office, or others charged with monitoring the work of the Commission or conducting records management inspections.

23. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or electronic storage devices. Paper records and records on electronic storage devices may be stored in locked file rooms and/or file cabinets and/or secured buildings.

RETRIEVABILITY:

Records are retrievable by party name, case name and/or commission file number through searchable databases. In some instances records may be retrieved by email address.

SAFEGUARDS:

Access to SEC facilities, data centers, and information or information systems is limited to authorized personnel with official duties requiring access. SEC facilities are equipped with security cameras and 24-hour security guard service. The records are kept in limited access areas during duty hours and

secured areas at all other times. Computerized records are safeguarded in secured, encrypted environment. Security protocols meet the promulgating guidance as established by the National Institute of Standards and Technology (NIST) Security Standards from Access Control to Data Encryption, and Security Assessment & Authorization (SA&A). Records will be maintained in a secure, password-protected electronic system that will utilize commensurate safeguards that may include: Firewalls, intrusion detection and prevention systems, and role-based access controls. Additional safeguards will vary by program. All records are protected from unauthorized access through appropriate administrative, operational, and technical safeguards. These safeguards include: Restricting access to authorized personnel who have a ''need to know''; using locks; and password protection identification features. Contractors and other recipients providing services to the Commission shall be required to maintain equivalent safeguards.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration

SYSTEM MANAGER(S) AND ADDRESS:

Secretary, Office of the Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1091.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–2736.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–2736.

CONTESTING RECORD PROCEDURES:

See Record access procedures above.

RECORD SOURCE CATEGORIES:

Records are obtained from any person named as a respondent in an order instituting proceedings, any applicant named in the caption of any order, persons entitled to notice in any proceeding, any person seeking Commission review of a decision, any person representing a party in a proceeding and/or SEC personnel from a division or office assigned primary responsibility by the Commission to participate in a particular proceeding. Additionally, information may be obtained from any papers filed with the Commission in connection with a proceeding and internal Commission files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SEC–55

SYSTEM NAME:

Information Pertaining or Relevant to SEC Regulated Entities and Their Activities.

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549. Records also are maintained in the SEC Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records concern individuals associated with entities or persons that are regulated by the SEC to include broker-dealers, investment advisers, investment companies, self-regulatory organizations, clearing agencies, nationally recognized statistical rating organizations, transfer agents, municipal securities dealers, municipal advisors, security-based swap dealers, security-based swap data repositories, major security-based swap participants, security-based swap execution facilities, and funding portals (individually, a ''Regulated Entity;'' collectively, ''Regulated Entities''). Records may also concern persons, directly or indirectly, with whom Regulated Entities or their affiliates have client relations or business arrangements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain Regulated Entities' and their associated persons' names, addresses, telephone numbers and email addresses. Additionally, there may be information relating to the business activities and transactions of Regulated Entities and their associated persons, as well as their compliance with provisions of the federal securities laws and with other applicable rules.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 78a *et seq.,* 80a–1 *et seq.,* and 80b–1 *et seq.*

PURPOSE(S):

1. For use by authorized SEC personnel in connection with their official functions including, but not limited to, conducting examinations for compliance with federal securities laws, investigations into possible violations of the federal securities laws, and other matters relating to the SEC's regulatory and law enforcement functions.

2. To maintain continuity within the SEC as to each Regulated Entity and to provide SEC staff with the background and results of earlier examinations of Regulated Entities, as well as an insight into current industry practices or possible regulatory compliance issues.

3. To conduct lawful relational searches or analysis or filtering of data in matters relating to the SEC's examination, regulatory or law enforcement functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.

3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the federal

banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.

4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.

5. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

7. To a bar association, state accountancy board, or other federal, state, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.

8. To a federal, state, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

9. To a federal, state, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100–900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100–1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.

12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

14. In reports published by the Commission pursuant to authority granted in the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).

15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.

16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735–1 to 200.735–18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.

19. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78c(a)(47), as amended.

20. To respond to subpoenas in any litigation or other proceeding.

21. To a trustee in bankruptcy.

22. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

23. To members of Congress, the Government Accountability Office, or others charged with monitoring the work of the Commission or conducting records management inspections.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or electronic storage devices. Paper records and records on electronic storage devices may be stored in locked file rooms and/or file cabinets and/or secured buildings.

RETRIEVABILITY:

Information is indexed by name of the Regulated Entity or by certain SEC identification numbers. Information

regarding individuals may be obtained through the use of cross-reference methodology or some form of personal identifier. Access for inquiry purposes is via a computer terminal.

SAFEGUARDS:

Access to SEC facilities, data centers, and information or information systems is limited to authorized personnel with official duties requiring access. SEC facilities are equipped with security cameras and 24-hour security guard service. The records are kept in limited access areas during duty hours and secured areas at all other times. Computerized records are safeguarded in secured, encrypted environment. Security protocols meet the promulgating guidance as established by the National Institute of Standards and Technology (NIST) Security Standards from Access Control to Data Encryption, and Security Assessment & Authorization (SA&A). Records will be maintained in a secure, password-protected electronic system that will utilize commensurate safeguards that may include: firewalls, intrusion detection and prevention systems, and role-based access controls. Additional safeguards will vary by program. All records are protected from unauthorized access through appropriate administrative, operational, and technical safeguards. These safeguards include: restricting access to authorized personnel who have a ''need to know''; using locks; and password protection identification features. Contractors and other recipients providing services to the Commission shall be required to maintain equivalent safeguards.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–4949.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–2736.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–2736.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Record sources include filings made by Regulated Entities; information obtained through examinations or investigations of Regulated Entities and their activities; information contained in SEC correspondence with Regulated Entities; information received from other federal, state, local, foreign or other regulatory organizations or law enforcement agencies; complaint information received by the SEC via letters, telephone calls, emails or any other form of communication; and data obtained from third-party sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By the Commission.
Dated: November 19, 2014.

Brent J. Fields,

Secretary.

Report Of Notice To Revise A System Of Records

System Name: Administrative Proceeding Files (SEC–36).

Introduction: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Securities and Exchange Commission (''Commission'' or ''SEC'') proposes to revise the system of records titled ''Administrative Proceeding Files (SEC–36).'' Administrative Proceeding Files (SEC–36) records are used by SEC personnel in connection with any proceeding where the federal securities laws are in issue or in which the Commission or past or present members of its staff is a party or otherwise involved in an official capacity. Substantive changes to SEC–36 have been made to the following sections: (1) Categories of Individuals, to clarify specific individuals covered in the records; (2) Categories of Records, to add specific data elements collected on individuals, to include, names, addresses, email addresses, telephone numbers, and fax numbers; (3) Purpose, to state the purpose of the system, which was omitted in the last publication; (4) Authority for Maintenance of the System, to add additional regulatory authority authorizing the collection of information; (5) Routine Uses, to clarify categories of users in two routines uses located at numbers 2 and 13, to delete one routine use previously located at number 2, and to expand by seven routine uses located at numbers 1, 4, and 19–23; and (6) Storage, to expand to include electronic media. Additional minor administrative changes have been made to the Record Source Categories, Retrievability and Safeguards sections, to clarify internal handling practices for the records; and to the Notification, Access and Contesting Procedures sections, to update the Commission's current address.

Purpose: The records are used in any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff is a party or otherwise involved in an official capacity.

Authority: 15 U.S.C. 77h(e), 77u, 78v, 78o(b), 80a–40, and 80b–12; the Commission's Rules of Practice, 17 CFR 201.100–900 and the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100–1106.

Probable effect on individual privacy or other rights: The records in this system may reveal personal information about individuals. We will disclose information under the routine uses only as necessary to accomplish the stated purpose. We do not anticipate that the routine use disclosures will have an unwarranted adverse effect on the rights of the individuals to whom the records pertain.

Security provided for this system: Access to SEC facilities, data centers, and information or information systems is limited to authorized personnel with official duties requiring access. SEC facilities are equipped with security cameras and 24-hour security guard service. The records are kept in limited access areas during duty hours and secured areas at all other times. Computerized records are safeguarded in secured, encrypted environment. Security protocols meet the promulgating guidance as established by the National Institute of Standards and Technology (NIST) Security Standards from Access Control to Data Encryption, and Security Assessment & Authorization (SA&A). Records will be maintained in a secure, password-protected electronic system that will utilize commensurate safeguards that may include: firewalls, intrusion detection and prevention systems, and role-based access controls. Additional safeguards will vary by program. All records are protected from unauthorized access through appropriate administrative, operational, and technical safeguards. These safeguards

include: restricting access to authorized personnel who have a ''need to know''; using locks; and password protection identification features. Contractors and other recipients providing services to the Commission shall be required to maintain equivalent safeguards.

Compatibility of routine uses: The Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and SEC disclosure regulation (17 CFR 200, Subpart H) permit disclosure of information under a published routine use for a purpose that is compatible with the purpose for which the information was collected. The routine uses are appropriate and meet the relevant statutory and regulatory criteria; are compatible with the purposes of this system; and will ensure efficient administration of the records contained in the system.

OMB Requirements: A report of this revised system of records must be transmitted to OMB.

OPM Requirements: None.

Report Of Notice To Revise A System Of Records

System Name: Information Pertaining or Relevant to SEC Regulated Entities and Their Activities (SEC–55).

Introduction: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Securities and Exchange Commission (''Commission'' or ''SEC'') proposes to revise the system of records titled ''Information Pertaining or Relevant to SEC Regulated Entities and Their Activities (SEC–55). The Information Pertaining or Relevant to SEC Regulated Entities and Their Activities (SEC–55) records are used by SEC personnel in connection with their official functions, including but not limited to, conducting examinations for compliance with federal securities law, investigating possible violations of federal securities laws, and other matters relating to SEC regulatory and law enforcement functions. Substantive changes to SEC–55 have been made to the following sections: (1) Name, to clarify the type of records in the system; (2) Categories of Individuals, to clarify the specific individuals covered in the system of records; (3) Categories of Records, modified to include specific data elements collected on individuals, name, address, telephone number, and email address; and (4) Routine Uses, to expand by one new routine use located at number 22. Additional minor administrative changes have been made to the Safeguards section, to clarify internal handling practices for the records; and to the System Manager(s) and Address Section, to update the Commission's current address.

Purpose: The records are used by SEC personnel in connection with their official functions including but not limited to, conducting examinations for compliance with federal securities law, investigating possible violations of federal securities laws, and other matters relating to SEC regulatory and law enforcement functions.

Authority: 15 U.S.C. 78a *et seq.,* 80a–1 *et seq.,* and 80b–1 *et seq.*

Probable effect on individual privacy or other rights: The records in this system may reveal personal information about individuals. We will disclose information under the routine uses only as necessary to accomplish the stated purpose. We do not anticipate that the routine use disclosures will have an unwarranted adverse effect on the rights of the individuals to whom the records pertain.

Security provided for this system: Access to SEC facilities, data centers, and information or information systems is limited to authorized personnel with official duties requiring access. SEC facilities are equipped with security cameras and 24-hour security guard service. The records are kept in limited access areas during duty hours and secured areas at all other times. Computerized records are safeguarded in secured, encrypted environment. Security protocols meet the promulgating guidance as established by the National Institute of Standards and Technology (NIST) Security Standards from Access Control to Data Encryption, and Security Assessment & Authorization (SA&A). Records will be maintained in a secure, password-protected electronic system that will utilize commensurate safeguards that may include: firewalls, intrusion detection and prevention systems, and role-based access controls. Additional safeguards will vary by program. All records are protected from unauthorized access through appropriate administrative, operational, and technical safeguards. These safeguards include: restricting access to authorized personnel who have a ''need to know''; using locks; and password protection identification features. Contractors and other recipients providing services to the Commission shall be required to maintain equivalent safeguards.

Compatibility of routine uses: The Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and SEC disclosure regulation (17 CFR 200, Subpart H) permit disclosure of information under a published routine use for a purpose that is compatible with the purpose for which the information was collected. The routine uses are appropriate and meet the relevant statutory and regulatory criteria; are compatible with the purposes of this system; and will ensure efficient administration of the records contained in the system.

OMB Requirements: A report of this revised system of records must be transmitted to OMB.

OPM Requirements: None.

[FR Doc. 2014–27745 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73625; File No. SR–C2–2014–026]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Penny Pilot Program Through June 30, 2015

November 18, 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 November 12, 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

C2 proposes to amend Rule 6.4 by extending the Penny Pilot Program through June 30, 2015. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Penny Pilot Program (the ''Pilot Program'') is scheduled to expire on December 31, 2014. C2 proposes to extend the Pilot Program until June 30, 2015. C2 believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Pilot Program, C2 proposes that it may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively traded, multiply listed option class that is not yet participating in the Pilot Program (''replacement class''). Any replacement class would be determined based on national average daily volume in the preceding six months,[5] and would be added on the second trading day following January 1, 2015. C2 will announce to its Trading Permit Holders by circular any replacement classes in the Pilot Program. The Exchange notes that it intends to utilize the same parameters to prospective replacement classes as was originally approved.

C2 is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

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.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program for the benefit of market participants.

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 appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

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

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

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–C2–2014–026 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–C2–2014–026. 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

[5] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.* December) would not be used for purposes of the six-month analysis. Thus, a replacement class to be added on the second trading day following January 1, 2015 would be identified based on The Option Clearing Corporation's trading volume data from June 1, 2014 through November 30, 2014.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b 4(f)(6).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2014–026 and should be submitted on or before December 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27703 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73619; File No. SR–NYSEARCA–2014–132]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the NYSE Proprietary Market Data Fee Schedule (''Market Data Fee Schedule'') Regarding Non-Display Use Fees

November 18, 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 November 7, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to change to the NYSE Proprietary Market Data Fee Schedule (''Market Data Fee Schedule'') regarding non-display use fees. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes a change to the Market Data Fee Schedule regarding non-display use fees for NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca Trades and NYSE Arca BBO, the market data products to which non-display use fees apply. Specifically, with respect to the three categories of, and fees applicable to, market data recipients for non-display use, the Exchange proposes to describe the three categories in the Market Data Fee Schedule.

In September 2014, the Exchange revised the fees for non-display use of NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca Trades and NYSE Arca BBO.[4] In the 2014 Filing, the Exchange proposed certain changes to the categories of, and fees applicable to, data recipients for non-display use. As set forth in the 2014 Filing: (i) Category 1 Fees apply when a data recipient's non-display use of real-time market data is on its own behalf as opposed to use on behalf of its clients; (ii) Category 2 Fees apply when a data recipient's non-display use of real-time market data is on behalf of its clients as opposed to use on its own behalf; and (iii) Category 3 Fees apply when a data recipient's non-display use of real-time market data is for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient's own behalf and/or on behalf of its clients. The Market Data Fee Schedule currently lists each category as Category 1, Category 2, and Category 3, without further description.

The Exchange is proposing to amend the Market Data Fee Schedule to add the descriptions of the three categories, as set forth above, as a footnote to the Market Data Fee Schedule. Because there will now be multiple footnotes to the Market Data Fee Schedule, the Exchange proposes non-substantive edits to change the existing footnote references from asterisks to numbers.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5)[6] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The Exchange believes that adding the description of the three categories of data recipients for non-display use to the Market Data Fee Schedule will remove impediments to and help perfect a free and open market by providing greater transparency for the Exchange's customers regarding the category descriptions that have been previously filed with the Commission and are applicable to the existing Market Data Fee Schedule.[7]

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 because the Exchange is merely adding to the Market Data Fee Schedule information

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 73011 (September 5, 2014), 79 FR 54315 (September 11, 2014) (SR–NYSEARCA–2014–93) (''2014 Filing'').

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See supra* n. 4.

that has been previously filed with the Commission.[8]

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[11] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day delayed operative date so that the proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)[17] thereunder. The Commission believes that the proposal raises no novel issues and that adding the description of the categories of market data recipients for non-display use to the Market Data Fee Schedule is consistent with the protection of investors and the public interest because it will provide more transparency in the Exchange's Market Data Fee Schedule regarding the existing definitions in that schedule. Based on the foregoing, the Commission has determined to waive the 30-day operative date so that the proposal may take effect upon filing.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2014–132 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–NYSEARCA–2014–132. 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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2014–132 and should be submitted on or before December 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27697 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

[8] *See supra* n. 4.

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] The Exchange has satisfied this requirement.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] *Id.*

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73624; File No. SR–CBOE–2014–086]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Penny Pilot Program through June 30, 2015

November 18, 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 November 12, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rule 6.42 by extending the Penny Pilot Program through June 30, 2015.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Penny Pilot Program (the ''Pilot Program'') is scheduled to expire on December 31, 2014. CBOE proposes to extend the Pilot Program until June 30, 2015. CBOE believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Pilot Program, CBOE proposes that it may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively traded, multiply listed option class that is not yet participating in the Pilot Program (''replacement class''). Any replacement class would be determined based on national average daily volume in the preceding six months,[5] and would be added on the second trading day following January 1, 2015. CBOE will employ the same parameters to prospective replacement classes as approved and applicable in determining the existing classes in the Pilot Program, including excluding high-priced underlying securities.[6] CBOE will announce to its Trading Permit Holders by circular any replacement classes in the Pilot Program.

CBOE is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

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.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program for the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

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

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

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

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.* December) would not be used for purposes of the six-month analysis. Thus, a replacement class to be added on the second trading day following January 1, 2015 would be identified based on The Option Clearing Corporation's trading volume data from June 1, 2014 through November 30, 2014.

[6] *See* Securities Exchange Act Release No. 60864 (October 22, 2009), 74 FR 55876 (October 29, 2009) (SR–CBOE–2009–76).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–CBOE–2014–086 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–CBOE–2014–086. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–CBOE–2014–086* and should be submitted on or before December 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27702 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73623; File No. SR–FINRA–2014–048]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports)

November 18, 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 November 14, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt new FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports) to address conflicts of interest relating to the publication and distribution of debt research reports.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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

Background

The proposed rule change would adopt FINRA Rule 2242 to address conflicts of interest relating to the publication and distribution of debt research reports. Proposed FINRA Rule 2242 would adopt a tiered approach that, in general, would provide retail debt research recipients with extensive protections similar to those provided to recipients of equity research under current and proposed FINRA rules, with modifications to reflect differences in the trading of debt securities.[3]

Currently, FINRA's research rules, NASD Rule 2711 (Research Analysts and Research Reports) and Incorporated NYSE Rule 472 (Communications with the Public) (the ''equity research rules''), set forth requirements to foster objectivity and transparency in equity research and provide investors with more reliable and useful information to make investment decisions. The equity research rules apply only to research reports that include analysis of an ''equity security,'' as that term is defined under the Exchange Act,[4] subject to certain exceptions.[5] The equity research rules were intended to restore public confidence in the objectivity of research and the veracity of research analysts, who are expected to function as unbiased intermediaries between issuers and the investors who buy and sell those issuers' securities.[6] The integrity of research had eroded due to the pervasive influences of investment banking and other conflicts during the market boom of the late 1990s.

In general, the equity research rules require disclosure of conflicts of interest

[3] The proposed rule change reflects proposed amendments to FINRA's equity research rules set forth in a companion filing to the proposed rule change (the ''equity research filing''). *See* Exchange Act Rel. No. 34–[] (Nov. 17, 2014) (SR–FINRA–2014–047).

[4] *See* 15 U.S.C. 78c(a)(11).

[5] In contrast to FINRA's current research rules, SEC Regulation Analyst Certification (''Regulation AC''), the SEC's primary vehicle to foster objective and transparent research, applies to both debt and equity research. *See* 17 CFR 242.500 et seq.

[6] NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 (Research Analysts and Supervisory Analysts) require any person associated with a member and who functions as a research analyst to be registered as such and pass the Series 86 and 87 exams, unless an exemption applies. FINRA is considering whether debt research analysts also should be subject to the same or a similar qualification requirement.

in research reports and public appearances by research analysts. The equity research rules further prohibit conflicted conduct—investment banking personnel involvement in the content of research reports and determination of analyst compensation, for example—where the conflicts are too pronounced to be cured by disclosure. Several requirements in the equity research rules implement provisions of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley''), which mandates separation between research and investment banking, proscribes conduct that could compromise a research analyst's objectivity and requires specific disclosures in research reports and public appearances.[7] The Sarbanes-Oxley research provisions do not apply to debt research.

In December 2005, in response to a Commission Order, FINRA and NYSE Regulation, Inc. (''NYSE'') submitted to the Commission a joint report on the operation and effectiveness of the research analyst conflict of interest rules (the ''Joint Report'').[8] Among other things, the Joint Report analyzed the impact of the equity research rules based on academic studies, media reports and commentary. The Joint Report concluded that the equity research rules have been effective in helping to restore integrity to research by minimizing the influence of investment banking and promoting transparency of other potential conflicts of interest. Evidence from academic studies, among other sources, further suggested that investors are benefiting from more balanced and accurate research to aid their investment decisions. A January 2012 GAO report on securities research (''GAO Report'') also concluded that empirical studies suggest the rules have resulted in increased equity analyst independence and weakened the influence of conflicts of interest on analyst recommendations.[9]

The Joint Report also recommended changes to the equity research rules to strike a better balance between ensuring objective and reliable research on the one hand, and permitting the flow of information to investors and minimizing costs and burdens to members on the other.[10] The proposed rule change is informed by FINRA's experience with and the effectiveness of the equity research rules and incorporates many of the findings and recommendations from the Joint Report.

A number of events and circumstances contributed to FINRA's determination that a dedicated debt research rule is needed to further investor protection. In 2004, the Bond Market Association (''BMA'') published its Guiding Principles to Promote the Integrity of Fixed Income Research (''Guiding Principles''),[11] a set of voluntary guidelines intended to foster management and transparency of conflicts of interest with respect to debt research. The Guiding Principles acknowledge that potential conflicts of interest could arise in the preparation of debt research, and many of the principles to maintain integrity of debt research hew closely to the equity research rule requirements. The Guiding Principles also reflect what the BMA asserted are several significant differences in the role and impact of research on the equity and fixed income markets, as well as differences in research regarding individual fixed-income asset classes. For example, the BMA contended that the prices of debt securities were less sensitive to the views of research analysts and that the major rating agencies provided a reliable source of independent information for the debt markets. It also asserted that most debt research was provided to sophisticated market participants for which it serves as one of many sources of information to consider when making an investment decision.

The Joint Report discussed the need for rules to govern debt research distribution. NASD and NYSE indicated that they would examine the extent to which firms voluntarily adopted the Guiding Principles and would consider further rulemaking after assessing the effectiveness of voluntary compliance. The Joint Report noted that the anti-fraud statutes and existing NASD and NYSE broad ethical rules could reach instances of misconduct involving debt research. NASD and NYSE subsequently surveyed a selection of firms' debt research supervisory systems and found many instances where firms failed to adhere to the Guiding Principles. More significantly, NASD and NYSE found cases where firms lacked any policies and procedures to manage debt research conflicts to ensure compliance with applicable ethical and anti-fraud rules. Those findings were published in *Notice to Members* 06–36,[12] where FINRA expressly noted that it would continue to consider more definitive rulemaking that might differ from or expand on the Guiding Principles.[13]

Following publication of its findings in 2006, FINRA continued to examine whether firms had implemented and enforced supervisory policies and procedures to promote the integrity of debt research and address attendant conflicts of interest. As noted in the GAO Report, between 2005 and 2010, FINRA conducted 55 such examinations and found deficiencies involving inadequate supervisory procedures to manage debt research conflicts or failure to disclose such conflicts in 11 (20%) examinations. The GAO Report stated that most market participants and observers that the GAO interviewed ''acknowledged that additional rulemaking is needed to protect investors, particularly retail investors.'' The GAO Report concluded that ''until FINRA adopts a fixed-income research rule, investors continue to face a potential risk.''

Following the consolidation of NASD and the member regulatory functions of NYSE Regulation, Inc. into FINRA, and as part of the process to develop the consolidated FINRA rulebook,[14] FINRA conducted a comprehensive review of all of its research rules and considered the appropriateness of adopting a dedicated rule to address potential conflicts of interest in the publication and distribution of debt research reports. In addition to its examination findings, and later, the conclusions of the GAO Report, several other factors also weighed in FINRA's decision to propose dedicated debt research conflict of interest rules. Misconduct in the sale of auction rate securities (*i.e.,* debt

[7] 15 U.S.C. 78*o*–6.

[8] *Joint Report by NASD and the NYSE on the Operation and Effectiveness of the Research Analyst Conflict of Interest Rules* (December 2005), available at *http://www.finra.org/web/groups/industry/@ip/@issues/@rar/documents/industry/p015803.pdf.*

[9] United States Government Accountability Office, *Securities Research, Additional Actions Could Improve Regulatory Oversight of Analyst Conflicts of Interest,* January 2012.

[10] The basis for the recommended changes to the equity research rules is described in more detail in the equity research filing. *See supra* note 3.

[11] In 2005, the BMA merged with the Securities Industry Association (''SIA'') to form the Securities Industry and Financial Markets Association (''SIFMA'').

[12] *Notice to Members* 06–36 (July 2006).

[13] As noted in the 2005 report, FINRA believes that the anti-fraud statutes, as well as existing FINRA rules, such as the requirement in FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade) that members, in the conduct of their business, ''observe high standards of commercial honor and just and equitable principles of trade,'' can reach any egregious conduct involving fixed-income research.

[14] The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

traders pressured research analysts to help prop up the market with optimistic research) demonstrates that potential conflicts of interest in the publication and distribution of debt research can exist just as they do for equity research.[15] Also, the reliability of credit agency ratings was called into question during the financial crisis that began in 2008. Furthermore, the Dodd-Frank legislation in response to that crisis has resulted in rules by the Commodity Futures Trading Commission (''CFTC'') to govern conflicts of interest regarding non-security-based swaps and commodities research, and the SEC has proposed rules that would require security-based swap dealers and major security-based swap participants to adopt written policies and procedures to address conflicts related to security-based swaps and research. Based on the foregoing considerations, and consistent with the regulatory trend to require mitigation and transparency of conflicts related to all types of investment research, FINRA believes it necessary and appropriate to provide better protections to recipients of debt research, particularly less sophisticated investors. FINRA's belief is buttressed by observations of retail investment in debt securities. For example, FINRA TRACE data shows that from 2007 through 2013, retail-sized transactions (defined to mean trades with a face value of less than $100,000) in corporate bonds increased approximately 97 percent to about 16,000 daily trades.

In developing the proposed rule change, FINRA recognized that the debt markets operate differently from the equity markets in some respects. Several of the differences were noted by the BMA in the release accompanying the Guiding Principles. For example, the debt markets feature a number of different asset classes (*e.g.,* corporate, high yield, mortgage backed and asset-backed) with unique characteristics. Within each class, there are typically many issues with similar terms, creating a fungibility of securities that doesn't exist to the same extent in the equity markets. As the BMA noted, these securities are often priced in relation to benchmark securities or interest rate measures, and their prices tend to depend more on interest rate movements and other macroeconomic factors than issuer fundamentals, although an issuer's ability to service its debt remains an important factor. As a result of these dynamics, it is less likely that a debt research report will influence the price of a subject company's debt securities than an equity report will impact the price of that company's equity securities. Also, while retail and institutional market participants invest in both equity and debt securities, relative to the equity markets, the debt markets are dominated by institutional market participants.

The nature of the debt markets has resulted in several different types of debt research. There is debt research that focuses on the creditworthiness of an issuer or its individual debt securities. Debt research reports on individual debt securities may look at the relative value of those securities compared to similar securities of other issuers. Some debt research compares debt asset classes or issues within those asset classes. And in light of the importance of interest rates on the price of debt securities, much of the research related to debt analyzes macroeconomic factors, monetary policy and economic events without reference to particular assets classes or securities. While much of this research is prepared by a dedicated research department, FINRA also understands that trading desks generate market color, analysis and trading ideas, sometimes known as ''trader commentary,'' geared towards institutional customers. FINRA understands from those participants that they value timely information from the trading desk and incorporate that information into their own analysis when making an investment decision about debt securities. As discussed in more detail below, the tiered structure of the proposed rule change and the definition of ''debt research report'' are intended to recognize these different forms of debt research and to accommodate the needs of the institutional market participants.

In a concept proposal published in *Regulatory Notice* 11–11,[16] FINRA first sought to gather additional information on differences between debt and equity research and the most appropriate rules to protect recipients of debt research. FINRA subsequently published two rule proposals in *Regulatory Notice* 12–09 and *Regulatory Notice* 12–42, each refining the previous proposal in response to comments.

The proposed rule change reflects feedback from those proposals and extensive discussions with industry participants. This proposal is narrowly tailored to achieve the regulatory objective to foster objectivity and transparency in debt research, particularly for retail investors, and to provide more reliable and useful information for investors to make investment decisions.

The proposed rule change adopts a substantial portion of the equity research rules and their basic framework for debt research distributed to retail investors. The equity research rules have proven to be effective in mitigating conflicts of interest in the publication and distribution of equity research.[17] Notwithstanding the differences in the operation of the equity and debt markets noted above, FINRA believes that many of the conflicts of interest in the publication and distribution of equity research are also present in debt research. Therefore, FINRA believes it reasonable generally to apply the same standards to address these conflicts for recipients of debt research reports. Moreover, FINRA believes that both investors and firms' compliance systems would benefit from consistency between those rules.

As noted above, the proposed rule change adopts a tiered approach that, in general, would provide retail debt research recipients with extensive protections similar to those provided to recipients of equity research under current and proposed FINRA rules, with modifications to reflect the different nature and trading of debt securities. Proposed FINRA Rule 2242 would differ from FINRA's current equity research rules in three key respects.[18] First, the proposed rule change would delineate the prohibited and permissible communications between debt research analysts and principal trading and sales and trading personnel. These restrictions take into account the need to ration a debt research analyst's resources among the multitude of debt securities, the limitations on price discovery in the debt markets, and the need for trading personnel to perform credit risk analyses with respect to

[15] *See e.g.,* SEC Finalizes ARS Settlements With Bank of America, RBC and Deutsch Bank, Litigation Release No. 21066, 2009 SEC LEXIS 1799 (June 3, 2009); SEC Finalizes ARS Settlement With Wachovia, Litigation Release No. 20885, 2009 SEC LEXIS 282 (February 5, 2009); SEC Finalizes Settlements With Citigroup and UBS, Litigation Release No. 20824, 2008 WL 5189517 (December 11, 2008).

[16] *See Regulatory Notice* 11–11 (March 2011), available at *http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p123296.pdf.*

[17] *See supra* notes 8 and 9.

[18] FINRA notes that the proposed rule change differs from the current equity rules in some other respects, including not incorporating the quiet periods and restrictions on pre-IPO share ownership. FINRA believes that the different nature and trading of debt securities, as discussed in detail above, does not necessitate the restrictions in the context of debt research. We further note that the quiet periods in the equity rules are mandated by Sarbanes-Oxley and that FINRA has proposed to reduce or eliminate those quiet periods, consistent with Sarbanes-Oxley, in the proposed equity rules.

current and prospective inventory. Second, the proposed rule change would exempt debt research provided solely to institutional investors from many of the structural protections and prescriptive disclosure requirements that apply to research reports distributed to retail investors. FINRA believes that this tiered approach is appropriate as it recognizes the needs of institutional market participants who rely on timely market color, trading strategies and other communications from the trading desk. Third, in addition to the exemption for limited investment banking activity found in the current and proposed equity research rules, the proposed rule change has a similar additional exemption for limited principal trading activity. The proposed rule change, in general, would exempt members that engage in limited investment banking activity or those with limited principal trading activity and revenues generated from debt trading from the review, supervision, budget, and compensation provisions in the proposed rule related to investment banking activity or principal trading activity, respectively.

Like the equity research rules, the proposed rule change is intended to foster objectivity and transparency in debt research and to provide investors with more reliable and useful information to make investment decisions. The proposed rule change is set forth in detail below.

Proposed FINRA Rule 2242

Definitions

The proposed rule change would adopt defined terms for purposes of proposed FINRA Rule 2242.[19] Most of the defined terms closely follow the defined terms for equity research in NASD Rule 2711, as amended by the equity research filing, with minor changes to reflect their application to debt research. The proposed definitions are set forth below.[20]

Under the proposed rule change, the term ''debt research analyst'' would mean an associated person who is primarily responsible for, and any associated person who reports directly or indirectly to a debt research analyst in connection with, the preparation of the substance of a debt research report, whether or not any such person has the job title of ''research analyst.'' [21] The term ''debt research analyst account'' would mean any account in which a debt research analyst or member of the debt research analyst's household has a financial interest, or over which such analyst has discretion or control; provided, however, it would not include an investment company registered under the Investment Company Act over which the debt research analyst or a member of the debt research analyst's household has discretion or control, provided that the debt research analyst or member of a debt research analyst's household has no financial interest in such investment company, other than a performance or management fee. The term also would not include a ''blind trust'' account that is controlled by a person other than the debt research analyst or member of the debt research analyst's household where neither the debt research analyst nor a member of the debt research analyst's household knows of the account's investments or investment transactions.[22]

The proposed rule change would define the term ''debt research report'' as any written (including electronic) communication that includes an analysis of a debt security or an issuer of a debt security and that provides information reasonably sufficient upon which to base an investment decision, excluding communications that solely constitute an equity research report as defined in proposed Rule 2241(a)(11).[23] The proposed definition and exceptions noted below would generally align with the definition of ''research report'' in NASD Rule 2711, while incorporating aspects of the Regulation AC definition of ''research report.'' [24]

Communications that constitute statutory prospectuses that are filed as part of the registration statement would not be included in the definition of a debt research report. In general, the term debt research report also would not include communications that are limited to the following, if they do not include an analysis of, or recommend or rate, individual debt securities or issuers:

- Discussions of broad-based indices;
- commentaries on economic, political or market conditions;
- commentaries on or analyses of particular types of debt securities or characteristics of debt securities;
- technical analyses concerning the demand and supply for a sector, index or industry based on trading volume and price;
- recommendations regarding increasing or decreasing holdings in particular industries or sectors or types of debt securities; or
- notices of ratings or price target changes, provided that the member simultaneously directs the readers of the notice to the most recent debt research report on the subject company that includes all current applicable disclosures required by the rule and that such debt research report does not contain materially misleading disclosure, including disclosures that are outdated or no longer applicable.

The term debt research report also, in general, would not include the following communications, even if they include an analysis of an individual debt security or issuer and information reasonably sufficient upon which to base an investment decision:

- Statistical summaries of multiple companies' financial data, including listings of current ratings that do not include an analysis of individual companies' data;
- an analysis prepared for a specific person or a limited group of fewer than 15 persons;
- periodic reports or other communications prepared for investment company shareholders or discretionary investment account clients that discuss individual debt securities in the context of a fund's or account's past performance or the basis for previously made discretionary investment decisions; or
- internal communications that are not given to current or prospective customers.

The proposed rule change would define the term ''debt security'' as any

[19] *See* proposed FINRA Rule 2242(a) for all of the proposed defined terms.

[20] The proposed rule change also adopts defined terms to implement the tiered structure of proposed FINRA Rule 2242, including the terms ''qualified institutional buyer'' or ''QIB,'' which is part of the description of an institutional investor for purposes of the Rule, and ''retail investor.'' A detailed discussion of these definitions and the tiered structure of the proposed rule is available at pages 89 through 95.

[21] *See* proposed FINRA Rule 2242(a)(1).

[22] *See* proposed FINRA Rule 2242(a)(2). The exclusion for a registered investment company over which a research analyst has discretion or control in the proposed definition mirrors proposed changes to the definition of ''research analyst account'' in the equity research rules.

[23] *See* proposed FINRA Rule 2242(a)(3). The proposed rule change does not incorporate a proposed exclusion from the equity research rule's definition of ''research report'' of communications concerning open-end registered investment companies that are not listed or traded on an exchange (''mutual funds'') because it is not necessary since mutual fund securities are equity securities under Section 3(a)(11) of the Exchange Act and therefore would not be captured by the proposed definition of ''debt research report'' in the proposed rule change.

[24] In aligning the proposed definition with the Regulation AC definition of research report, the proposed definition differs in minor respects from the definition of ''research report'' in NASD Rule 2711. For example, the proposed definition of ''debt research report'' would apply to a communication that includes an analysis of a debt security or an issuer of a debt security, while the definition of ''research report'' in NASD Rule 2711 applies to an analysis of equity securities of individual companies or industries.

''security'' as defined in Section 3(a)(10) of the Exchange Act, except for any ''equity security'' as defined in Section 3(a)(11) of the Exchange Act, any ''municipal security'' as defined in Section 3(a)(29) of the Exchange Act, any ''security-based swap'' as defined in Section 3(a)(68) of the Exchange Act, and any ''U.S. Treasury Security'' as defined in paragraph (p) of FINRA Rule 6710.[25] The proposed definition excludes municipal securities, in part because of FINRA's jurisdictional limitations with respect to such securities. The proposed definition excludes security-based swaps given the nascent and evolving nature of security-based swap regulation.[26] However, FINRA intends to monitor regulatory developments with respect to security-based swaps and may determine to later include such securities in the definition of debt security.

The proposed rule change would define the term ''debt trader'' as a person, with respect to transactions in debt securities, who is engaged in proprietary trading or the execution of transactions on an agency basis.[27]

The proposed rule change would provide that the term ''independent third-party debt research report'' means a third-party debt research report, in respect of which the person producing the report: (1) Has no affiliation or business or contractual relationship with the distributing member or that member's affiliates that is reasonably likely to inform the content of its research reports; and (2) makes content determinations without any input from the distributing member or that member's affiliates.[28]

The proposed rule change would define the term ''investment banking department'' as any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.[29] The term ''investment banking services'' would include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer.[30]

The proposed rule change would define the term ''member of a debt research analyst's household'' as any individual whose principal residence is the same as the debt research analyst's principal residence.[31] This term would not include an unrelated person who shares the same residence as a debt research analyst, provided that the debt research analyst and unrelated person are financially independent of one another.

The proposed rule change would define ''public appearance'' as any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before 15 or more persons or before one or more representatives of the media, a radio, television or print media interview, or the writing of a print media article, in which a debt research analyst makes a recommendation or offers an opinion concerning a debt security or an issuer of a debt security.[32] This term shall not include a password protected webcast, conference call or similar event with 15 or more existing customers, provided that all of the event participants previously received the most current debt research report or other documentation that contains the required applicable disclosures, and that the debt research analyst appearing at the event corrects and updates during the event any disclosures in the debt research report that are inaccurate, misleading or no longer applicable.

Under the proposed rule change the term ''qualified institutional buyer'' has the same meaning as under Rule 144A of the Securities Act.[33]

The proposed rule change would define ''research department'' as any department or division, whether or not identified as such, that is principally responsible for preparing the substance of a debt research report on behalf of a member.[34] The proposed rule change would define the term ''subject company'' as the company whose debt securities are the subject of a debt research report or a public appearance.[35] Finally, the proposed rule change would define the term ''third-party debt research report'' as a debt research report that is produced by a person or entity other than the member.[36]

Identifying and Managing Conflicts of Interest

Similar to the proposed equity research rules, the proposed rule change contains an overarching provision that would require members to establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to the preparation, content and distribution of debt research reports, public appearances by debt research analysts, and the interaction between debt research analysts and persons outside of the research department, including investment banking, sales and trading and principal trading personnel, subject companies and customers.[37] The proposed rule change then sets forth minimum requirements for those written policies and procedures. These provisions set out the fundamental obligation for a member to establish and maintain a system to identify and mitigate conflicts to foster integrity and fairness in its debt research products and services. The provisions are also intended to require firms to be more proactive in identifying and managing conflicts as new research products, affiliations and distribution methods emerge. This approach allows for some flexibility to manage identified conflicts, with some specified prohibitions and restrictions where

[25] *See* proposed FINRA Rule 2242(a)(4).

[26] The Commission's rulemaking in the area of security-based swaps, pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''), is ongoing. In June 2011, the Commission proposed rules addressing policies and procedures with respect to research and analysis for security-based swaps as part of its proposal governing business conduct standards for security-based swap dealers and major security-based swap participants. *See* Securities Exchange Act Release No. 64766 (June 29, 2011), 76 FR 42396 (July 18, 2011) (Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants). In June 2012, the Commission staff sought comment on a statement of general policy for the sequencing of compliance dates for rules applicable to security-based swaps. *See* Securities Exchange Act Release No. 67177 (June 11, 2012), 77 FR 35625 (June 14, 2012) (Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act). In May 2013, the Commission re-opened comment on the statement of general policy and on the outstanding rulemaking releases. The comment period was reopened until July 22, 2013. *See* Securities Exchange Act Release No. 69491 (May 1, 2013), 78 FR 30800 (May 23, 2013) (Reopening of Comment Periods for Certain Proposed Rulemaking Releases and Policy Statements Applicable to Security-Based Swaps).

[27] *See* proposed FINRA Rule 2242(a)(5).

[28] *See* proposed FINRA Rule 2242(a)(6).

[29] *See* proposed FINRA Rule 2242(a)(8).

[30] *See* proposed FINRA Rule 2242(a)(9). The current definition in NASD Rule 2711 includes, without limitation, many common types of investment banking services. The proposed rule change and the equity research filing propose to add the language ''or otherwise acting in furtherance of'' either a public or private offering to further emphasize that the term ''investment banking services'' is meant to be construed broadly.

[31] *See* proposed FINRA Rule 2242(a)(10).

[32] *See* proposed FINRA Rule 2242(a)(11).

[33] *See* proposed FINRA Rule 2242(a)(12).

[34] *See* proposed FINRA Rule 2242(a)(14).

[35] *See* proposed FINRA Rule 2242(a)(15).

[36] *See* proposed FINRA Rule 2242(a)(16).

[37] *See* proposed FINRA Rule 2242(b)(1).

disclosure does not adequately mitigate them. Most of the minimum requirements have been experience tested and found effective in the equity research rules.

In general, the proposed rule change adopts, with slight modifications, the structural safeguards that the Joint Report found effective to promote analyst independence and objective research in the equity research rules, but in the form of mandated policies and procedures with some baseline proscriptions.[38] FINRA believes this approach will impose less cost than a pure prescriptive approach by requiring members to adopt a compliance system that aligns with their particular structure, business model and philosophy. FINRA notes that the approach is consistent with FINRA's general supervision rule, which similarly provides firms flexibility to establish and maintain supervisory programs best suited to their business models, reasonably designed to achieve compliance with applicable federal securities law and regulations and FINRA rules.[39] The proposed rule change introduces a distinction between sales and trading personnel—institutional sales representatives and sales traders—and persons engaged in principal trading activities, where the conflicts addressed by the proposal are of most concern.

Specifically, members must implement written policies and procedures reasonably designed to promote objective and reliable debt research that reflects the truly held opinions of debt research analysts and to prevent the use of debt research reports or debt research analysts to manipulate or condition the market or favor the interests of the firm or current or prospective customers or class of customers.[40] Such policies and procedures must, at a minimum, address the following.

Prepublication Review

The required policies and procedures must, at a minimum, be reasonably designed to prohibit prepublication review, clearance or approval of debt research by persons involved in investment banking, sales and trading or principal trading, and either restrict or prohibit such review, clearance and approval by other non-research personnel other than legal and compliance.[41] The policies and procedures also must prohibit prepublication review of a debt research report by a subject company, other than for verification of facts.[42] Similar provisions in the equity rules have proven effective to ensure independence of the research department, and FINRA believes that the objectivity of debt research could be compromised to the extent conflicted persons, *e.g.,* those involved in investment banking and trading activities, have an opportunity to review and comment on the content of a debt research report. The proposed rule change would allow limited review by the subject company because it is sometimes in a unique position to verify facts; otherwise, FINRA believes research analysts should confirm that purported facts are based on other reliable information. The proposed rule change allows sections of a draft debt research report to be provided to non-investment banking personnel, non-principal trading personnel, non-sales and trading personnel or to the subject company for factual review, so long as: (a) The sections of the draft debt research report submitted do not contain the research summary, recommendation or rating; (b) a complete draft of the debt research report is provided to legal or compliance personnel before sections of the report are submitted to non-investment banking personnel, non-principal trading personnel, non-sales and trading personnel or the subject company; and (c) if, after submitting sections of the draft debt research report to non-investment banking personnel, non-principal trading personnel, non-sales and trading personnel or the subject company, the research department intends to change the proposed rating or recommendation, it must first provide written justification to, and receive written authorization from, legal or compliance personnel for the change. The member must retain copies of any draft and the final version of such debt research report for three years after publication.[43]

Coverage Decisions

With respect to coverage decisions, a member's written policies and procedures must restrict or limit input by investment banking, sales and trading and principal trading personnel to ensure that research management independently makes all final decisions regarding the research coverage plan.[44] However, as discussed below, the provision does not preclude personnel from these or any other department from conveying customer interests and coverage needs, so long as final decisions regarding the coverage plan are made by research management. FINRA believes this provision strikes an appropriate balance by allowing input of customer interests in determining the allocation of limited research resources to a wide range of debt securities, while preserving the final decisions for research management.

Solicitation and Marketing of Investment Banking Transactions

A member's written policies and procedures also must, at a minimum, restrict or limit activities by debt research analysts that can reasonably be expected to compromise their objectivity.[45] This includes prohibiting participation in pitches and other solicitations of investment banking

[38] Among the structural safeguards, FINRA believes separation between investment banking and debt research, and between sales and trading and principal trading and debt research, is of particular importance. As such, while the proposed rule change does not mandate physical separation between the debt research department and the investment banking, sales and trading and principal trading departments (or other person who might seek to influence research analysts), FINRA would expect such physical separation except in extraordinary circumstances where the costs are unreasonable due to a firm's size and resource limitations. In those instances, a firm must implement written policies and procedures, including information barriers, to effectively achieve and monitor separation between debt research and investment banking, sales and trading and principal trading personnel.

[39] *See* NASD Rule 3010, recently adopted with changes as a consolidated FINRA rule by Securities Exchange Act Release No. 71179 (December 23, 2013), 78 FR 79542 (December 30, 2013) (Order Approving File No. SR–FINRA–2013–025). The consolidated rule becomes effective December 1, 2014. FINRA notes that the policies and procedures approach is consistent with the effective practices highlighted by FINRA in its *Report on Conflicts of Interest,* among them that firms should implement a robust conflicts management framework that includes structures, processes and policies to identify and manage conflicts of interest. *See Report on Conflicts of Interest, FINRA* (October 2013) at 5, available at *http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p359971.pdf.* The proposed changes also help to harmonize with approaches in international jurisdictions, such as the rules of the Financial Conduct Authority in the United Kingdom. *See* COBS 12.2.5 R, The Financial Conduct Authority Handbook, available at *http://fshandbook.info/FS/html/handbook/COBS/12/2.*

[40] *See* proposed FINRA Rule 2242(b)(2).

[41] *See* proposed FINRA Rule 2242(b)(2)(A) and (B). Thus, a firm must specify in its policies and procedures the circumstances, if any, where prepublication review would be permitted as necessary and appropriate pursuant to proposed FINRA Rule 2242(b)(2)(B); for example, where non-research personnel are best situated to verify select facts or where administrative personnel review for formatting. FINRA notes that members still would be subject to the overarching requirement to have policies and procedures reasonably designed to effectively manage conflicts of interest between research analysts and those outside of the research department. *See also* proposed FINRA Rule 2242.05 (Submission of Sections of a Draft Research Report for Factual Review).

[42] *See* proposed FINRA Rule 2242(b)(2)(N).

[43] *See* proposed FINRA Rule 2242.05 (Submission of Sections of a Draft Research Report for Factual Review).

[44] *See* proposed FINRA Rule 2242(b)(2)(C).

[45] *See* proposed FINRA Rule 2242(b)(2)(L).

services transactions and road shows and other marketing on behalf of issuers related to such transactions. The proposed rule change adopts Supplementary Material that incorporates an existing FINRA interpretation for the equity research rules that prohibits in pitch materials any information about a member's debt research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable debt research coverage.[46] By way of example, the Supplementary Material explains that FINRA would consider the publication in a pitch book or related materials of an analyst's industry ranking to imply the potential outcome of future research because of the manner in which such rankings are compiled. The Supplementary Material further notes that a member would be permitted to include in the pitch materials the fact of coverage and the name of the debt research analyst, since that information alone does not imply favorable coverage. FINRA notes that, consistent with existing guidance on the equity research rules, debt research analysts may listen to or view a live webcast of a transaction-related road show or other widely attended presentation by investment banking to investors or the sales force from a remote location, or another room if they are in the same location.[47]

The proposed rule change also would prohibit investment banking personnel from directing debt research analysts to engage in sales or marketing efforts related to an investment banking services transaction or any communication with a current or prospective customer about an investment banking services transaction.[48] In addition, the proposed rule change adopts Supplementary Material to provide that, consistent with this requirement, no debt research analyst may engage in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction.[49] FINRA believes that the presence of investment bankers or issuer management could compromise a debt research analyst's candor when talking to a current or prospective customer about a deal.

FINRA believes that the role of any research analyst, debt or equity, is to provide unbiased analysis of issuers and their securities for the benefit of investors, not to help win business for their firms or market transactions on behalf of issuers. FINRA believes the prohibitions in these provisions, which have been a cornerstone of the equity research rules, are equally important to mitigate significant conflicts between investment banking and debt research analysts.

Supervision

A member's written policies and procedures must limit the supervision of debt research analysts to persons not engaged in investment banking, sales and trading or principal trading activities.[50] In addition, they further must establish information barriers or other institutional safeguards to ensure that debt research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services, principal trading or sales and trading activities or others who might be biased in their judgment or supervision.[51]

The requirement for information barriers or other institutional safeguards to insulate research analysts from pressure is taken from Sarbanes-Oxley, which applies only to research reports on equity securities. FINRA believes this provision has equal application to debt research reports and that firms must not allow supervision or influence by anyone in the firm outside of the research department whose interests may be at odds with producing objective research. FINRA believes that independence for debt research analysts requires effective separation from those whose economic interests may be in conflict with the content of debt research. The proposed rule change furthers that separation by prohibiting oversight of debt research analysts by those involved in investment banking or trading activities.

Budget and Compensation

A member's written policies and procedures also must limit the determination of a firm's debt research department budget to senior management, excluding senior management engaged in investment banking or principal trading activities, and without regard to specific revenues or results derived from investment banking.[52] However, the proposed rule change would expressly permit all persons to provide input to senior management regarding the demand for and quality of debt research, including product trends and customer interests. It further would allow consideration by senior management of a firm's overall revenues and results in determining the debt research budget and allocation of expenses. FINRA believes the budget provisions strike a reasonable balance by prohibiting final budget determinations by those persons most conflicted, but allowing input from all persons and consideration of revenues other than investment banking to best allocate scarce budget resources.

With respect to compensation determinations, a member's written policies and procedures must prohibit compensation based on specific investment banking services or trading transactions or contributions to a firm's investment banking or principal trading activities and prohibit investment banking and principal trading personnel from input into the compensation of debt research analysts.[53] Further, the firm's written policies and procedures must require that the compensation of a debt research analyst who is primarily responsible for the substance of a research report be reviewed and approved at least annually by a committee that reports to a member's board of directors or, if the member has no board of directors, a senior executive officer of the member.[54] This committee may not have representation from investment banking personnel or persons engaged in principal trading activities and must consider the following factors when reviewing a debt research analyst's compensation, if applicable: The debt research analyst's individual performance, including the analyst's productivity and the quality of the debt research analyst's research; and the overall ratings received from customers and peers (independent of the member's investment banking department and persons engaged in principal trading activities) and other independent ratings services.

Neither investment banking personnel nor persons engaged in principal trading activities may give input with respect to the compensation determination for debt research analysts. However, sales and trading personnel may give input to

[46] *See* proposed FINRA Rule 2242.01 (Efforts to Solicit Investment Banking Business).

[47] *See* NASD *Notice to Members* 07–04 (January 2007) and NYSE *Information Memo* 07–11 (January 2007).

[48] *See* proposed FINRA Rule 2242(b)(2)(M).

[49] *See* proposed FINRA Rule 2242.02(a) (Restrictions on Communications with Customers and Internal Personnel).

[50] *See* proposed FINRA Rule 2242(b)(2)(D). The provision is substantively the same as current NASD Rule 2711(b)(1), a core structural separation requirement in the equity research rules that FINRA believes is essential to safeguarding analyst objectivity.

[51] *See* proposed FINRA Rule 2242(b)(2)(H).

[52] *See* proposed FINRA Rule 2242(b)(2)(E).

[53] *See* proposed FINRA Rule 2242(b)(2)(D) and (F).

[54] *See* proposed FINRA Rule 2242(b)(2)(G).

debt research management as part of the evaluation process in order to convey customer feedback, provided that final compensation determinations are made by research management, subject to review and approval by the compensation committee.[55] The committee, which may not have representation from investment banking or persons engaged in principal trading activities, must document the basis for each debt research analyst's compensation, including any input from sales and trading personnel.

The compensation provisions are similar to those that have proven effective in the equity research rules. However, the separation extends to not only investment banking, but also those engaged in principal trading activities, because such persons have the most pronounced conflict with respect to debt research. FINRA believes that the compensation determination is a key source of influence on the content of debt research reports and therefore it is important to require both separation from those who might influence research analysts and consideration of the quality of the research produced in making that determination.

Personal Trading Restrictions

Under the proposed rule change, a member's written policies and procedures must restrict or limit trading by a ''debt research analyst account'' in securities, derivatives and funds whose performance is materially dependent upon the performance of securities covered by the debt research analyst.[56] The procedures must ensure that those accounts, supervisors of debt research analysts and associated persons with the ability to influence the content of debt research reports do not benefit in their trading from knowledge of the content or timing of debt research reports before the intended recipients of such research have had a reasonable opportunity to act on the information in the report.[57] Furthermore, the procedures must generally prohibit a debt research analyst account from purchasing or selling any security or any option or derivative of such security in a manner inconsistent with the debt research analyst's most recently published recommendation, except that they may define circumstances of financial hardship (*e.g.,* unanticipated significant change in the personal financial circumstances of the beneficial owner of the research analyst account) in which the firm will permit trading contrary to that recommendation. In determining whether a particular trade is contrary to an existing recommendation, firms may take into account the context of a given trade, including the extent of coverage of the subject security. While the proposed rule change does not include a recordkeeping requirement, FINRA expects members to evidence compliance with their policies and procedures and retain any related documentation in accordance with FINRA Rule 4511.

The proposed rule change includes Supplementary Material .10, which provides that FINRA would not consider a research analyst account to have traded in a manner inconsistent with a research analyst's recommendation where a member has instituted a policy that prohibits any research analyst from holding securities, or options on or derivatives of such securities, of the companies in the research analyst's coverage universe, provided that the member establishes a reasonable plan to liquidate such holdings consistent with the principles in paragraph (b)(2)(J)(i) and such plan is approved by the member's legal or compliance department.[58] This provision is intended to provide a mechanism by which a firm's analysts can divest their holdings to comply with a more restrictive personal trading policy without violating the trading against recommendation provision in circumstances where an analyst has, for example, a ''buy'' rating on a subject company or debt security.

FINRA believes these provisions will protect investors by prohibiting research analysts and those with an ability to influence the content of research reports, such as supervisors, from trading ahead of their customers based on knowledge that may move the market once made public. FINRA further believes the provisions, in general, will promote objective research by requiring consistency between personal trading by research analysts and recommendations to customers.

Retaliation and Promises of Favorable Research

A member's written policies and procedures must prohibit direct or indirect retaliation or threat of retaliation against debt research analysts by any employee of the firm for publishing research or making a public appearance that may adversely affect the member's current or prospective business interests.[59] FINRA believes it is essential to a research analyst's independence and objectivity that no person employed by the member that is in a position to retaliate or threaten to retaliate should be permitted to do so based on the content of a research report or public appearance. The policies and procedures also must prohibit explicit or implicit promises of favorable debt research, specific research content or a specific rating or recommendation as inducement for the receipt of business or compensation.[60] This provision is also key to preserving the integrity of debt research and the independence of debt research analysts, who otherwise may feel pressure to tailor the content of debt research to the business interests of the firm.

Joint Due Diligence With Investment Banking Personnel

The proposed rule change establishes a proscription with respect to joint due diligence activities—*i.e.,* due diligence by the debt research analyst in the presence of investment banking department personnel—during a specified time period. Specifically, the proposed rule change states that FINRA interprets the overarching principle requiring members to, among other things, establish, maintain and enforce written policies and procedures that address the interaction between debt research analysts, banking and subject companies,[61] to prohibit the performance of joint due diligence prior to the selection of underwriters for the investment banking services transaction.[62] FINRA understands that in some instances, due diligence activities take place even before an issuer has awarded the mandate to manage or co-manage an offering. There is heightened risk in those circumstances that investment bankers may pressure analysts to produce favorable research that may bolster the firm's bid to become an underwriter for the offering. Once the mandate has been awarded, FINRA believes joint due diligence may take place in accordance

[55] *See* proposed FINRA Rule 2242(b)(2)(D) and (G).

[56] *See* proposed FINRA Rule 2242(b)(2)(J).

[57] *See* proposed FINRA Rule 2242.07 (Ability to Influence the Content of a Research Report) would provide that for the purposes of the rule, an associated person with the ability to influence the content of a debt research report is an associated person who, in the ordinary course of that person's duties, has the authority to review the debt research report and change that debt research report prior to publication or distribution.

[58] *See* proposed FINRA Rule 2242.10.

[59] *See* proposed FINRA Rule 2242(b)(2)(I). This provision is not intended to limit a member's authority to discipline or terminate a debt research analyst, in accordance with the member's written policies and procedures, for any cause other than writing an adverse, negative, or otherwise unfavorable research report or for making similar comments during a public appearance.

[60] *See* proposed FINRA Rule 2242(b)(2)(K).

[61] *See* proposed FINRA Rule 2242(b)(1)(C).

[62] *See* proposed FINRA Rule 2242.09 (Joint Due Diligence).

with appropriate written policies and procedures to guard against interactions to further the interests of the investment banking department. At that time, FINRA believes that the efficiencies of joint due diligence outweigh the risk of pressure on debt research analysts by investment banking.

Communications Between Debt Research Analysts and Trading Personnel

The proposed rule change delineates the prohibited and permissible interactions between debt research analysts and sales and trading and principal trading personnel. The proposed rule change would require members to establish, maintain and enforce written policies and procedures reasonably designed to prohibit sales and trading and principal trading personnel from attempting to influence a debt research analyst's opinions or views for the purpose of benefiting the trading position of the firm, a customer or a class of customers.[63] It would further prohibit debt research analysts from identifying or recommending specific potential trading transactions to sales and trading or principal trading personnel that are inconsistent with such debt research analyst's currently published debt research reports or from disclosing the timing of, or material investment conclusions in, a pending debt research report.[64] The communications prohibited under the proposed rule change are intended to prevent undue influence on debt research analysts to generate or conform research to a firm's proprietary trading interests or those of particular customers. FINRA believes that these prohibitions are necessary to mitigate a significant conflict between firms and their customers.

However, FINRA understands that certain communications between debt research analysts and trading desk personnel are essential to the discharge of their functions, *e.g.,* debt research analysts need to obtain from trading personnel information relevant to a valuation analysis and trading personnel need to obtain from debt research analysts information regarding the creditworthiness of an issuer. These departments also must communicate regarding coverage decisions, given the large number of debt instruments.

Therefore, the proposed rule change would permit sales and trading and principal trading personnel to communicate customers' interests to a debt research analyst, so long as the debt research analyst does not respond by publishing debt research for the purpose of benefiting the trading position of the firm, a customer or a class of customers.[65] In addition, debt research analysts may provide customized analysis, recommendations or trade ideas to sales and trading and principal trading personnel and customers, provided that any such communications are not inconsistent with the analyst's currently published or pending debt research, and that any subsequently published debt research is not for the purpose of benefiting the trading position of the firm, a customer or a class of customers.[66]

The proposed rule change also would permit sales and trading and principal trading personnel to seek the views of debt research analysts regarding the creditworthiness of the issuer of a debt security and other information regarding an issuer of a debt security that is reasonably related to the price or performance of the debt security, so long as, with respect to any covered issuer, such information is consistent with the debt research analyst's published debt research report and consistent in nature with the types of communications that a debt research analyst might have with customers. In determining what is consistent with the debt research analyst's published debt research, a member may consider the context, including that the investment objectives or time horizons being discussed differ from those underlying the debt research analyst's published views.[67] Finally, debt research analysts may seek information from sales and trading and principal trading personnel regarding a particular debt instrument, current prices, spreads, liquidity and similar market information relevant to the debt research analyst's valuation of a particular debt security.[68]

The proposed rule change clarifies that communications between debt research analysts and sales and trading or principal trading personnel that are not related to sales and trading, principal trading or debt research activities may take place without restriction, unless otherwise prohibited.[69]

Restrictions on Communications With Customers and Internal Sales Personnel

The proposed rule change would apply standards to communications with customers and internal sales personnel. Any written or oral communication by a debt research analyst with a current or prospective customer or internal personnel related to an investment banking services transaction must be fair, balanced and not misleading, taking into consideration the overall context in which the communication is made.[70]

Consistent with the prohibition on investment banking department personnel directly or indirectly directing a debt research analyst to engage in sales or marketing efforts related to an investment banking services transaction or directing a debt research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction, no debt research analyst may engage in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction. These provisions are intended to allow debt research analysts to educate investors and internal sales personnel about an investment banking transaction in fair and balanced manner, in a setting that promotes candor by the debt research analyst.[71]

Content and Disclosure in Debt Research Reports

The proposed rule change would, in general, adopt the disclosures in the equity research rule for debt research, with modifications to reflect the different characteristics of the debt market. As discussed above, the equity research rules are designed to provide investors with useful information on which to base their investment decisions. FINRA believes retail debt investors would benefit from similar disclosures applied to debt research reports. In addition, FINRA understands from industry participants that members have systems in place to track the disclosures required under the equity

[63] *See* proposed FINRA Rule 2242.03(a)(1) (Information Barriers between Research Analysts and Trading Desk Personnel).

[64] *See* proposed FINRA Rule 2242.03(a)(2) (Information Barriers between Research Analysts and Trading Desk Personnel).

[65] *See* proposed FINRA Rule 2242.03(b)(1) (Information Barriers between Research Analysts and Trading Desk Personnel).

[66] *See* proposed FINRA Rule 2242.03(b)(2) (Information Barriers between Research Analysts and Trading Desk Personnel).

[67] *See* proposed FINRA Rule 2242.03(b)(3) (Information Barriers between Research Analysts and Trading Desk Personnel).

[68] *See* proposed FINRA Rule 2242.03(b)(4) (Information Barriers between Research Analysts and Trading Desk Personnel).

[69] *See* proposed FINRA Rule 2242.03(c) (Information Barriers between Research Analysts and Trading Desk Personnel).

[70] *See* proposed FINRA Rule 2242.02(b) (Restrictions on Communications with Customers and Internal Personnel).

[71] *See* proposed FINRA Rule 2242.02(a) (Restrictions on Communications with Customers and Internal Personnel).

research rules that can be leveraged to meet the debt research disclosure requirements in the proposed rule change.

The proposed rule change would require members to establish, maintain and enforce written policies and procedures reasonably designed to ensure that purported facts in their debt research reports are based on reliable information.[72] FINRA has included this provision because it believes members should have policies and procedures to foster verification of facts and trustworthy research on which investors may rely. In addition, the policies and procedures must be reasonably designed to ensure that any recommendation or rating has a reasonable basis and is accompanied by a clear explanation of any valuation method used and a fair presentation of the risks that may impede achievement of the recommendation or rating.[73] While there is no obligation to employ a rating system under the proposed rule, members that choose to employ a rating system must clearly define in each debt research report the meaning of each rating in the system, including the time horizon and any benchmarks on which a rating is based. In addition, the definition of each rating must be consistent with its plain meaning.[74]

Consistent with the equity rules, irrespective of the rating system a member employs, a member must disclose, in each debt research report that includes a rating, the percentage of all debt securities rated by the member to which the member would assign a ''buy,'' ''hold'' or ''sell'' rating.[75] In addition, a member must disclose in each debt research report the percentage of subject companies within each of the ''buy,'' ''hold'' and ''sell'' categories for which the member has provided investment banking services within the previous 12 months.[76] All such information must be current as of the end of the most recent calendar quarter or the second most recent calendar quarter if the publication date of the debt research report is less than 15 calendar days after the most recent calendar quarter.[77]

If a debt research report contains a rating for a subject company's debt security and the member has assigned a rating to such debt security for at least one year, the debt research report must show each date on which a member has assigned a rating to the debt security and the rating assigned on such date. This information would be required for the period that the member has assigned any rating to the debt security or for a three-year period, whichever is shorter.[78] Unlike the equity research rules, the proposed rule change does not require those ratings to be plotted on a price chart because of limits on price transparency, including daily closing price information, with respect to many debt securities.

The proposed rule change would require[79] a member to disclose in any debt research report at the time of publication or distribution of the report:

- If the debt research analyst or a member of the debt research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, any option, right, warrant, future, long or short position), and the nature of such interest;
- if the debt research analyst has received compensation based upon (among other factors) the member's investment banking, sales and trading or principal trading revenues;
- if the member or any of its affiliates: Managed or co-managed a public offering of securities for the subject company in the past 12 months; received compensation for investment banking services from the subject company in the past 12 months; or expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months;
- if, as of the end of the month immediately preceding the date of publication or distribution of a debt research report (or the end of the second most recent month if the publication date is less than 30 calendar days after the end of the most recent month), the member or its affiliates have received from the subject company any compensation for products or services other than investment banking services in the previous 12 months;[80]
- if the subject company is, or over the 12-month period preceding the date of publication or distribution of the debt research report has been, a client of the member, and if so, the types of services provided to the issuer. Such services, if applicable, shall be identified as either investment banking services, non-investment banking securities-related services or non-securities services;
- if the member trades or may trade as principal in the debt securities (or in related derivatives) that are the subject of the debt research report;[81]
- if the debt research analyst received any compensation from the subject company in the previous 12 months; and
- any other material conflict of interest of the debt research analyst or member that the debt research analyst or an associated person of the member with the ability to influence the content of a debt research report knows or has reason to know at the time of the publication or distribution of a debt research report.[82]

The proposed rule change would incorporate a proposed amendment to the corresponding provision in the equity research rules that expands the existing ''catch all'' disclosure to require disclosure of material conflicts known not only by the research analyst, but also by any ''associated person of the member with the ability to influence the content of a research report.'' In so doing, the proposed rule change would capture material conflicts of interest that, for example, only a supervisor or the head of research may be aware of. The ''reason to know'' standard would not impose a duty of inquiry on the debt research analyst or others who can influence the content of a debt research report. Rather, it would cover disclosure of those conflicts that should reasonably be discovered by those persons in the ordinary course of discharging their functions.

The proposed equity research rules include an additional disclosure if the member or its affiliates maintain a significant financial interest in the debt or equity of the subject company, including, at a minimum, if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. FINRA did not include this provision in the proposed debt research rule because, unlike equity holdings, firms do not typically have systems to track ownership of debt securities. Moreover, the number and complexity of bonds, together with the fact that a firm may be both long and short different bonds of the same issuer, make it difficult to have real-time disclosure of a firm's credit exposure. Therefore, the proposed rule change only requires disclosure of firm

[72] *See* proposed FINRA Rule 2242(c)(1)(A).

[73] *See* proposed FINRA Rule 2242(c)(1)(B).

[74] *See* proposed FINRA Rule 2242(c)(2).

[75] *See* proposed FINRA Rule 2242(c)(2)(A).

[76] *See* proposed FINRA Rule 2242(c)(2)(B).

[77] *See* proposed FINRA Rule 2242(c)(2)(C).

[78] *See* proposed FINRA Rule 2242(c)(3).

[79] *See* proposed FINRA Rule 2242(c)(4).

[80] *See also* discussion of proposed FINRA Rule 2242.04 (Disclosure of Compensation Received by Affiliates) below.

[81] This provision is analogous to the equity research rule requirement to disclose market making activity.

[82] For example, FINRA would consider it to be a material conflict of interest if the debt research analyst or a member of the debt research analyst's household serves as an officer, director or advisory board member of the subject company.

ownership of debt securities in research reports or a public appearance to the extent those holdings constitute a material conflict of interest.[83] While the ownership of the equity securities of the subject company of a debt research report can constitute a conflict of interest for the member that publishes or distributes the research report, FINRA does not believe the conflict requires routine disclosure, even above some threshold of ownership. This is because the impact of a debt research report on the market for an equity security is more attenuated than that of an equity research report. In those circumstances where the impact is heightened—*e.g.,* a debt research report asserting that a subject company may not be able to meet its debt service—disclosure could be captured by the material conflict of interest provision.

The proposed rule change adopts from the equity research rules the general exception for disclosure that would reveal material non-public information regarding specific potential future investment banking transactions of the subject company.[84] Similar to the equity research rules, the proposed rule change would require that disclosures be presented on the front page of debt research reports or the front page must refer to the page on which the disclosures are found. Electronic debt research reports, however, may provide a hyperlink directly to the required disclosures. All disclosures and references to disclosures required by the proposed rule must be clear, comprehensive and prominent.[85]

Like the equity research rule, the proposed rule change would permit a member that distributes a debt research report covering six or more companies (compendium report) to direct the reader in a clear manner to the applicable disclosures. Electronic compendium reports must include a hyperlink to the required disclosures. Paper-based compendium reports must provide either a toll-free number or a postal address to request the required disclosures and also may include a web address of the member where the disclosures can be found.[86]

Disclosure of Compensation Received by Affiliates

The proposed rule change would provide that a member may satisfy the disclosure requirement with respect to receipt of non-investment banking services compensation by an affiliate by implementing written policies and procedures reasonably designed to prevent the debt research analyst and associated persons of the member with the ability to influence the content of debt research reports from directly or indirectly receiving information from the affiliate as to whether the affiliate received such compensation.[87] In addition, a member may satisfy the disclosure requirement with respect to the receipt of investment banking compensation from a foreign sovereign by a non-U.S. affiliate of the member by implementing written policies and procedures reasonably designed to prevent the debt research analyst and associated persons of the member with the ability to influence the content of debt research reports from directly or indirectly receiving information from the non-U.S. affiliate as to whether such non-U.S. affiliate received or expects to receive such compensation from the foreign sovereign. However, a member must disclose receipt of compensation by its affiliates from the subject company (including any foreign sovereign) in the past 12 months when the debt research analyst or an associated person with the ability to influence the content of a debt research report has actual knowledge that an affiliate received such compensation during that time period.

Disclosure in Public Appearances

The proposed rule change closely parallels the equity research rules with respect to disclosure in public appearances. Under the proposed rule, a debt research analyst must disclose in public appearances:[88]

- If the debt research analyst or a member of the debt research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), and the nature of such interest;
- if, to the extent the debt research analyst knows or has reason to know, the member or any affiliate received any compensation from the subject company in the previous 12 months;
- if the debt research analyst received any compensation from the subject company in the previous 12 months;
- if, to the extent the debt research analyst knows or has reason to know, the subject company currently is, or during the 12-month period preceding the date of publication or distribution of the debt research report, was, a client of the member. In such cases, the debt research analyst also must disclose the types of services provided to the subject company, if known by the debt research analyst; or
- any other material conflict of interest of the debt research analyst or member that the debt research analyst knows or has reason to know at the time of the public appearance.

However, a member or debt research analyst will not be required to make any such disclosure to the extent it would reveal material non-public information regarding specific potential future investment banking transactions of the subject company.[89] Unlike in debt research reports, the ''catch all'' disclosure requirement in public appearances applies only to a conflict of interest of the debt research analyst or member that the analyst knows or has reason to know at the time of the public appearance and does not extend to conflicts that an associated person with the ability to influence the content of a research report or public appearance knows or has reason to know. FINRA understands that supervisors typically do not have the opportunity to review and insist on changes to public appearances, many of which are extemporaneous in nature.

The proposed rule change would require members to maintain records of public appearances by debt research analysts sufficient to demonstrate compliance by those debt research analysts with the applicable disclosure requirements for public appearances. Such records must be maintained for at least three years from the date of the public appearance.[90]

Disclosure Required by Other Provisions

With respect to both research reports and public appearances, the proposed rule change would require that, in addition to the disclosures required under the proposed rule, members and debt research analysts must comply with all applicable disclosure provisions of FINRA Rule 2210 (Communications with the Public) and the federal securities laws.[91]

Distribution of Member Research Reports

The proposed rule change, like the proposed amendments to the equity research rules, codifies an existing interpretation of FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade) and provides

[83] *See* proposed FINRA Rules 2242(c)(4)(H) and (d)(1)(E).

[84] *See* proposed FINRA Rule 2242(c)(5).

[85] *See* proposed FINRA Rule 2242(c)(6).

[86] *See* proposed FINRA Rule 2242(c)(7).

[87] *See* proposed FINRA Rule 2242.04 (Disclosure of Compensation Received by Affiliates).

[88] *See* proposed FINRA Rule 2242(d)(1).

[89] *See* proposed FINRA Rule 2242(d)(2).

[90] *See* proposed FINRA Rule 2242(d)(3).

[91] *See* proposed FINRA Rule 2242(e).

additional guidance regarding selective—or tiered—dissemination of a firm's debt research reports. The proposed rule change requires firms to establish, maintain and enforce written policies and procedures reasonably designed to ensure that a debt research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that the member has previously determined are entitled to receive the debt research report.[92] The proposed rule change includes further guidance to explain that firms may provide different debt research products and services to different classes of customers, provided the products are not differentiated based on the timing of receipt of potentially market moving information and the firm discloses its research dissemination practices to all customers that receive a research product.[93]

A member, for example, may offer one debt research product for those with a long-term investment horizon (''investor research'') and a different debt research product for those customers with a short-term investment horizon (''trading research''). These products may lead to different recommendations or ratings, provided that each is consistent with the meaning of the member's ratings system for each respective product. However, a member may not differentiate a debt research product based on the timing of receipt of a recommendation, rating or other potentially market moving information, nor may a member label a debt research product with substantially the same content as a different debt research product as a means to allow certain customers to trade in advance of other customers.

In addition, a member that provides different debt research products and services for certain customers must inform its other customers that its alternative debt research products and services may reach different conclusions or recommendations that could impact the price of the debt security.[94] Thus, for example, a member that offers trading research must inform its investment research customers that its trading research product may contain different recommendations or ratings that could result in short-term price movements contrary to the recommendation in its investment research. FINRA understands, however, that customers may actually receive at different times research reports originally made available at the same time because of the mode of delivery elected by the customer eligible to receive such research services (*e.g.,* in paper form versus electronic). However, members may not design or implement a distribution system intended to give a timing advantage to some customers over others. FINRA will read with interest comments as to whether a member should be required to disclose to its other customers when an alternative research product or service does, in fact, contain a recommendation contrary to the research product or service that those customers receive.

Distribution of Third-Party Debt Research Reports

FINRA believes that the supervisory review and disclosure obligations applicable to the distribution of third-party equity research should similarly apply to third-party retail debt research. Moreover, the proposed rule change would incorporate the current standards for third-party equity research, including the distinction between independent and non-independent third-party research with respect to the review and disclosure requirements. In addition, the proposed rule change adopts an expanded requirement in the proposed equity research rules that requires members to disclose any other material conflict of interest that can reasonably be expected to have influenced the member's choice of a third-party research provider or the subject company of a third-party research report. FINRA believes that it is important that readers be made aware of any conflicts of interest present that may have influenced either the selection or content of third-party research disseminated to investors.

The proposed rule change would prohibit a member from distributing third-party debt research if it knows or has reason to know that such research is not objective or reliable.[95] FINRA believes that, where a member is distributing or ''pushing-out'' third-party debt research, the member must have written policies and procedures to vet the quality of the research producers. A member would satisfy the standard based on its actual knowledge and reasonable diligence; however, there would be no duty of inquiry to definitively establish that the third-party research is, in fact, objective and reliable.

In addition, the proposed rule change would require a member to establish, maintain and enforce written policies and procedures reasonably designed to ensure that any third-party debt research report it distributes contains no untrue statement of material fact and is otherwise not false or misleading.[96] For the purpose of this requirement, a member's obligation to review a third-party debt research report extends to any untrue statement of material fact or any false or misleading information that should be known from reading the debt research report or is known based on information otherwise possessed by the member.

The proposed rule change would require that a member accompany any third-party debt research report it distributes with, or provide a web address that directs a recipient to, disclosure of any material conflict of interest that can reasonably be expected to have influenced the choice of a third-party debt research report provider or the subject company of a third-party debt research report, including, at a minimum:

- If the member or any of its affiliates managed or co-managed a public offering of securities for the subject company in the past 12 months; received compensation for investment banking services from the subject company in the past 12 months; or expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months;
- if the member trades or may trade as principal in the debt securities (or in related derivatives) that are the subject of the debt research report; and
- any other material conflict of interest of the debt research analyst or member that the debt research analyst or an associated person of the member with the ability to influence the content of a debt research report knows or has reason to know at the time of the publication or distribution of a debt research report.[97]

The proposed rule change would not require members to review a third-party debt research report prior to distribution if such debt research report is an independent third-party debt research

[92] *See* proposed FINRA Rule 2242(f).

[93] *See* proposed FINRA Rule 2242.06 (Distribution of Member Research Products).

[94] *See* proposed FINRA Rule 2242.06 (Distribution of Member Research Products). A member that distributes both institutional and retail debt research would be required to inform its retail customers of the existence of the institutional debt research product and, if applicable, that the product may contain different recommendations or ratings than its retail debt research product. This disclosure need not be in each retail debt research report; rather, a member may establish policies and procedures reasonably designed to inform retail investors of the existence and nature of the institutional debt research product.

[95] *See* proposed FINRA Rule 2242(g)(1).

[96] *See* proposed FINRA Rule 2242(g)(2).

[97] *See* proposed FINRA Rule 2242(g)(3).

report.[98] For the purposes of the disclosure requirements for third-party research reports, a member shall not be considered to have distributed a third-party debt research report where the research is an independent third-party debt research report and made available by a member upon request, through a member-maintained Web site, or to a customer in connection with a solicited order in which the registered representative has informed the customer, during the solicitation, of the availability of independent debt research on the solicited debt security and the customer requests such independent debt research.[99]

The proposed rule would require that members ensure that third-party debt research reports are clearly labeled as such and that there is no confusion on the part of the recipient as to the person or entity that prepared the debt research reports.[100]

Obligations of Persons Associated With a Member

The proposed rule change clarifies the obligations of each associated person under those provisions of the proposed rule that require a member to restrict or prohibit certain conduct by establishing, maintaining and enforcing particular policies and procedures. Specifically, the proposed rule change provides that, consistent with FINRA Rule 0140, persons associated with a member must comply with such member's written policies and procedures as established pursuant to the proposed rule. Failure of an associated person to comply with such policies and procedures shall constitute a violation of the proposed rule.[101] In addition, consistent with Rule 0140, the proposed rule states in Supplementary Material .08 that it shall be a rule violation for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance and enforcement of written policies and procedures required by provisions of FINRA Rule 2242, including applicable Supplementary Material, that embed in the policies and procedures specific obligations on individuals. This Supplementary Material reflects FINRA's position that associated persons can be held liable for engaging in conduct that is proscribed by the member under FINRA rules. FINRA is clarifying this point in the Supplementary Material because the proposed rule change would adopt a policies and procedures approach to restricted and prohibited conduct with respect to research in place of specific proscriptions in the current equity research rules. Thus, for example, where the proposed rule requires a member to establish policies and procedures to prohibit debt research analyst participation in road shows, associated persons also are directly prohibited from engaging in such conduct, even where a member has failed to establish policies and procedures. FINRA believes that it is incumbent upon each associated person to familiarize themselves with the regulatory requirements applicable to his or her business and should not be able to avoid responsibility where minimum standards of conduct have been established for members.

Exemption for Members With Limited Investment Banking Activity

Similar to the equity research rules, the proposed rule change exempts from certain provisions regarding supervision and compensation of debt research analysts those members that over the previous three years, on average per year, have participated in 10 or fewer investment banking services transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions.[102] Specifically, members that meet those thresholds would be exempt from the requirement to establish, maintain and enforce policies and procedures that: Prohibit prepublication review of debt research reports by investment banking personnel or other persons not directly responsible for the preparation, content or distribution of debt research reports (but not principal trading or sales and trading personnel, unless the member also qualifies for the limited principal trading activity exemption); restrict or limit investment banking personnel from input into coverage decisions; limit supervision of debt research analysts to persons not engaged in investment banking; limit determination of the research department budget to senior management, excluding senior management engaged in investment banking activities; require that compensation of a debt research analyst be approved by a compensation committee that may not have representation from investment banking personnel; and establish information barriers to insulate debt research analysts from the review or oversight by persons engaged in investment banking services or other persons who might be biased in their judgment or supervision.[103] However, the proposed rule would require that members with limited investment banking activity establish information barriers or other institutional safeguards to ensure debt research analysts are insulated from pressure by persons engaged in investment banking services activities or other persons, including persons engaged in principal trading or principal sales and trading activities, who might be biased in their judgment or supervision.[104] FINRA believes that even where research analysts need not be structurally separated from investment banking or other non-research personnel, they should not be subject to pressures that could compromise their independence and objectivity.

While small investment banks may need those who supervise debt research analysts under such circumstances also to be involved in the determination of those analysts' compensation, the proposal still prohibits these firms from compensating a debt research analyst based upon specific investment banking services transactions or contributions to a member's investment banking services activities. Members that qualify for this exemption must maintain records sufficient to establish eligibility for the exemption and also maintain for at least three years any communication that, but for this exemption, would be subject to all of the requirements of proposed FINRA Rule 2242(b).

FINRA has found the thresholds in the current equity rule to be reasonable and appropriate: They reduce the challenges and costs of compliance for select provisions for those firms whose limited investment banking business significantly reduces the magnitude of conflicts that could impact investors. In addition, in the context of the equity rules, FINRA analyzed data to see if changing the magnitude of either or both thresholds—the number of transactions managed or co-managed or the amount of gross revenues generated from those transactions—yielded a more appropriate universe of exempted firms. FINRA reviewed and analyzed deal data

[98] *See* proposed FINRA Rule 2242(g)(4).

[99] *See* proposed FINRA Rule 2242(g)(5).

[100] *See* proposed FINRA Rule 2242(g)(6). This requirement codifies guidance in *Notice to Members* 04–18 (March 2004) related to equity research reports.

[101] *See* proposed FINRA Rule 2242.08 (Obligations of Persons Associated with a Member).

[102] *See* proposed FINRA Rule 2242(h).

[103] *See* proposed FINRA Rule 2242(b)(2)(A)(i), (b)(2)(B), (b)(2)(C) (with respect to investment banking), (b)(2)(D)(i), (b)(2)(E) (with respect to investment banking), (b)(2)(G) and (b)(2)(H)(i) and (iii).

[104] For the purposes of proposed FINRA Rule 2242(h), the term ''investment banking services transactions'' includes the underwriting of both corporate debt and equity securities but not municipal securities.

for calendar years 2009 through 2011. FINRA reviewed firms that either managed or co-managed deals and earned underwriting revenues from those transactions during the review period. The analysis found that 155 of 317 such firms—or 49%—would have been eligible for the exemption. The data further suggested that incremental upward adjustments to the exemption thresholds would not result in a significant number of additional firms eligible for the exemption. For example, increasing both of the thresholds by 33% (to 40 transactions managed or co-managed and $20 million in gross revenues over a three-year period) would result in 18 additional exempted firms. As such, FINRA believes the current exemption produces a reasonable and appropriate universe of exempted firms. Since the exemption in the equity research rules relates to the same investment banking conflicts that debt research analysts face, FINRA believes the exemption, with its current thresholds, is equally reasonable and appropriate for the debt research rules.

Exemption for Limited Principal Trading Activity

FINRA believes it appropriate to provide an exemption from some provisions of the proposed rule that require separation of debt research from sales and trading and principal trading for firms whose limited principal trading operations results in an appreciably increased burden of compliance relative to the expected investor protection benefits. In general, FINRA believes that firms with modest potential principal trading profits pose lower risk of having sales and trading or principal trading personnel pressure debt analysts, provided other safeguards remain in place. The proposed rule change therefore includes an exemption from certain provisions regarding supervision and compensation of debt research analysts for members that engage in limited principal trading activity where: (1) In absolute value on an annual basis, the member's trading gains or losses on principal trades in debt securities are $15 million or less over the previous three years, on average per year; and (2) the member employs fewer than 10 debt traders; provided, however, such members must establish information barriers or other institutional safeguards to ensure debt research analysts are insulated from pressure by persons engaged in principal trading or sales and trading activities or other persons who might be biased in their judgment or supervision.[105] Specifically, members that meet those thresholds would be exempt from the requirement to establish, maintain and enforce policies and procedures that: Prohibit prepublication review of debt research reports by principal trading or sales and trading personnel or other persons not directly responsible for the preparation, content or distribution of debt research reports (but not investment banking personnel, unless the firm also qualifies for the limited investment banking activity exemption); restrict or limit principal trading or sales and trading personnel from input into coverage decisions; limit supervision of debt research analysts to persons not engaged in sales and trading or principal trading activities, including input into the compensation of debt research analysts; limit determination of the research department budget to senior management, excluding senior management engaged in principal trading activities; require that compensation of a debt research analyst be approved by a compensation committee that may not have representation from principal trading personnel; and establish information barriers to insulate debt research analysts from the review or oversight by persons engaged in principal trading or sales and trading activities or other persons who might be biased in their judgment or supervision.[106]

As with the limited investment banking activity exemption, members still would be required to establish information barriers or other institutional safeguards to ensure debt research analysts are insulated from pressure by persons engaged in principal trading or sales and trading activities or other persons who might be biased in their judgment or supervision. Members that qualify for this exemption must maintain records sufficient to establish eligibility for the exemption and also maintain for at least three years any communication that, but for this exemption, would be subject to all of the requirements of proposed FINRA Rule 2242(b).

In crafting the exemption, FINRA sought a rational principal debt trading revenue threshold for small firms where the conflicts addressed by the proposal might be minimized. FINRA further considered the ability of firms with limited personnel to comply with the provisions that require effective separation of principal debt trading and debt research activities. To those ends, FINRA reviewed and analyzed available TRACE and FOCUS data, particularly with respect to small firms (150 or fewer registered representatives). FINRA supplemented its analysis with survey results from 72 geographically diverse small firms that engage in principal debt trading in varying magnitudes. The survey sought more specific information on the nature of the firms' debt trading—the breakdown between trading in corporate versus municipal securities (which are excepted from the proposal) and the amount of ''riskless principal'' trading—as well as the number of debt traders, whether any of those traders write research or market commentary, and the prospective ability of firms to comply with the proposal's structural separation requirements.

Based on the data, FINRA analyzed the range of principal debt revenues generated by small firms and determined that $15 million would be a reasonable threshold for the exemption. However, because the revenue figure represents a net gain or loss (in absolute terms) from principal debt trading activity, the potential exists that a firm with substantial trading operations could have an anomalous year that yields net revenues under the threshold. Therefore, FINRA added as a backstop the second criterion of having fewer than 10 debt traders, to ensure the exemption applies only to firms with modest debt trading activity. Furthermore, based on the assessment, FINRA believes firms with 10 or more debt traders are more capable of dedicating a debt trader to writing research. FINRA notes that only eight of the 72 responding survey firms indicated that they have debt traders that write either research or market commentary—which is excepted from the definition of ''debt research report'' under the proposal—on debt securities. FINRA intends to monitor the research produced by firms that avail themselves of the exemption to assess whether the thresholds to qualify for the exemption are appropriate or should be modified.

Exemption for Debt Research Reports Provided to Institutional Investors

FINRA understands that, unlike in the equity market, institutional investors trading in debt securities tend to interact with broker-dealers in a manner more closely resembling that of a counterparty than a customer. FINRA further understands that these institutional investors value the timely flow of analysis and trade ideas related to debt securities, are aware of the types of potential conflicts that may exist

[105] *See* proposed FINRA Rule 2242(i).

[106] *See* proposed FINRA Rule 2242(b)(2)(A)(ii) and (iii), (b)(2)(B), (b)(2)(C) (with respect to sales and trading and principal trading), (b)(2)(D)(ii) and (iii), (b)(2)(E) (with respect to principal trading), (b)(2)(G) and (b)(2)(H)(ii) and (iii).

between a member's recommendations and trading interests, and are capable of exercising independent judgment in evaluating such recommendations (and selectively incorporate research as a data point in their own analytics) and reaching pricing decisions. Moreover, some well-regarded debt research is produced by analysts that are part of the trading desk. The separation required by the Rule would preclude this source of information. Given the debt market and the needs of its participants, the proposed rule change would exempt debt research distributed solely to eligible institutional investors (''institutional debt research'') from most of the provisions regarding supervision, coverage determinations, budget and compensation determinations and all of the disclosure requirements applicable to debt research reports distributed to retail investors (''retail debt research'').[107] Under the proposed rule change, the term ''retail investor'' means any person other than an institutional investor.[108]

FINRA believes that institutional investors should opt in to receive institutional debt research and should be able to choose to receive only debt research that is subject to the full protections of the rule. The proposed rule distinguishes between larger and smaller institutions in the manner in which their opt-in decision is obtained. The larger may receive institutional debt research based on negative consent, while the smaller must affirmatively consent in writing to receive that research.

Specifically, the proposed rule would allow firms to distribute institutional debt research by negative consent to a person who meets the definition of a QIB [109] and where, pursuant to FINRA Rule 2111(b): (1) The member or associated person has a reasonable basis to believe that the QIB is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a debt security or debt securities; and (2) the QIB has affirmatively indicated that it is exercising independent judgment in evaluating the member's recommendations pursuant to FINRA Rule 2111 and such affirmation is broad enough to encompass transactions in debt securities. The proposed rule change would require written disclosure to the QIB that the member may provide debt research reports that are intended for institutional investors and are not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors. If the QIB does not contact the member and request to receive only retail debt research reports, the member may reasonably conclude that the QIB has consented to receiving institutional debt research reports.[110] FINRA interprets this standard to allow an order placer, *e.g.,* a registered investment adviser, for a QIB that satisfies the FINRA Rule 2111 institutional suitability requirements with respect to debt transactions to agree to receive institutional debt research on behalf of the QIB by negative consent.

Institutional accounts that meet the definition of FINRA Rule 4512(c) but do not satisfy the higher tier requirements described above may still affirmatively elect in writing to receive institutional debt research. Specifically, a person that meets the definition of ''institutional account'' in FINRA Rule 4512(c) may receive institutional debt research provided that such person, prior to receipt of a debt research report, has affirmatively notified the member in writing that it wishes to receive institutional debt research and forego treatment as a retail investor for the purposes of the proposed rule. Retail investors may not choose to receive institutional debt research.[111]

To avoid a disruption in the receipt of institutional debt research, the proposed rule change would allow firms to send institutional debt research to any FINRA Rule 4512(c) account, except a natural person, without affirmative or negative consent for a period of up to one year after SEC approval while they obtain the necessary consents. Natural persons that qualify as an institutional account under FINRA Rule 4512(c) must provide affirmative consent to receive institutional debt research during this transition period and thereafter.[112]

The proposed exemption relieves members that distribute institutional debt research to institutional investors from the requirements to have written policies and procedures for this research with respect to: (1) Restricting or prohibiting prepublication review of institutional debt research by principal trading and sales and trading personnel or others outside the research department, other than investment banking personnel; (2) input by investment banking, principal trading and sales and trading into coverage decisions; (3) limiting supervision of debt research analysts to persons not engaged in investment banking, principal trading or sales and trading activities; (4) limiting determination of the debt research department's budget to senior management not engaged in investment banking or principal trading activities and without regard to specific revenues derived from investment banking; (5) determination of debt research analyst compensation; (6) restricting or limiting debt research analyst account trading; and (7) information barriers to ensure debt research analysts are insulated from review or oversight by investment banking, sales and trading or principal trading personnel, among others (but members still must have written policies and procedures to guard again those persons pressuring analysts). The exemption further would apply to all disclosure requirements, including content and disclosure requirements for third-party research.

Notwithstanding the proposed exemption, some provisions of the proposed rule still would apply to institutional debt research, including the prohibition on prepublication review of debt research reports by investment banking personnel and the restrictions on such review by subject companies. While prepublication review by principal trading and sales and trading personnel would not be prohibited pursuant to the exemption, other provisions of the rule continue to require management of those conflicts, including the requirement to impose information barriers to insulate debt research analysts from pressure by those persons. Furthermore, the requirements in Supplementary Material .05 related to submission of sections of a draft debt research report for factual review would apply to any permitted prepublication review by persons not directly responsible for the preparation, content or distribution of debt research reports. In addition, members must prohibit debt research analysts from participating in the solicitation of investment banking services transactions, road shows and other marketing on behalf of issuers and further prohibit investment banking personnel from directly or indirectly directing a debt research analyst to engage in sales and marketing efforts related to an investment banking deal or to communicate with a current or prospective customer with respect to such transactions. The provisions regarding retaliation against debt

[107] *See* proposed FINRA Rule 2242(j)(1).

[108] *See* proposed FINRA Rule 2242(a)(13).

[109] *See* proposed FINRA Rule 2242(a)(12) under which a QIB has the same meaning as under Rule 144A of the Securities Act.

[110] *See* proposed FINRA Rule 2242(j)(1)(A)(i) and (ii).

[111] *See* proposed FINRA Rule 2242(j)(1)(B).

[112] *See* proposed FINRA Rule 2242.11 (Distribution of Institutional Debt Research During Transition Period).

research analysts and promises of favorable debt research also still apply with respect to research distributed to eligible institutional investors.[113] FINRA believes that, notwithstanding the sophistication of its recipients, minimum objectivity standards should apply to institutional debt research and members should not be encouraged to use debt research analysts for the purpose of soliciting and marketing investment banking transactions.

While the proposed rule change does not require institutional debt research to carry the specific disclosures applicable to retail debt research, it does require that such research carry general disclosures prominently on the first page warning that: (1) The report is intended only for institutional investors and does not carry all of the independence and disclosure standards of retail debt research reports; (2) if applicable, that the views in the report may differ from the views offered in retail debt research reports; and (3) if applicable, that the report may not be independent of the firm's proprietary interests and that the firm trades the securities covered in the report for its own account and on a discretionary basis on behalf of certain customers, and such trading interests may be contrary to the recommendation in the report.[114] Thus, the second and third disclosures described above would be required only if the member produces both retail and institutional debt research reports that sometimes differ in their views or if the member maintains a proprietary trading desk or trades on a discretionary basis on behalf of some customers and those interests sometimes are contrary to recommendations in institutional debt research reports. Although FINRA typically favors specific disclosure *e.g.,* that a view or recommendation does, in fact, differ or is contrary to the member's trading interests—FINRA believes that the cost to track and identify a specific conflict with respect to institutional debt research reports exceeds the value that specific disclosure would provide to sophisticated institutional investors, particularly since those investors value timely analysis and trade ideas that could be diminished due to the burdens associated with a specific disclosure requirement.

FINRA believes that this approach will maintain the flow of institutional debt research to most institutional investors and allow firms to leverage existing compliance efforts, while ensuring that those investors who receive institutional debt research through negative consent have a high level of experience in evaluating transactions involving debt securities, and that certain protections remain in place to manage potential conflicts of interest. In addition, FINRA believes that this approach appropriately acknowledges the arm's-length nature of transactions between trading desk personnel and institutional buyers. Finally, FINRA notes that no institutional investor will be exposed to this less-protected institutional research without either negative or affirmative consent, as applicable.

The proposed rule change would require members to establish, maintain and enforce written policies and procedures reasonably designed to ensure that institutional debt research is made available only to eligible institutional investors.[115] A member may not rely on the proposed exemption with respect to a debt research report that the member has reason to believe will be redistributed to a retail investor. The proposed rule change also states that the proposed exemption does not relieve a member of its obligations to comply with the antifraud provisions of the federal securities laws and FINRA rules.[116]

General Exemptive Authority

The proposed rule change would provide FINRA, pursuant to the FINRA Rule 9600 Series, with authority to conditionally or unconditionally grant, in exceptional and unusual circumstances, an exemption from any requirement of the proposed rule for good cause shown, after taking into account all relevant factors and provided that such exemption is consistent with the purposes of the rule, the protection of investors, and the public interest.[117] Given the scope of the rule's subject matter and the diversity of firm sizes, structures and research business and distribution models, FINRA believes it would be useful and appropriate to have the ability to provide relief from a particular provision of the proposed rules under specific factual circumstances.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[118] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would promote increased quality, objectivity and transparency of debt research distributed to investors by requiring firms to identify and mitigate conflicts in the preparation and distribution of such research. FINRA further believes the rule will provide investors with more reliable information on which to base investment decisions in debt securities, while maintaining timely flow of information important to institutional market participants and providing those institutional investors with appropriate safeguards.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change largely adopts provisions that have proven effective to promote objective and reliable research in the equity research space, as detailed through academic studies and other observations in the Joint Report and the GAO Report.[119] The GAO report, for example, concluded that empirical studies suggest the rules have resulted in increased analyst independence and weakened the influence of conflicts of interest on analyst recommendations.[120]

The proposed rule change would adopt a policies and procedures approach that allows members to implement a compliance system that

[113] *See* proposed FINRA Rule 2242(j)(2). A member must establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest described in paragraphs (b)(2)(A)(i), (b)(2)(H) (with respect to pressuring), (b)(2)(I), (b)(2)(K), (b)(2)(L), (b)(2)(M), (b)(2)(N) and Supplementary Material .02(a).

[114] *See* proposed FINRA Rule 2242(j)(3). With respect to the disclosure requirement, if applicable, that the views in the institutional debt research report may differ from views in retail debt research, FINRA notes institutional debt research is not subject to Supplementary Material .06, which otherwise requires a member to inform its customers of the existence of a different research product offered to other customers that may reach different conclusions or recommendations that could impact the price of the debt security.

[115] *See* proposed FINRA Rule 2242(j)(4).

[116] *See* proposed FINRA Rule 2242(j)(5).

[117] *See* proposed FINRA Rule 2242(k).

[118] 15 U.S.C. 78*o*−3(b)(6).

[119] *See* Joint Report, *supra* note 8 at 12–23.

[120] *See* GAO Report, *supra* note 9 at 11–15.

aligns with their particular structure and business models, without diminishing investor protection. FINRA believes that this proposed approach imposes less cost on members without reducing investor protections than does a purely prescriptive approach or ''one size fits all'' approach with respect to compliance. In addition, the proposed rule adopts a substantial portion of the equity research rules. FINRA believes that many of the same conflicts of interest are present in the publication and distribution of equity and debt research and that consistency among the debt and equity research rules will further minimize the burdens to members to comply with the proposed rule change.

As set forth in Item II.C., FINRA elicited comment on proposed debt research rules in two separate Regulatory Notices. In each instance, FINRA carefully considered the commenters' concerns and amended the proposal to address issues with respect to costs and burdens raised by commenters. Even before the two proposals, FINRA issued a concept proposal in *Regulatory Notice* 11–11 to gather information and identify provisions of the equity research rules that would not be efficient or effective in a debt research proposal. For example, the concept proposal included a parallel provision to the equity rules that would have required a firm to promptly notify its customers if it intends to terminate coverage in a debt security and include with the notice a final research report. If it were impracticable to provide such final report, the concept proposal would have required a firm to disclose to customers its reason for terminating coverage. FINRA recognized that firms may have an extensive coverage universe of debt securities that may only be the subject of episodic research coverage. As such, FINRA determined that the termination of coverage provision in the debt context would be overly burdensome to firms relative to its investor protection value and therefore eliminated the provision from this revised proposal.

In addition, and as detailed below in Item II.C., FINRA considered numerous iterations of an institutional exemption for debt research. Several commenters raised issues regarding an earlier provision that would have required affirmative consent for all institutional investors. In response to comments that the proposal was overly burdensome and may exclude a significant number of institutional investors from receiving the debt research that they receive today, FINRA is now proposing a higher tier of institutional investors that may receive institutional debt research based on negative consent. As set forth in *Regulatory Notice* 12–42, FINRA also made several other changes and clarifications in response to comments, including to the definition of ''debt research report,'' the standard for disclosure of conflicts and the permissible interactions between debt research analysts and sales and trading personnel.

FINRA also considered an alternative suggested by commenters to exempt all trader commentary from the protections of the proposed rule. FINRA did not adopt this alternative because it would create an avenue through which firms could funnel debt research to retail investors without objectivity and reliability safeguards or disclosure of conflicts. FINRA reviewed examples of trader commentary and believes that many of those communications either do not meet the definition of a research report or are subject to exceptions from that definition. For those that are debt research reports, FINRA believes retail recipients should be entitled to the same protections, irrespective of the author or department of origin. FINRA further understands that most trader commentary is intended for sophisticated institutional investors, and to the extent a firm limits distribution to eligible institutional investors, most of the provisions of the proposed rule change would not apply. Therefore, FINRA believes its institutional exemption approach strikes the appropriate balance between protecting retail investors and maintaining timely information flow to more sophisticated investors.

FINRA also sought comment and engaged in data analysis, as described in Item II.A.1., to fashion exemptions for firms with limited investment banking activity and limited principal trading activity. In combination with the institutional investor exemption, FINRA believes the proposed rule change is narrowly tailored to achieve its regulatory objectives.

Finally, FINRA notes that it solicited comment in *Regulatory Notice* 12–42 on the economic impact of the proposed rule change, including quantified costs and the anticipated effects on competition, but received little or no feedback.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Earlier iterations of the proposed rule change were published for comment in *Regulatory Notice* 12–09 (''*Regulatory Notice* 12–09 Proposal) and *Regulatory Notice* 12–42 (''*Regulatory Notice* 12–42 Proposal'') (together, the ''Notice Proposals''). Copies of the *Regulatory Notices* are attached as Exhibit 2a. A list of the commenters and copies of the comment letters received in response to the Notice Proposals are attached as Exhibits 2b and 2c, respectively.

The *Regulatory Notice* 12–09 Proposal sought comment on a proposed rule to govern the preparation and distribution of debt research pursuant to a tiered approach based on whether debt research is distributed to retail or institutional investors. Under the proposal, debt research distributed to retail investors would carry most of the same protections provided to recipients of equity research, while institutional investors could affirmatively opt in to a framework that would exempt such research from many of those provisions. FINRA received seven comments in response to the proposal.[121] Commenters suggested significant changes to the proposal, most notably with respect to the definitions of ''debt security'' and ''debt research report,'' the opt-in requirement for institutional investors, and the restrictions on input into debt research budget and compensation determinations by those involved in principal trading activities.

FINRA addressed several of the commenters' concerns in the *Regulatory Notice* 12–42 Proposal, which included, among other things, amended exemptions for research distributed to certain institutional investors and for firms with limited principal debt trading activity. The amended exemption for institutional investors added a higher tier of institutional investor that could receive institutional debt research by negative consent. FINRA received five comment letters on

[121] *See* Letter from Joseph R.V. Romano, President, Romano Brothers & Co., to Marcia E. Asquith, Corporate Secretary, FINRA, dated March 31, 2012 (''Romano''); letter from Ryan K. Bakhtiari, President, Public Investors Arbitration Bar Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 2, 2012 (''PIABA''); letter from Ira D. Hammerman, Senior Managing Director, General Counsel and Secretary, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 2, 2012 (''SIFMA''); letter from Michael Nicholas, CEO, Bond Dealers of America, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 2, 2012 (''BDA''); letter from Lee A. Pickard and William D. Edick, Pickard and Djinis LLP, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 2, 2012 (''ASIR''); letter from Chris Charles, President, Wulff, Hansen & Co., to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 5, 2012 (''Wulff''); and letter from Amy Natterson Kroll, Bingham McCutchen LLP, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 10, 2012 (''Morgan Stanley'').

the proposal.[122] The comments focused on two primary issues: The higher tier definition of institutional investor and the restrictions on input by principal trading personnel into research budget and evaluation and compensation determinations. Despite specific requests in the *Regulatory Notice,* FINRA received little or no comment on the economic impact of the proposal or any particular provisions.

A summary of the comments received on the Notice Proposals and FINRA's responses are set forth below.

Definitions

The *Regulatory Notice* 12–09 Proposal defined ''debt security'' to mean any ''security'' as defined in Section 3(a)(10) of the Exchange Act, except for any ''equity security,'' ''municipal security'' or ''security-based swap'' as defined in Section 3(a) of the Exchange Act, or any U.S. Treasury Security as defined in FINRA Rule 6710(p). SIFMA and BDA urged FINRA to expand the exceptions to the definition to include U.S. agency securities and investment grade foreign government securities. BDA again urged FINRA to exclude U.S. agency securities in response to the *Regulatory Notice* 12–42 Proposal. SIFMA further asked FINRA to clarify that ''derivatives,'' as defined in the CFTC conflict rules are excluded from the definition of ''debt security'' because they are subject to a separate federal regulatory regime. PIABA, on the other hand, thought FINRA should include municipal securities and security-based swaps within the definition.

FINRA did not believe it was appropriate to expand the exceptions to the definition of ''debt security'' to include agency securities or foreign sovereign debt securities and did not propose these changes to the definition. FINRA has not provided these exclusions in the proposed rule change for a variety of reasons. First, commenters did not provide a rationale to exclude other non-equity securities. Second, treasury securities are excluded because FINRA is reticent to interfere with the markets involving direct obligations of the United States. In contrast, FINRA already has reporting schemes around agency securities and does not think it appropriate to carve out Fannie Mae and Freddie Mac securities, for example. Municipal securities were excluded from the proposal in part due to FINRA's jurisdictional limitations with respect to those securities, so suggestions to exclude other securities as analogous to municipals are misplaced.

FINRA believes an exclusion for foreign sovereign debt of other G–20 countries is too broad, as the conflicts the rules address are similarly present with respect to research on such securities, and therefore retail investors would benefit from the proposal's protections. Alternatively, commenters asked for greater flexibility with respect to disclosure of compensation on foreign sovereign issues, in large part due to tracking difficulties given the many and diverse relationships that firms' affiliates have with governments. In response, FINRA amended the proposal to permit firms, in lieu of disclosing investment banking compensation received by a non-U.S. affiliate from foreign sovereigns, to instead implement information barriers between that affiliate and the debt research department to prevent direct or indirect receipt of such information.[123] However, the proposed rule change would still require disclosure if the debt research analyst has actual knowledge of receipt of investment banking compensation by the non-U.S. affiliate.

As stated in Item II.A. above, the proposed rule excludes security-based swaps from the definition of debt security given the nascent and evolving nature of security-based swaps regulation. FINRA intends to monitor regulatory developments with respect to security-based swaps and may determine to later include such securities in the definition of debt security.

The *Regulatory Notice* 12–09 proposal defined ''debt research report'' as any written (including electronic) communication that includes an analysis of debt securities and that provides information sufficient upon which to base an investment decision. The term excluded the same communications excepted from the definition of ''research report'' in NASD Rule 2711. Morgan Stanley and SIFMA suggested that the definition should be amended to conform to the definition of ''research report'' in Regulation AC, which defines ''research report'' as a ''written communication . . . that includes an analysis of a security or issuer . . . .'' They further suggested that FINRA should include an exception from the definition of ''research report'' similar to interpretive guidance found in the Commission's adopting release about the general characteristics of that term as it is used in Regulation AC for ''reports commenting on or analyzing particular types of debt securities or characteristics of debt securities'' that do not include an analysis of, or recommend or rate individual securities or companies. In response to comments to both of the Notice Proposals, FINRA agreed that the definition of ''debt research report'' should be consistent with the definition in Regulation AC and therefore amended the proposal to achieve that regulatory harmony, including the exception for reports on classes of debt securities. This amendment is reflected in the proposed rule change.

In response to a suggestion by BDA to the *Regulatory Notice* 12–09 Proposal, FINRA included the exceptions to the definition of ''debt research report'' in the rule text rather than by reference to the exceptions in NASD Rule 2711. BDA, BMO, Morgan Stanley, SIFMA, and Wulff, in response to one or both of the Notice Proposals, suggested that FINRA should exclude from the definition desk communications, including trader commentary, if such communications are sent only to institutional investors. Among other arguments, these commenters asserted that trader commentary is common in the debt markets, that institutions don't rely on it as the sole basis for their investment decisions and that inclusion of trader commentary within the definition of ''debt research report'' is unduly burdensome and costly and could reduce available market information to investors without ''commensurate policy returns.'' BDA asserted that the proposal would categorically eliminate an entire segment of analysis for retail investors without providing evidence that it is a harmful or abusive practice. In response to *Regulatory Notice* 12–42, BDA also stated that the definition should exclude offering documents for unregistered transactions and securities and any document prepared by or at the request of the issuer or obligor of a security.

FINRA continues to believe it imprudent to create a broad exception from the definition of ''debt research report'' based on the author or

[122] *See* Letter from Kurt N. Schacht, Managing Director, and Linda L. Rittenhouse, Director, CFA Institute, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 7, 2012 (''CFA''); letter from Michael Nicholas, CEO, Bond Dealers of America, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 20, 2012 (''BDA''); letter from Lee A. Pickard and William D. Edick, Pickard and Djinis LLP, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 20, 2012 (''ASIR''); letter from Roberts J. Stracks, Counsel, BMO Capital Markets GKST Inc., to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 20, 2012 (''BMO''); and letter from Kevin A. Zambrowicz, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 4, 2013 (''SIFMA'').

[123] *See* proposed FINRA Rule 2242. 04 (Disclosure of Compensation Received by Affiliates).

department of origin. As explained in *Regulatory Notice* 12–09, such an approach creates a potential loophole through which biased and non-transparent research could be disseminated to investors, including retail investors. FINRA notes that the Sarbanes-Oxley Act declined to adopt such an approach in the equity context. Furthermore, Regulation AC has no such exception, so the regulatory consistency that commenters seek would be undermined. If, as commenters maintain, trader commentary is mostly provided only to institutions, then the institutional research exemption could exclude these communications from most of the provisions of the rule that otherwise apply to retail debt research for institutions that opt in. While FINRA understands that institutions may be more attuned to conflicts, FINRA believes it appropriate that even institutional debt research should retain certain minimum standards of independence and transparency, including restrictions on prepublication review by investment banking and the issuer, prohibitions on promises of favorable research as an inducement for receipt of business or compensation and general disclosure alerting recipients of the lesser standards and potential conflicts of interest attendant to the research report.

FINRA declined BDA's suggestion to exclude from the definition of ''debt research report'' offering documents for unregistered transactions or any document prepared by or at the request of the issuer or obligor of a security. BDA offered no rationale for the exclusions, which would be inconsistent with Regulation AC. Moreover, FINRA believes an exception for any document requested by an issuer would seriously undermine the regulatory purpose of the proposed rule change because it would allow a broker-dealer to distribute to retail investors a communication that contains all of the elements of a debt research report but none of the protections where the issuer, a conflicted party, requested it be created.

Prepublication Review

The proposed rule change maintains provisions in the Notice Proposals that would prohibit prepublication review, clearance or approval of debt research reports by investment banking, principal trading and sales and trading personnel. In response to the *Regulatory Notice* 12–09 Proposal, SIFMA contended that the rule should permit investment banking and sales and trading to review debt research reports prior to publication for factual accuracy, subject to appropriate supervision. As an example, SIFMA cited research on new complex structured products, suggesting analysts need to verify with investment banking or sales and trading that the basic facts about the products are correct and to corroborate the accuracy of the analyst's statements regarding trading activity, prevailing market prices or yields. SIFMA also pointed out that current NASD Rule 2711 permits such factual review of research reports by investment banking and other non-research personnel.

First, FINRA notes that it has proposed to eliminate any prepublication review by investment banking or other persons not directly responsible for the preparation, content and distribution of equity research reports, other than legal and compliance personnel. FINRA believes that review of facts in a report by investment banking and other non-research personnel is unnecessary in light of the numerous other sources available to verify factual information, including the subject company. FINRA notes that such review may invite pressure on a research analyst that could be difficult to monitor. FINRA further notes that such factual review is not permitted under the terms of the Global Settlement [124] and that FINRA staff has seen no evidence that the factual accuracy of research produced by Global Settlement firms has suffered. Second, with respect to debt research, the proposal delineates certain permissible communications between debt research analysts and sales and trading and principal trading personnel necessary for each to effectively discharge their responsibilities and facilitate debt market trading. Among the allowable communications, a debt research analyst may seek information from sales and trading and principal trading personnel regarding a ''particular bond instrument, current prices, spreads, liquidity and similar market information relevant to the debt research analyst's valuation of a particular security.'' In light of these permissible communications, and the other reasons stated above, FINRA sees no compelling reason why a debt research analyst needs further factual review from sales and trading or principal trading personnel by sharing portions of a draft research report. FINRA believes that any incremental improvement in accuracy by permitting factual review by investment banking, principal trading or sales and trading personnel is outweighed by the increased risk of pressure on a research analyst and the prospect that the perceived objectivity of the research may be undermined. Therefore, the proposed rule change does not incorporate the commenter's suggestion.

Research Department Budget

The *Regulatory Notice* 12–09 Proposal limited determination of the research department budget to senior management, other than persons engaged in investment banking or principal trading activities, and without regard to specific revenues or results derived from those activities. However, the proposal noted that revenues and results of the firm as a whole may be considered in determining the debt research department budget and allocation of research department expenses. Moreover, the proposal permitted all persons within the firm to provide senior management input regarding the demand for and quality of debt research, including product trends and customer interests.

In response to that proposal, SIFMA commented that senior management should be permitted to consider principal trading and other business revenues in making budget decisions, else senior management cannot accurately marry research funding to customer needs. SIFMA further contended that the proposal's other provisions adequately safeguard against inappropriate pressures by investment banking and principal trading with respect to debt research budget determinations. The *Regulatory Notice* 12–42 Proposal maintained these restrictions on debt research budget input, and in response, SIFMA again asserted that the provision denies research management the ability to assess the value of the permissible input by comparing it to the revenues generated from principal trading activities, thereby resulting in a misallocation of resources. SIFMA contended that the allocation of the research department's resources to a particular asset class ''will be and should be influenced by the size and profitability of the respective market.''

FINRA appreciates the desire of firms to allocate research costs based on the revenues to which the research department contributes, but also sees a countervailing investor protection interest in firms managing conflicts between their revenue-producing operations and research. FINRA believes that the size and allocation of the research budget should be insulated from pressure by those business

[124] *See* Letter from James A. Brigagliano, Assistant Director, SEC Division of Trading and Markets, to Dana G. Fleischman, Clearly, Gottlieb, Steen & Hamilton, dated Nov. 2, 2004.

segments. In the case of investment banking, FINRA believes the conflict is too pronounced to allow any consideration of investment banking revenues in determining the research department budget. However, given the vast array of debt securities and classes, FINRA believes it appropriate to allow some consideration of revenue streams in allocating research budget resources. Therefore, the proposed rule change would permit consideration of those revenues, provided that: (1) Senior management, other than persons engaged in principal trading or investment banking activities, makes the final research department budget determination;[125] and (2) the member establishes information barriers or other institutional safeguards to ensure that debt research analysts are insulated from the review, pressure or oversight by persons engaged in principal trading activities, among others.[126]

Debt Research Analyst Evaluation and Compensation

With respect to evaluation and compensation of debt research analysts, the proposed rule change maintains a provision in the Notice Proposals that would allow sales and trading personnel, but not persons engaged in principal trading activities, to provide input to research management into the evaluation of a debt research analyst, so long as research management makes final determinations on compensation, subject to review by the compensation committee.

In response to the *Regulatory Notice* 12–09 Proposal, SIFMA argued that the proposal was too strict in prohibiting the input of principal trading personnel and contributions to principal trading activities in determining debt research analyst compensation. SIFMA asserted that as long as final compensation decisions rest with research management and the compensation committee, FINRA should allow input from principal trading personnel because those individuals regularly interface with customers and therefore are a necessary resource for customer feedback on the quality and productivity of debt research analysts. SIFMA also noted that the provision would preclude input from persons who wear multiple hats and engage in both sales and principal trading activities. Finally, SIFMA contended that compensation prohibitions fail to acknowledge the important role that debt research analysts play in assisting market making and customer facilitation desks.

In response to *Regulatory Notice* 12–42, SIFMA reiterated that the provision will deprive research management of important client feedback to evaluate debt research analysts' performance because principal traders are the primary conduit for such information. According to SIFMA, there are limited means to obtain direct customer feedback on the quality of research, and reliance on the sales force to provide customer feedback is inadequate because debt traders can have as much or more interaction with clients. In addition, SIFMA noted that the CFTC business conduct rules permit employees of the business trading unit or clearing unit of a swap dealer or major swap participant to communicate customer feedback, ratings and other indicators of research analyst performance to research department management.[127]

While FINRA recognizes that there is some value in input from those engaged in principal trading activities, FINRA believes such input is outweighed by conflicts that could provide incentive for principal trading personnel to reward or punish a debt research analyst with selected feedback based on whether his or her research or trading ideas benefitted the firm's trading activities. Conversely, debt research analysts may feel compelled to produce research and trade ideas to benefit firm or particular customer positions if their compensation is tied to contributions to principal trading activities. Moreover, FINRA believes, in part based on discussions with research management personnel, that input from sales and trading personnel provides an effective proxy for customer feedback, to the extent such feedback cannot be obtained directly from customers. Furthermore, FINRA believes that research management should be in a position to assess the quality of the research it oversees. Finally, to the extent firms qualify for the limited principal trading exemption in the proposed rule change, dual-hatted persons engaged in both research and principal trading activities would be able to provide feedback to research department management.

Given the importance of principal trading operations to the revenues of many firms, FINRA believes there is increased risk that principal traders could improperly pressure or influence debt research if they have input into analyst compensation or can solicit, relay or characterize customer feedback on retail debt research. FINRA believes this risk, which if manifested could directly impact retail investors, outweighs the benefit of an additional data point for research management to evaluate the quality of research produced by analysts they oversee.

BDA stated that FINRA should amend the proposal to clarify that debt research analyst compensation may be based on the revenues and results of the firm as a whole. FINRA agrees that a member may consider the overall success of the firm when determining a debt analyst's compensation, provided the member complies with the compensation review and approval requirements. FINRA notes that the proposed rule change specifies that the revenues and results of the firm as a whole may be considered in determining the research department budget, including expenses. Since debt analyst compensation is a research department expense, FINRA does not believe it necessary to further amend the compensation provisions.

Prohibitions on Interactions With Investment Banking Personnel

The proposed rule change would require members to have written policies and procedures to prohibit participation in pitches and other solicitations of investment banking services transactions and participation in road shows and other marketing on behalf of an issuer related to investment banking services transactions.

The *Regulatory Notice* 12–09 Proposal had a similar provision, but did not limit the marketing prohibition to investment banking services transactions. SIFMA asked whether the proposed requirement with respect to road shows was intended to operate identically with NASD Rule 2711. SIFMA also asked FINRA to clarify that, consistent with NASD Rule 2711, the prohibition on road shows is only intended to cover road shows and other marketing related to an investment banking transaction and not non-deal road shows. FINRA is primarily concerned with marketing by research analysts in connection with an investment banking services transaction, and therefore FINRA has added that limitation to the provision in proposed rule change. FINRA notes, however, that the overarching requirement to have written policies and procedures to manage conflicts related to the interaction between debt research analysts and, among others, subject companies would apply to other

[125] *See* proposed FINRA Rule 2242(b)(2)(E).

[126] *See* proposed FINRA Rule 2242(b)(2)(H).

[127] The CFTC rules apply to research on derivatives, which is predominantly an institutional business. As noted below, the proposed rule change exempts from the compensation prohibitions institutional debt research. By comparison, SIFMA asked to allow principal traders to relay customer feedback in connection with retail debt research.

marketing activity on behalf of an issuer. FINRA does not believe that merely facilitating a meeting between issuer management and investors, absent other facts, would constitute marketing on behalf of the issuer.

In response to the *Regulatory Notice* 12–09 Proposal, SIFMA contended that the prohibition on joint due diligence conducted with the subject company in the presence of investment banking personnel was overly restrictive. FINRA has clarified in the proposed rule change that the prohibition on joint due diligence applies only during the period prior to the selection by the issuer of the underwriters for the investment banking services transaction.[128] In response to the *Regulatory Notice* 12–42 Proposal, SIFMA commented that debt research analysts should be able to passively attend road show presentations because, unlike equity analysts that frequently have access to issuer management, the road show is often the only opportunity for a debt research analyst to view an issuer's management presentation and evaluate the credibility of management's business plan and outlook. SIFMA contended that it is impractical for issuers to meet separately with debt research analysts and challenging for analysts to call in and listen to an issuer presentation. SIFMA also noted that the concern is more pronounced in certain sectors of the debt markets, such as high-yield and emerging markets.

FINRA does not believe that the prohibition with respect to road show participation should differ between the debt and equity research rules, since the conflicts are the same. FINRA believes the ability to listen remotely to a road show presentation provides debt research analysts a reasonable means to hear the issuer management's story, while not appearing to be part of the deal team to prospective customers attending the presentation in person. Therefore, FINRA did not amend this provision of the proposal.

Prohibitions on Interactions with Sales and Trading

The proposed rule change maintains a provision in the Notice Proposals that would require members to have written policies and procedures to prohibit certain interactions between debt research and sales and trading and principal trading personnel. The proposed rule change also delineates prohibited and permissible communications between those persons. In response to the *Regulatory Notice* 12–09 Proposal, SIFMA asked FINRA to clarify that the prohibition on attempting to influence analysts for the purpose of benefiting the firm, a customer or class of customers would not capture ordinary-course communications and is meant to prohibit non-research direction over the decision to publish a report and non-research direction over the views and opinions expressed in debt reports. The proposed rule provides that communications between debt research analysts and trading desk personnel that are not related to sales and trading, principal trading or debt research activities may take place without restriction, unless otherwise prohibited.[129]

SIFMA also recommended that FINRA include in the proposed rule text the language provided in *Regulatory Notice* 12–09 that, in assessing whether a debt research analyst's permissible communications are ''inconsistent'' with the analyst's published research, firms may consider the context, including that the investment objectives or time horizons being discussed differ from those underlying the analyst's published views. FINRA incorporated the suggested language into proposed FINRA Rule 2242.[130]

ASIR noted that the *Regulatory Notice* 12–09 Proposal goes beyond NASD Rule 2711 by restricting not only communications between analysts and investment banking, but also between debt research analysts and sales and trading personnel. ASIR asserted that the debt research proposal should only restrict communications between research and investment banking personnel, so as to harmonize with the equity rules.

The proposed rule change specifically addresses communications between debt research and sales and trading and principal trading personnel because the interests of the trading department create a particularly pronounced conflict with respect to debt research. This is because, under current market conditions, principal trading is far more prevalent in the debt markets than in the equity markets. However, FINRA continues to monitor the relationship between equity research and sales and trading and principal trading personnel to assess whether similar specific restrictions should be applied in the equity research context. FINRA notes that the current and proposed equity research rules do require firms to manage conflicts between equity research and other non-research personnel, including those engaged in sales and trading and principal trading activities.

Conflicts Disclosure

With respect to the *Regulatory Notice* 12–09 Proposal, SIFMA and BDA found overly broad the provision that requires disclosure of ''all conflicts that reasonably could be expected to influence the objectivity of the research report and that are known or should have been known by the member or debt research analyst on the date of publication or distribution of the report.'' SIFMA contended that the language would require firms to identify ''all possible conflicts (material or immaterial)'' and encouraged FINRA to either specify the conflicts it intends to capture or rely on the standard in NASD Rule 2711 requiring disclosure of ''actual, material'' conflicts. SIMFA further questioned whether conflicts could ever be expected to influence the objectivity of research reports and suggested that existing FINRA research rules and Regulation AC assume the contrary.

In response to SIFMA's doubt that conflicts could ever be expected to influence the objectivity of research reports, FINRA notes that its research rules are premised on the belief that conflicts can be disinfected—and possibly discouraged—by disclosure and will give investors the material information needed to assess the objectivity of a research report. In addition, the rules prohibit certain conduct where the conflicts are too pronounced to be cured by disclosure. Yet the rules do not—and cannot—identify every such conflict. Thus, at a minimum, FINRA's proposal would require firms to identify and disclose them.

In general, FINRA believes that an immaterial conflict could not reasonably be expected to influence the objectivity of a research report, and therefore a materiality standard is essentially congruent with the proposed standard. FINRA agrees that the ''catch-all'' disclosure provision captures such material conflicts that the research analyst and persons with the ability to influence the content of a research report know or have reason to know. Therefore, FINRA has amended the proposal to delete as superfluous the overarching obligation to disclose ''all conflicts that reasonably could be expected to influence the objectivity of the research report and that are known or should have been known by the member or research analyst on the date of publication or distribution of the report.''

[128] *See* proposed FINRA Rule 2242.09 (Joint Due Diligence).

[129] *See* proposed FINRA Rule 2242.03(c).

[130] *See* proposed FINRA Rule 2242.03(b)(3).

SIFMA also contended that the requirement in proposed FINRA Rule 2242(c)(5) to disclose information on the date of publication or distribution is broader than current NASD Rule 2711, which only applies at the time of publication, and problematic logistically because the broader standard is not reflective of the conflicts that apply at the time the debt research analyst writes the research report. In addition, SIFMA argues that it is unclear how members could control and prevent the distribution of reports that have already been published in order to determine if additional disclosures are required. FINRA notes that the term ''distribution'' is drawn from the provisions of the Sarbanes-Oxley Law that apply to equity research reports and is intended to capture research that may only be distributed electronically as opposed to published in hard copy. FINRA has included the same ''publication or distribution'' language in the proposed changes to the equity research rules. However, FINRA interprets this language to require the disclosures to be current only as of the date of first publication or distribution, provided that the research report is prominently dated, and the disclosures are not known to be misleading.

The proposed rule text in the *Regulatory Notice* 12–09 Proposal required firms to ensure any recommendation or rating has a reasonable basis in fact and is accompanied by a clear explanation of the valuation method utilized and a fair presentation of the risks that may impede achievement of the recommendation or rating. SIFMA requested clarification that the requirement with respect to valuation method should apply only if the analyst used a ''formal'' valuation method. FINRA is not clear what constitutes a ''formal'' valuation method, but made a clarification in the proposed rule change to provide that any recommendation or rating must be accompanied by a clear explanation of ''any'' (as opposed to ''the'') valuation method used.

SIFMA also sought several other clarifications on the proposal. First, it asked FINRA to clarify that the requirement to include in research reports that contain a rating a distribution of ''all securities rated by the member to which the member would assign a 'buy,' 'hold,' or 'sell' rating'' is limited to debt securities. FINRA agrees that the proposed provision is limited to debt securities and has changed the text accordingly. Second, SIFMA sought flexibility to make a good faith determination as to which securities constitute a debt security that must be accompanied by a ''ratings table,'' given that bonds of the same issuer may have different ratings. FINRA agrees that any ratings table should reflect ratings of distinct securities rather than issuers. Finally, SIFMA requested guidance to distinguish between a ''recommendation'' and a ''rating'' for the purposes of disclosure under the revised proposal. In particular, SIFMA suggested that a recommendation of a relative value or paired trade idea should constitute a recommendation but not a rating. While any determination will be fact specific, FINRA believes in general that a recommendation is a suggestion to make a particular investment while a rating is a label or conclusion attached to a research report.

SIFMA asked that FINRA allow firms to modify the required ''health warning'' disclosure for institutional debt research to refer to ''this document'' rather than ''this research report'' when the material is not prepared by research department personnel. While FINRA would permit firms to use the word ''document'' rather than ''research report,'' such labeling must be used consistently and would have no bearing on whether the communication constitutes a ''research report'' for purposes of the proposed rule.

Third-Party Research Reports

With respect to distribution of third-party debt research reports, SIMFA objected to requirements in the Notice Proposals that do not currently apply to equity research under NASD Rule 2711. In particular, SIFMA cited the requirement to establish, maintain and enforce written policies and procedures reasonably designed to ensure that any third-party debt research report it distributes is ''reliable and objective.'' SIFMA stated that it is unclear what FINRA means by ''objective.'' With respect to the requirement to disclose ''any material conflict of interest that can reasonably expected to have influenced the choice of a third-party debt research provider or the subject company of a third-party debt research report,'' SIFMA stated that it is ''not clear what types of conflicts this provision is intended to capture.''

FINRA notes that its equity research proposal contains identical requirements with respect to the selection and distribution of third-party research. FINRA believes it reasonable to require firms to conduct upfront due diligence on the quality of its third-party research providers, particularly given the lesser review obligations imposed prior to distribution. FINRA notes that Global Settlement firms had to have such procedures to select their independent research providers,[131] and FINRA does not believe it unreasonable to have some type of screening procedures to ensure, for example that the third-party provider is not being paid by the issuer or that the research has some kind of track record or good reputation. In fact, in a 2006 comment letter, SIFMA stated that firms should ''demand high standards'' from providers of third-party research.[132] FINRA further believes it appropriate for firms to disclose to investors any relationship, *e.g.,* an affiliate relationship, or other circumstances that rise to a material conflict of interest that could reasonably be seen as having influenced the choice of third-party research provider. FINRA believes this disclosure is consistent with the requirement to disclosure material conflicts of interest with respect to a firm's own research, and therefore will similarly promote objectivity and transparency of information provided to investors that may influence their investment decisions. FINRA notes that a firm may avoid the requirement to review third-party research for false or misleading statements if it chooses to distribute only independent third-party research.[133]

In response to the Notice Proposals, ASIR commented that the proposal could be read to impose obligations on members who make available third-party research pursuant to Section 28(e) of the Exchange Act to have procedures to ensure that such research is reliable and objective and labeled in a certain manner. FINRA is not proposing to make any changes based on this comment. However, research made available pursuant to Section 28(e) is not ''distributed'' and therefore the proposed requirements would not apply.

Institutional Investor Definition

The *Regulatory Notice* 12–09 proposal would have exempted from many of the rule's provisions debt research reports disseminated only to ''institutional investors,'' provided that those institutional investors had, prior to receipt of a debt research report, affirmatively notified the member in writing that they wished to forego treatment as a retail investor for the

[131] *See* Letter from James A. Brigagliano, Assistant Director, SEC Division of Trading and Markets, to Dana G. Fleischman, Clearly, Gottlieb, Steen & Hamilton, dated Nov. 2, 2004.

[132] *See* Letter from Michael D. Udoff, SIFMA, to Nancy M. Morris, Secretary, SEC, dated Nov. 14, 2006.

[133] *See* proposed FINRA Rules 2242(g)(2) and (g)(4).

purposes of the rule. ASIR, BDA and SIFMA found this provision unnecessarily burdensome and difficult to implement and track. The commenters noted that they already expend resources to document similar consents under FINRA's suitability rule and that the nature of research distribution makes it more challenging than the suitability rule to track and process all eligible institutional investors that have consented to receive institutional debt research. Commenters instead advocated an approach whereby persons or entities that otherwise meet the definition of ''institutional investor''—as defined in FINRA Rule 4512(c)—are presumed to have consented to the institutional debt research regime unless they affirmatively choose to receive the protections afforded recipients of retail debt research. Among other things, these commenters asserted that this alternative approach would be less costly and burdensome to administer and that the remaining protections afforded institutional debt research under the proposal, together with the content standards applicable to institutional communications pursuant to FINRA's Communications with the Public rules,[134] provide less sophisticated institutional investors adequate protections should they not to choose be treated as retail investors for the purposes of debt research.

After considering these comments and discussing the issue further with industry members, FINRA proposed a revised institutional investor exemption in the *Regulatory Notice* 12–42 Proposal. Under the revised proposal, institutional investors that meet the definition of QIB and satisfy the FINRA Rule 2111 institutional suitability standards with respect to debt trading and strategies would be eligible to receive institutional debt research by way of negative consent. Other institutional investors that meet the definition in FINRA Rule 4512(c) but do not satisfy the higher tier requirements could still affirmatively elect in writing to receive institutional debt research. The revised proposal asked whether alternative standards for the higher tier would be more appropriate, including one that combines the FINRA Rule 4512(c) definition and the institutional suitability requirements.

CFA Institute supported the revised higher tier of QIB plus suitability standard in *Regulatory Notice* 12–42. SIFMA, BDA and BMO opposed it. BDA asserted that all QIBs should be able to receive research on debt securities without consent since they are in the business of investing and that an institutional suitability standard should be imposed to determine whether other institutional accounts may receive institutional debt research. BMO expressed concern that the proposal to require affirmative consent is cumbersome and burdensome and would deprive some smaller and mid-size institutional investors of research they receive today, in part because experience has shown that some institutional clients cannot or will not provide the affirmation required in FINRA Rule 2111.

SIFMA contended that the proposal had both practical and logical flaws. SIFMA maintained that the QIB component would introduce a problematic new standard that would require complex and costly systems to track QIB certifications and link them to FINRA Rule 2111 certifications and research distribution lists. SIFMA stated that one firm estimated a cost of $5 million to develop such a system. SIFMA further noted that suitability certifications are tracked at the order placer level, whereas QIBs are tracked for particular transactions. SIFMA also asserted that the proposal would lead to anomalous results, such as the circumstance where a dual registered investment adviser has multiple institutional accounts, only some of which have QIB certificates. SIFMA asked how the registered investment adviser could meet its duty to all of its clients but only utilize the institutional debt research for the QIBs. SIFMA further questioned the logic of a proposal that would allow institutional investors to transact in restricted securities but not receive research on those securities without taking additional steps.

SIFMA offered two alternatives for the higher tier: (1) Non-natural persons that satisfy institutional suitability requirements with respect to debt trading and strategies; or (2) certain order placing institutions: QIBs; registered broker-dealers, banks, savings and loans, insurance companies, registered investment companies; registered investment advisers; institutions with $50–$100 million in assets and represented by an independent investment adviser; and universities, regulatory and government entities that use research for academic purposes.

FINRA does not believe that retail investors or less sophisticated institutional investors should be required to take any additional steps to receive the full protections of the proposed rule. FINRA believes that some QIBs may lack expertise and experience in debt market analysis and trading, including some employee benefit plans, trust funds with participants of employee benefit plans and charitable organizations. For the same reasons, FINRA believes SIFMA's first alternative is too broad in that it would require less sophisticated institutional customers to affirmatively opt-in to the full protections of the rule. Therefore, the proposed rule change would adopt a standard under which firms may use negative consent only for the higher standard QIBs that also satisfy the institutional suitability requirements under FINRA Rule 2111 with respect to debt transactions, and affirmative consent from any institutional account as defined in FINRA Rule 4512(c). To avoid a disruption in the receipt of institutional debt research, the proposed rule change would allow firms to send institutional debt research to any FINRA Rule 4512(c) account, except a natural person, without affirmative or negative consent for a period of up to one year after SEC approval while they obtain the necessary consents. Natural persons that qualify as an institutional account under Rule 4512(c) must provide affirmative consent to receive institutional debt research during this transition period and thereafter.

FINRA believes that the proposed institutional investor definition strikes an appropriate balance between protecting less sophisticated institutional investors and maintaining the flow of research—and minimizing the burdens and costs of distributing debt research—to knowledgeable institutional investors. The exemption provides additional protections beyond the FINRA Rule 4512(c) standard for firms to receive institutional debt research by negative consent by ensuring that those institutions satisfy the higher QIB standard and are both capable of evaluating investment risks with respect to debt trading and strategies and have affirmatively indicated that they are exercising independent judgment in evaluating recommendations for such transactions. FINRA believes an affirmative consent requirement is appropriate for FINRA Rule 4512(c) accounts, which are more likely to include investors lacking experience in debt market analysis and trading. To the extent a FINRA Rule 4512(c) institutional investor values institutional debt research, FINRA

[134] At the time of the comment letters, those content standards were found in NASD IM–2110–1. Since that time, the Commission has approved a consolidated FINRA communications with the public rule, and those standards are now found in FINRA Rule 2210(d).

believes the proposed rule change imposes a one-time small burden on such investors to provide written consent. Some firms indicated to FINRA that the consent could be obtained at the time of other required written authorizations. FINRA believes the one-year grace period will ease the transition to the new rules without disrupting the current flow of debt research to institutional clients.

As to SIFMA's second alternative above, FINRA believes it would only exacerbate SIFMA's stated concerns about introducing a new standard, as the suggested standard has no precedent and is even more complex and presumably difficult to track than the QIB plus suitability standard FINRA proposes to adopt to receive institutional debt research by negative consent.

SIFMA also commented that even if FINRA adopted its preferred institutional suitability standard for the higher tier, many firms may not avail themselves of the exemption because of cost, logistics and obligations to provide their research to retail customers. Thus, SIFMA asked to narrow the scope of restricted persons by adopting the following definition of ''principal trading'' to mean:

> Engaging in proprietary trading activities for the trading book of a member but does not include transactions undertaken as part of underwriting related, market making related, or hedging activities, or otherwise on behalf of clients.

FINRA declined to adopt the suggested definition. FINRA believes the definition is overly broad and ambiguous and could encourage traders to pressure debt research analysts to support firm inventory positions. For example, the proposed definition would seem to permit traders of auction rate securities to participate in the determination of compensation for debt research analysts, thereby sanctioning the type of concerning conduct that served as a catalyst for rulemaking in this area. For the same reason, FINRA declines a request by BMO for FINRA to clarify that persons who position debt inventory to sell on a principal basis to customers but not for a firm's proprietary trading account would not be deemed to be engaged in principal trading activities.

SIFMA indicated to FINRA in discussions subsequent to their comment letter that firms with large institutional client bases were divided on whether the QIB-based negative consent standard or the FINRA Rule 4512(c) affirmative consent standard would be preferable from a cost efficiency perspective. The proposed rule change provides both options, which FINRA believes will help reduce the costs to satisfy the exemption requirements. The proposed rule change further reduces the costs of compliance by interpreting the QIB-based alternative to capture both QIBs and any order placer (*e.g.* registered investment adviser) that has at least one QIB sub-account. FINRA believes this interpretation addresses SIFMA's concern that suitability certifications are tracked at the order placer level, while QIBs are tracked for particular transactions, as well as concerns as to how the requirement would apply to a registered investment adviser with both QIB and non-QIB accounts. FINRA understands that the single $5 million estimate referenced by SIFMA in its letter was based in large part on the cost of developing a system that could directly link institutional suitability certifications to QIB sub-accounts and that the interpretation would appreciably reduce the burden.

Limited Investment Banking or Principal Trading Activities Exemptions

The proposed rule change includes an exemption for firms with limited investment banking activity, which is defined as managing or co-managing 10 or fewer investment banking services transactions on average per year over the previous three years and generating $5 million or less in gross investment banking revenues from those transactions. The proposed rule change also includes an exemption for firms that engage in limited principal trading activity where, in absolute value on an annual basis, the member's trading gains or losses on principal trades in debt securities are $15 million or less over the previous three years, on average per year, and the member employs fewer than 10 debt traders.

In response to *Regulatory Notice* 12–42, CFA opposed both the proposed exemption for firms with limited investment banking and the proposed exemption for firms with limited principal debt trading activities because they would allow influences that could compromise the independence and accuracy of debt research distributed to retail investors. FINRA did not propose any changes based on CFA's comments. With respect to the limited investment banking exemption, FINRA notes that this provision parallels an exemption in the equity research rules and FINRA has not found any evidence of abuse by firms subject to the exemption. With respect to the exemption for limited principal trading activity, FINRA notes that it would be limited to those firms whose limited trading activity makes the conflicts less pronounced and where it would be a significant marginal cost to add a trader dedicated to producing research.

In response to *Regulatory Notice* 12–09, Wulff and Romano expressed concerns regarding the exemption for firms that engage in limited investment banking activity, arguing that it did not go far enough to curtail the burden of the proposed rule on small firms, many of which have associated persons that engage in both producing debt research and principal trading activities, and that the thresholds were not appropriate for a proposal regarding debt research conflicts of interest. FINRA subsequently amended the proposal to add a more targeted exemption for firms with limited principal trading activity. The exemption, discussed in detail in Item II.A.1., addresses the concerns of small firms with dual-hatted persons by exempting those firms that engage in modest principal trading activity from the restrictions on supervision and compensation determination of debt research analysts by those engaged in sales and trading and principal trading activities. As noted above, FINRA determined the thresholds for the exemption based on data analysis and a survey of firms that engage in principal trading activity.

In addition, FINRA maintained the exemption for firms with limited investment banking activity, exempting eligible firms from similar supervision and compensation determination restrictions with respect to investment banking personnel. FINRA also engaged in data analysis, discussed in Item II.A.1., to confirm the appropriateness of the proposed thresholds for that exemption.

Effective Date

In response to both *Regulatory Notices,* SIFMA requested that FINRA establish an effective date that will provide adequate time for implementation of the proposed rule change, *e.g.,* 12 to 18 months after SEC approval. FINRA notes that it will provide sufficient time for implementation taking into account any required systems changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–048 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–FINRA–2014–048. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2014–048 and should be submitted on or before December 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[135]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27701 Filed 11–21–14; 8:45 am]

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[135] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73631; File No. SR–NYSEArca–2014–41]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and No. 4 Thereto, Relating to Listing and Trading of Shares of the Reality Shares DIVS Index ETF Under NYSE Arca Equities Rule 5.2(j)(3)

November 18, 2014.

I. Introduction

On April 11, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Reality Shares DIVS Index ETF (''Fund'') under NYSE Arca Equities Rule 5.2(j)(3). The proposed rule change was published for comment in the **Federal Register** on April 30, 2014.[3] On May 6, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.[4] On June 6, 2014, the Exchange filed Amendment No. 4 to the proposed rule change.[5] On June 13, 2014, pursuant to Section 19(b)(2) of the Act,[6] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[7] On July 29, 2014, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change.[9] In response to the Order Instituting Proceedings, the Commission received two comment letters on the proposal.[10] On October 23, 2014, the Commission designated a longer period for Commission action on the Order Instituting Proceedings.[11] This order grants approval of the proposed rule change, as modified by Amendments No. 1 and No. 4 thereto.

II. Description of the Proposal, as Modified by Amendments No. 1 and No. 4 Thereto

A. The Fund, Generally

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 5.2(j)(3), which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72015 (Apr. 24, 2014), 79 FR 24475 (''Notice'').

[4] In Amendment No. 1, the Exchange clarified the valuation of investments for purposes of calculating net asset value, provided additional details regarding the dissemination of the Disclosed Portfolio, and made other minor technical edits to the proposed rule change. Amendment No. 1 provided clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change or raise novel or unique regulatory issues, Amendment No. 1 is not subject to notice and comment.

[5] The Exchange filed Amendment No. 2 on June 4, 2014 and withdrew it on June 5, 2014, and filed Amendment No. 3 on June 5, 2014 and withdrew it on June 6, 2014. Amendment No. 4 supersedes both Amendments No. 2 and No. 3. In Amendment No. 4, the Exchange amended the proposal to reflect a change to the name of the Fund and the underlying index. Specifically, the Exchange replaced each reference in the proposal to the ''Reality Shares Isolated Dividend Growth Index ETF'' (the original name of the Fund) with a reference to the ''Reality Shares DIVS Index ETF.'' Similarly, the Exchange replaced each reference in the proposal to the ''Reality Shares Isolated Dividend Growth Index'' with a reference to the ''Reality Shares DIVS Index.'' Amendment No. 4 is a technical amendment and is not subject to notice and comment as it does not materially affect the substance of the filing.

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 72385, 79 FR 35205 (Jun. 19, 2014). The Commission designated a longer period within which to take action on the proposed rule change and designated July 29, 2014, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 72714, 79 FR 45574 (Aug. 5, 2014) (''Order Instituting Proceedings''). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' *See id.*

[10] *See* Letter from Eric R. Ervin, President, Reality Shares ETF Trust and Reality Shares Advisors, LLC, and President and CEO, Reality Shares, Inc., to Kevin M. O'Neill, Deputy Secretary, Commission, dated August 22, 2014 (''Reality Shares Letter 1''); Letter from Eric R. Ervin, President, Reality Shares ETF Trust and Reality Shares Advisors, LLC, and President and CEO, Reality Shares, Inc., to Arun Manoharan, Financial Economist, Commission, dated October 21, 2014 (''Reality Shares Letter 2'').

[11] *See* Securities Exchange Act Release No. 73417, 79 FR 64430 (Oct. 29, 2014).

governs the listing and trading of Investment Company Units on the Exchange.[12] The Fund is an exchange-traded fund (''ETF'') that will seek long-term capital appreciation by tracking the performance of the Reality Shares DIVS Index (''Index''). The Shares of the Fund will be offered by the Reality Shares ETF Trust (''Trust''). The Exchange represents that the Trust will be registered with the Commission as an open-end management investment company.[13] Reality Shares Advisors, LLC will serve as the investment adviser to the Fund (''Adviser'').[14] The Exchange states that the Adviser is not registered as a broker-dealer and is not affiliated with any broker-dealers.[15] ALPS Distributors, Inc. will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon will serve as administrator, custodian, and transfer agent for the Fund.

B. The Exchange's Description of the Fund

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including permitted portfolio holdings and investment restrictions.[16]

Reality Shares DIVS Index ETF

The Index was developed and is maintained by Reality Shares, Inc.[17] The Exchange states that the Index Provider is not registered as an investment adviser or broker dealer and is not affiliated with any broker-dealers.[18] The Exchange states that the Index for the Fund does not meet all of the ''generic'' listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Investment Company Units based upon an index of ''US Component Stocks.''[19] Specifically, Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) sets forth the requirements to be met by components of an index or portfolio of US Component Stocks. As discussed in more detail herein, the Index is calculated using a proprietary, rules-based methodology designed to track market expectations for dividend growth conveyed in real-time using bid-ask prices on exchange-listed S&P 500 Index options and exchange-listed options on exchange traded funds (''ETFs'') designed to track the S&P 500 Index.[20] The Fund may also invest up to 20% of its total assets in other securities such as over-the-counter (''OTC'') options, futures, and forward contracts on the S&P 500 Index, and OTC options, futures, and forward contracts on ETFs that track the S&P 500 Index. Because the Index will consist primarily of S&P 500 Index options and options on ETFs designed to track the S&P 500 Index, and not US Component Stocks, the Index does not satisfy the requirements of Commentary .01(a)(A).[21]

Principal Investments of the Fund

The Fund will seek long-term capital appreciation and will seek investment results that, before fees and expenses, generally correspond to the performance of the Index. At least 80% of the Fund's total assets (exclusive of collateral held from securities lending, if any) will be invested in the component securities of the Index. The Fund will seek a correlation of 0.95 or better between its performance and the performance of its Index (a figure of 1.00 would represent perfect correlation). The Fund generally will use a representative sampling investment strategy.

The Fund will buy (*i.e.,* hold a ''long'' position in) and sell (*i.e.,* hold a ''short'' position in) put and call options. The strategy of taking both a long position in a security through its ex-dividend date (the last date an investor can own the security and receive dividends paid on the security) and a corresponding short position in the same security immediately thereafter is designed to allow the Fund to isolate its exposure to the growth of the level of dividends expected to be paid on such security while minimizing its exposure to changes in the trading price of such security.

The Fund will buy and sell U.S. exchange-listed options on the S&P 500 Index and U.S. exchange-listed options on ETFs designed to track the S&P 500 Index. A put option gives the purchaser of the option the right to sell, and the issuer of the option the obligation to buy, the underlying security or instrument on a specified date or during a specified period of time. A call option on a security gives the purchaser of the option the right to buy, and the writer of the option the obligation to sell, the underlying security or instrument on a specified date or during a specified period of time. The Fund will invest in a combination of put and call options designed to allow the Fund to isolate its

[12] NYSE Arca Equities Rule 5.2(j)(3)(A) provides that an Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on, or representing an interest in, an index or portfolio of securities).

[13] According to the Exchange, the Trust will be registered under the Investment Company Act of 1940 (''1940 Act''). On February 6, 2014, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 and the 1940 Act relating to the Fund, as amended by Pre-Effective Amendment Number 1, filed with the Commission on February 6, 2014 (File Nos. 333–192288 and 811–22911) (''Registration Statement''). In addition, the Exchange states that the Trust has obtained certain exemptive relief under the 1940 Act. Investment Company Act Release No. 30678 (Aug. 27, 2013) (''Exemptive Order''). The Exchange represents that investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

[14] The Adviser is a wholly-owned subsidiary of Reality Shares, Inc. (''Index Provider'').

[15] According to the Exchange, the Adviser and the Index Provider have represented that a fire wall exists around the respective personnel who have access to information concerning changes and adjustments to the Index. The Exchange further represents that in the event (a) the Adviser, any sub-adviser, or the Index Provider becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser, sub-adviser, or Index Provider is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to the relevant personnel or broker-dealer affiliate regarding access to information concerning the composition or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[16] Additional information regarding the Trust, the Fund, and the Shares, including investment strategy, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice, Registration Statement, and Exemptive Order, as applicable. *See* Notice, *supra* note 3; *see also* Registration Statement and Exemptive Order, *supra* note 13.

[17] The Index will be calculated by International Data Corporation (''IDC''), which is not affiliated with the Adviser or Index Provider, and which is not a broker-dealer or fund advisor.

[18] *See supra* note 15.

[19] NYSE Arca Equities Rule 5.2(j)(3) defines the term ''US Component Stock'' as an equity security that is registered under Sections 12(b) or 12(g) of the Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

[20] For purposes of this proposed rule change, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)) and Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100). The ETFs all will be listed and traded in the U.S. on registered exchanges. The Fund may not invest in leveraged or inverse leveraged (*e.g.,* 2X, -2X, 3X, or -3X) ETFs or options on such ETFs.

[21] NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(5) provides that all securities in the applicable index or portfolio shall be US Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 under Regulation NMS of the Act. The Exchange states that each component stock of the S&P 500 Index is a US Component Stock that is listed on a national securities exchange and is an NMS Stock. Options, however, are excluded from the definition of NMS Stock. The Exchange represents that the Fund and the Index meet all of the requirements of the listing standards for Investment Company Units in Rule 5.2(j)(3) and the requirements of Commentary .01, except the requirements in Commentary .01(a)(A)(1)–(5), because the Index includes options on US Component Stocks.

exposure to the growth of the level of expected dividends reflected in options on the S&P 500 Index and options on ETFs tracking the S&P 500 Index, while minimizing the Fund's exposure to changes in the trading price of such securities.

Index Methodology

The Index will be calculated using a proprietary, rules-based methodology designed to track market expectations for dividend growth conveyed in real-time using the mid-point of the bid-ask spread on S&P 500 Index options and options on ETFs designed to track the S&P 500 Index.[22] All options included in the Index will be listed and traded on a U.S. national securities exchange. The Index will consist of a minimum of 20 components.

The prices of index and ETF options reflect the market trading prices of the securities included in the applicable underlying index or ETF, as well as market expectations regarding the level of dividends to be paid on such indexes or ETFs during the term of the option. The Index constituents, and, therefore, most of the Fund's portfolio holdings, will consist of multiple corresponding near-term and long-term put and call option combinations on the same reference assets (*i.e.,* options on the S&P 500 Index or options on S&P 500 ETFs) with the same strike price. Because option prices reflect both stock price and dividend expectations, they can be used in combination to isolate either price exposure or dividend expectations. The use of near-term and long-term put and call options combinations on the same reference asset with the same strike price, but with different maturities, is designed to gain exposure to the expected dividends reflected in options on the S&P 500 Index and options on ETFs tracking the S&P 500 Index while neutralizing the impact of stock price.

Once established, this portfolio construction of options combinations will accomplish two goals. First, the use of corresponding buy or sell positions on near and long-term options at the same strike price is designed to neutralize underlying stock price movements. In other words, the corresponding ''buy'' and ''sell'' positions on the same reference asset are designed to net against each other and eliminate the impact that changes to the stock price of the reference asset would otherwise have on the value of the Index (and Fund Shares). Second, by minimizing the impact of price fluctuations through the construct of the near- and long-term contract combinations, the strategy is designed to isolate market expectations for dividends implied between expiration dates of the near-term and long-term option contracts. Over time, the Index will increase or decrease in value as the dividend spread between the near-term and long-term options combinations increases or decreases as a result of changing market expectations for dividend growth.

Other Fund Investments

While, as described above, at least 80% of the Fund's total assets (exclusive of collateral held from securities lending, if any) will be invested in the component securities of the Index, the Fund may invest up to 20% of its total assets in other securities and financial instruments, as described below.

The Fund may invest in: (a) U.S. exchange-listed futures contracts based on the S&P 500 Index and ETFs designed to track the S&P 500 Index; and (b) forward contracts based on the S&P 500 Index and ETFs designed to track the S&P 500 Index. The Fund's use of exchange-listed futures contracts and forward contracts is designed to allow the Fund to isolate its exposure to the growth of the level of expected dividends reflected in options on the S&P 500 Index and options on ETFs tracking the S&P 500 Index, while minimizing the Fund's exposure to changes in the trading price of such securities. The Fund may also buy and sell OTC options on the S&P 500 Index and on ETFs designed to track the S&P 500 Index.

The Fund may enter into dividend and total return swap transactions (including equity swap transactions) based on the S&P 500 Index and ETFs designed to track the S&P 500 Index.[23] In a typical swap transaction, one party agrees to make periodic payments to another party (''counterparty'') based on the change in market value or level of a specified rate, index, or asset. In return, the counterparty agrees to make periodic payments to the first party based on the return of a different specified rate, index, or asset. Swap transactions are usually done on a net basis, whereby the Fund would receive or pay only the net amount of the two payments. In a typical dividend swap transaction, the Fund would pay the swap counterparty a premium and would be entitled to receive the value of the actual dividends paid on the subject index during the term of the swap contract. In a typical total return swap, the Fund might exchange long or short exposures to the return of the underlying securities or index to isolate the value of the dividends paid on the underlying securities or index constituents. The Fund also may engage in interest rate swap transactions. In a typical interest rate swap transaction one stream of future interest payments is exchanged for another. Such transactions often take the form of an exchange of a fixed payment for a variable payment based on a future interest rate. The Fund intends to use interest rate swap transactions to manage or hedge exposure to interest rate fluctuations.

The Fund may invest up to 20% of its assets (exclusive of collateral held from securities lending, if any) in exchange-listed equity securities and derivative instruments (specifically, futures contracts, forward contracts, and swap transactions, as noted above)[24] relating to the Index and its component securities that the Adviser believes will help the Fund track the Index. For example, the Fund may buy and sell ETFs and, to a limited extent, individual large-capitalization equity securities listed and traded on a U.S. national securities exchange.

The Fund may invest in the securities of other investment companies (including money market funds) to the extent permitted under the 1940 Act.

The Fund's short positions and its investments in swaps, futures contracts, forward contracts, and options based on the S&P 500 Index and ETFs designed to track the S&P 500 Index will be backed by investments in cash, high-quality short-term debt securities, and money-market instruments in an amount equal to the Fund's maximum liability under the applicable position or contract, or will otherwise be offset in accordance with Section 18 of the 1940 Act. Short-term debt securities and money market instruments include shares of fixed income or money market mutual funds, commercial paper, certificates of deposit, bankers'

[22] The Exchange notes that there is no guarantee that either the level of overall dividends paid by such companies will grow over time, or that the Index or Fund's investment strategies will capture such growth. The Fund will include appropriate risk disclosure in its offering documents disclosing these risks, which will be available for free on the Commission's Web site and on the Fund's Web site, *www.realityshares.com.*

[23] The Fund will transact only with swap dealers that have in place an ISDA agreement with the Fund.

[24] Where practicable, the Fund intends to invest in swaps cleared through a central clearing house (''Cleared Swaps''). Currently, only certain of the interest rate swaps in which the Fund intends to invest are Cleared Swaps, while the dividend and total return swaps (including equity swaps) in which the Fund may invest are currently not Cleared Swaps.

acceptances, U.S. government securities (including securities issued or guaranteed by the U.S. government or its authorities, agencies, or instrumentalities), repurchase agreements,[25] and bonds that are rated BBB or higher. In addition to the investments described above, and in a manner consistent with its investment objective, the Fund may invest a limited portion of its net assets in high-quality, short-term debt securities and money market instruments for cash management purposes.[26]

The Fund will attempt to limit counterparty risk in non-cleared swap, forward, and OTC option contracts by entering into such contracts only with counterparties the Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty. The Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.[27]

The Fund's investments in swaps, futures contracts, forward contracts, and options will be consistent with the Fund's investment objective and with the requirements of the 1940 Act.[28]

Investment Restrictions

To the extent the Index concentrates (*i.e.,* holds 25% or more of its total assets) in the securities of a particular industry or group of industries, the Fund will concentrate its investments to approximately the same extent as the Index.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance.[29] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may make secured loans of its portfolio securities; however, securities loans will not be made if, as a result, the aggregate amount of all outstanding securities loans by the Fund exceeds 33⅓% of its total assets (including the market value of collateral received). To the extent the Fund engages in securities lending, securities loans will be made to broker-dealers that the Adviser believes to be of relatively high credit standing pursuant to agreements requiring that the loans continuously be collateralized by cash, liquid securities, or shares of other investment companies with a value at least equal to the market value of the loaned securities.

The Fund will be classified as a ''non-diversified'' investment company under the 1940 Act. The Fund intends to qualify for and to elect treatment as a separate regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code.

The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

III. Summary of Comment Letters

As noted above, the Commission received two comment letters in response to the Order Instituting Proceedings.[30] Both comment letters, which were in favor of the proposal, sought to address certain questions, as outlined in the Order Instituting Proceedings,[31] and provide additional clarification regarding the proposal.

A. Reality Shares Letter 1

In Reality Shares Letter 1, the commenter offers its responses to the Commission's questions. The commenter responds that the Fund's investment strategy is not based on the assumption that dividend growth is underpriced by the options markets, stating that it is instead based on the expected dividend value to be paid on S&P 500 securities (as implied in the price of listed S&P 500 Index options over time) and the ''historical high correlation between such expected dividend values and the value of actual dividends paid on S&P 500

[25] The Fund may enter into repurchase agreements with banks and broker-dealers. A repurchase agreement is an agreement under which securities are acquired by a fund from a securities dealer or bank subject to resale at an agreed upon price on a later date. The acquiring fund bears a risk of loss in the event that the other party to a repurchase agreement defaults on its obligations and the fund is delayed or prevented from exercising its rights to dispose of the collateral securities.

[26] The Fund may invest in shares of money market mutual funds to the extent permitted by the 1940 Act.

[27] The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser will evaluate each approved counterparty using various methods of analysis, such as, for example, the counterparty's liquidity in the event of default, the counterparty's reputation, the Adviser's past experience with the counterparty, and the counterparty's share of market participation.

[28] To limit the potential risk associated with such transactions, the Fund will segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations arising from such transactions. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

[29] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[30] *See* Reality Shares Letter 1; Reality Shares Letter 2, *supra* note 10.

[31] In the Order Instituting Proceedings, the Commission sought comment on the following questions: (a) Because the Index is designed to reflect changes in market expectations of future dividend growth, rather than to track actual dividend growth, is the Fund's investment strategy fundamentally based on an assumption that the options markets systemically underprice dividend growth? What are commenters' views regarding whether investors would be able to understand the strategy, risks, potential rewards, assumptions, and expected performance of the Fund's strategy? (b) With respect to the trading of the Shares on the Exchange, do commenters believe that the Exchange's rules governing sales practices are adequately designed to ensure the suitability of recommendations regarding the Shares? Why or why not? If not, should the Exchange's rules governing sales practices be enhanced? If so, in what ways? (c) How closely do commenters think the market price of the Shares will track the Fund's intraday indicative value (''IIV'') or the intraday value of the Index? Are certain of these values likely to be more volatile than others? If so, how would this affect trading in the Shares? Are the Shares likely to trade with a significant premium or discount to IIV? What are commenters' views of how effectively the IIV of the Fund would represent the Fund's portfolio? What are commenters' views of how the Shares' market price, the Fund's IIV, and the intraday value of the Index will relate to one another during times of market stress? and (d) Does the liquidity of the long-dated options in which the Fund will invest differ materially from that of the short-dated options in which the Fund will invest? If so, how would that affect the ability of market makers to engage in arbitrage or to hedge their positions while making a market in the Shares? Would the liquidity characteristics of the Index components or of the options in the Fund's portfolio affect the calculation of the Index value, the calculation of the Fund's IIV, the calculation of the Fund's NAV, or the ability of market makers or other market participants to value the Shares? If so, how?

securities.'' [32] The commenter then explains that as the value of actual dividends paid increases or decreases, market expectations for dividends typically move up or down in a corresponding direction, and that if the current expected dividend value of the options in the Fund's portfolio changes, the value of an investment in the Fund changes correspondingly.[33]

The commenter asserts that the Fund's Registration Statement will sufficiently disclose to investors the key features of the Fund, including explanations of how the Fund's strategy works and how the Fund is expected to perform under various market conditions, and disclosures highlighting all material risks of investing in the Fund.[34] The commenter believes that these disclosures and the disclosures in the Fund's marketing materials, will allow investors to understand the Fund's investment objective, strategy, risks, potential rewards, assumptions, and performance characteristics.[35] Further, the commenter believes that the Exchange's rules governing sales practices are sufficient to ensure the suitability of recommendations to investors regarding the Fund's Shares.[36]

With respect to IIV, the commenter responds that it believes that the market price of the Fund Shares will closely approximate the IIV of the Fund's portfolio and the intraday value of the Fund's underlying Index.[37] While it believes that ''the Fund's IIV and intraday Index values may reflect higher volatility than the market trading price of Fund Shares,'' the commenter does not expect this will have any material impact on secondary market trading of Fund Shares or arbitrage in Fund Shares.[38] The commenter expects that Authorized Participants and other institutional investors will quote and trade the option contracts held by the Fund in combination (by holding simultaneous long and short positions in the same put/call contracts) and that this combination tends to trade at tighter bid/ask spreads than do the individual contracts.[39] The commenter expects that Authorized Participants and other market makers will factor the price of the combination trades into their assessment of the value of Fund Shares, which will be reflected in the trading price of Fund Shares.[40] The commenter explains that the Fund's IIV and the intraday Index values are based on the intraday market price of individual option contracts and do not reflect the trading price of option contracts held in combination. So, while the commenter expects the price of Fund Shares to closely approximate the Fund's IIV and the intraday values of the Index, it also expects that the trading price of Fund shares will be less volatile than the Fund's IIV and the intraday value of the Index.[41]

In times of market stress, the commenter believes that the Fund's Shares will trade within an acceptable spread to the Fund's IIV and the intraday value of the Index.[42] The commenter believes that because the Fund's portfolio is transparent and the Index constituents are publicly disclosed, market participants will be able to assess the value of the Fund and the Index and access the securities necessary to hedge their position exposures, even during times of market stress.[43] Further, the commenter asserts that, ''[b]ecause of the transparency of the Fund's portfolio and the liquidity and transparency of the underlying listed index options . . . investors will continue to have the ability to buy and sell Shares in the secondary market at fair and representative prices should there be any material departure from the IIV.'' [44]

The commenter states that the liquidity of the longer-dated option contracts in the Fund's portfolio will not differ materially from the liquidity of the shorter-dated option contracts.[45] Further, the commenter explains that the liquidity characteristics of the option contracts held by the Fund will not negatively impact the Fund's operation, the calculation of the Index value, the calculation of the Fund's IIV, or the calculation of the Fund's NAV.[46] The commenter believes that the options contracts provide ''sufficient and ample liquidity . . . for Authorized Participants and other investors to engage in efficient hedging activity, to value Fund Shares and to make markets in Fund Shares.'' [47]

B. Reality Shares Letter 2

In Reality Shares Letter 2, the commenter seeks to address whether the Fund's strategy will produce positive returns for buy-and-hold investors over the longer term in light of the efficient nature of markets and the ability of astute market participants to predict dividend growth.[48] The commenter claims that the historical returns of the Fund's strategy have been positive over long periods of time and that an investor can reasonably expect returns in the future that are non-zero and positive in the long term.[49]

In support of this claim, the commenter argues that all investments, even in perfectly efficient markets, are expected to have, at minimum, a risk-free rate associated with them.[50] For example, Treasury Bills (theoretically risk-free assets) are discounted by the risk-free rate in order to entice investors to purchase them.[51] Thus, even in a perfectly efficient market such as the one for Treasury Bills, an investment in a riskless asset will produce a long-term return greater than zero.[52] In addition, the commenter adds that, if any uncertainty surrounds the future payoff of an investment, one would expect a risk premium to be attached to the investment.[53] This would be quantified as the amount of money by which the expected return on the asset exceeds the known return of a risk-free asset.[54] This risk premium compensates investors for the uncertainty in their investment in a risky asset.[55] If the dividend risk premium were low, one would expect the strategy to earn less than the actual growth of dividends; if dividend risk premium were high, one would expect the strategy to earn more than actual dividend growth.[56] The commenter notes that, while expected dividend returns may not match dividend growth exactly, the rate of return would (at a minimum) be expected to be equal to the risk free rate, plus the risk premium.[57]

The commenter further asserts that, beyond the theoretical analogy stated above, an investment in the expected dividend implied in the options markets has historically produced positive returns and that the Fund's strategy can

[32] *See* Reality Shares Letter 1, *supra* note 10, at 2–3.

[33] *See id.,* at 3.

[34] *See id.,* at 3–4.

[35] *See id.,* at 4.

[36] *See id.,* at 5.

[37] *See* Reality Shares Letter 1, *supra* note 10, at 6.

[38] *See id.*

[39] *See id.*

[40] *See id.,* at 7.

[41] *See id.*

[42] *See* Reality Shares Letter 1, *supra* note 10, at 9.

[43] *See id.*

[44] *See id.,* at 10.

[45] *See id.*

[46] *See id.,* at 11.

[47] *See* Reality Shares Letter 1, *supra* note 10, at 12.

[48] *See* Reality Shares Letter 2, *supra* note 10, at 1.

[49] *See id.*

[50] *See id.*

[51] *See id.*

[52] *See id.*

[53] *See* Reality Shares Letter 2, *supra* note 10, at 2.

[54] *See id.*

[55] *See id.*

[56] *See id.*

[57] *See id.*

be expected to produce future positive long-term returns.[58] While the commenter believes that it is possible for implied dividend strategies to outperform equity returns, as well as actual dividend growth, the commenter argues that the foundation of the Fund's investment strategy is predicated on its conclusion that implied dividends carry risk and that, in an efficient market, this risk will be reflected in the form of a dividend risk premium.[59]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposal and the comments submitted in response to the questions raised by the Commission in the Order Instituting Proceedings. For the reasons discussed below, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[60] In particular, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 4 thereto, is consistent with Section 6(b)(5) of the Exchange Act,[61] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[62] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. The value of the Index will be published by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. Information about the Index constituents, the weighting of the constituents, the Index's methodology, and the Index's rules will be available at no charge on the Index Provider's Web site at *www.realityshares.com.* In addition, the Intraday Indicative Value (''IIV'') as defined in NYSE Arca Equities Rule 5.2(j)(3), Commentary 01(c), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[63] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the ''Disclosed Portfolio'' (as such term is defined in NYSE Arca Equities Rule 8.600(c)(2)) that will form the basis for the Fund's calculation of NAV at the end of the business day.[64] In addition, a portfolio composition file, which includes the security names and quantities, as applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange (''NYSE'') via the National Securities Clearing Corporation. The portfolio composition file will represent one Creation Unit of Shares of the Fund. The Fund will calculate its NAV by: (i) Taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares outstanding. The Fund will calculate NAV once each business day as of the regularly scheduled close of trading on the NYSE (normally, 4:00 p.m., Eastern Time).[65] The intra-day, closing, and settlement prices of the portfolio securities and other Fund investments, including futures and exchange-traded equities, ETFs, and exchange-traded options,[66] will also be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, and, with respect to OTC options, swap transactions, and forward transactions, from third party pricing sources, or on-line information services such as Bloomberg or Reuters. The intra-day, closing, and settlement prices of debt securities and money market instruments will be readily available from published and other public sources or on-line information services. Price information regarding investment company securities, including ETFs, will be available from on-line information services and from the Web site for the applicable investment company security. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Fund's Web site will include a form of the prospectus for the Fund that may be downloaded and additional data relating to NAV and other applicable quantitative information.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be

[58] *See* Reality Shares Letter 2, *supra* note 10, at 2.

[59] *See id.,* at 3.

[60] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[61] 15 U.S.C. 78f(b)(5).

[62] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[63] According to the Exchange, several major market data vendors display and/or make widely available IIVs taken from the CTA or other data feeds.

[64] Under accounting procedures to be followed by the 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 Fund 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. On a daily basis, the Adviser, on behalf of the Fund, will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

[65] The Trust will generally value exchange-listed equity securities (which include common stocks and ETFs) and exchange-listed options, including options on the S&P 500 Index and options on ETFs, at market closing prices. Market closing price is generally determined on the basis of last reported sales prices on the applicable exchange, or if no sales are reported, based on the mid-point between the last reported bid and ask. The Trust will generally value exchange-listed futures at the settlement price determined by the applicable exchange. Non-exchange-traded derivatives, including OTC options, swap transactions, and forward transactions, will normally be valued on the basis of quotations or equivalent indication of value supplied by an independent pricing service or major market makers or dealers. Debt securities and money market instruments generally will be valued based on prices provided by independent pricing services, which may use valuation models or matrix pricing to determine current value. Investment company securities (other than ETFs) will be valued at NAV. The Trust generally will use amortized cost to value fixed income or money market securities that have a remaining maturity of 60 days or less.

[66] Information relating to U.S. exchange-listed options is available via the Options Price Reporting Authority.

necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange represents that trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[67] In addition, if the IIV, the Index Value or the value of the Index Components is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange will obtain a representation from the Fund that the NAV for the Fund will be calculated daily and will be made available to all market participants at the same time. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV for the Fund is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Commission notes that the Index Provider is not registered as an investment adviser or broker dealer and is not affiliated with any broker-dealers, and the Adviser is not registered as a broker-dealer and is not affiliated with any broker-dealers.[68] Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. The Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange,[69] will communicate as needed regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts, and exchange-traded options contracts with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts, and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts, and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[70] All exchange-listed equity securities, ETFs, futures contracts and options held by the Fund will be traded on U.S. exchanges, all of which are members of ISG or are exchanges with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions (Opening, Core, and Late Trading Sessions).

(2) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index will not meet the requirements of NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(1)–(5) in that the Index will consist of options based on US Component Stocks (*i.e.,* ETFs based on the S&P 500 Index) and options on an index of US Component Stocks (*i.e.,* S&P 500 Index options), rather than US Component Stocks themselves. The Index will include a minimum of 20 components and, therefore, would meet the numerical requirement of NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(4) (a minimum of 13 index or portfolio components).

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to detect and help deter violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV or Index value will not be calculated or publicly disseminated; (d) how information regarding the IIV and Index value will be disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

[67] These reasons may include: (1) The extent to which trading is not occurring in the securities or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. The Exchange represents that it may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.

[68] *See supra* note 15 and accompanying text. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[69] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[70] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[71] as provided by NYSE Arca Equities Rule 5.3.

(6) At least 80% of the Fund's total assets (exclusive of collateral held from securities lending, if any) will be invested in the component securities of the Index. The Fund will seek a correlation of 0.95 or better between its performance and the performance of its Index. A figure of 1.00 would represent perfect correlation. All options included in the Index will be listed and traded on a U.S. national securities exchange.

(7) The Fund's investments in swaps, futures contracts, forward contracts and options will be consistent with the Fund's investment objective and with the requirements of the 1940 Act. To limit the potential risk associated with such transactions, the Fund will segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations arising from such transactions. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk. The Fund may not invest in leveraged or inverse leveraged (*e.g.,* 2X, −2X, 3X, or −3X) ETFs or options on such ETFs. The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

(8) The Fund will transact only with swap dealers that have in place an ISDA agreement with the Fund. Where practicable, the Fund intends to invest in Cleared Swaps. The Fund will attempt to limit counterparty risk in non-cleared swap, forward, and OTC option contracts by entering into such contracts only with counterparties the Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty. The Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis. The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced. The Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser will evaluate each approved counterparty using various methods of analysis, such as, for example, the counterparty's liquidity in the event of default, the counterparty's reputation, the Adviser's past experience with the counterparty, and the counterparty's share of market participation.

(9) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance.

(10) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.

(11) The Fund will include appropriate risk disclosure in its offering documents, which will be available on the Commission's Web site and on the Fund's Web site, *www.realityshares.com.*

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 4 thereto, is consistent with Section 6(b)(5) of the Act[72] and the rules and regulations thereunder applicable to a national securities exchange.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[73] that the proposed rule change (SR–NYSEArca–2014–41), as modified by Amendments No. 1 and No. 4 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[74]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27707 Filed 11–21–14; 8:45 am]

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[71] 17 CFR 240.10A–3.

[72] 15 U.S.C. 78f(b)(5).

[73] *Id.*

[74] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73627; File No. SR–CME–2014–28]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Withdrawal of Proposed Rule Change Related to Enhancements to Risk Model for Credit Default Swaps

November 18, 2014.

On August 8, 2014, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change (SR–CME–2014–28) relating to CME's Risk Model for Credit Default Swaps (''CDS'') as it applied only to broad-based index CDS products cleared by CME, and would not be applicable to security-based swaps. Notice of the proposed rule change was published in the **Federal Register** on August 18, 2014.[3] Notice of Amendment No. 2 to the proposed rule change was published in the **Federal Register** on September 8, 2014.[4] The Commission did not receive comments on the proposal.

On October 1, 2014, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change to November 16, 2014.[5] On November 14, 2014, CME withdrew the proposed rule change (SR–CME–2014–28).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27705 Filed 11–21–14; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–72834 (August 13, 2014), 79 FR 48805 (August 18, 2014) (SR–CME–2014–28).

[4] Securities Exchange Act Release No. 34–72959 (September 2, 2014), 79 FR 53234 (September 8, 2014) (SR–CME–2014–28). On August 18, 2014, CME filed Amendment No. 1 to the proposed rule change. CME withdrew Amendment No. 1 on August 29, 2014.

[5] Securities Exchange Act Release No. 34–73283 (October 1, 2014), 79 FR 60563 (October 7, 2014) (SR–CME–2014–28).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73626; File No. SR–CME–2014–31]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Withdrawal of Proposed Rule Change Related to Clearing of Certain iTraxx Europe Index Untranched CDS Contracts on Indices Administered by Markit

November 18, 2014.

On August 11, 2014, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change (SR–CME–2014–31) seeking to enable CME to offer clearing of certain iTraxx Europe index untranched CDS contracts on indices administered by Markit (''iTraxx Contracts''). Specifically, the proposed rule change would update CME's CDS Product Rules to provide for the clearing of the iTraxx Contracts. Notice of the proposed rule change was published in the **Federal Register** on August 18, 2014.[3] Notice of Amendment No. 2 to the proposed rule change was published in the **Federal Register** on October 1, 2014.[4] The Commission did not receive comments on the proposal.

On October 2, 2014, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change to November 16, 2014.[5] On November 14, 2014, CME withdrew the proposed rule change (SR–CME–2014–31).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27704 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–72833 (August 13, 2014), 79 FR 48797 (August 18, 2014) (SR–CME–2014–31).

[4] Securities Exchange Act Release No. 34–73275 (October 1, 2014), 79 FR 60563 (October 7, 2014) (SR–CME–2014–31). On August 18, 2014, CME filed Amendment No. 1 to the proposed rule change. CME withdrew Amendment No. 1 on August 29, 2014.

[5] Securities Exchange Act Release No. 34–73290 (October 2, 2014), 79 FR 60873 (October 8, 2014) (SR–CME–2014–31).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73632; File No. SR–FINRA–2014–046]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Gross Income Assessment Pricing Structure

November 18, 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 November 7, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to modify the Gross Income Assessment pricing structure in Section 1(c) of Schedule A to the FINRA By-Laws.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for,the Proposed Rule Change

1. Purpose

The proposed rule change is intended to provide limited relief from the Gross Income Assessment (''GIA'') for some smaller FINRA members due to the unanticipated effect of a 2009 change to the method of calculating the assessment. The GIA is one of a few primary revenue sources that funds FINRA's regulatory operations [5] and is based on a firm's annual gross revenue.[6] In 2008, FINRA established a seven-tier rate structure to assess the GIA, with a minimum assessment of $1,200. The tiered rates, which have remained unchanged, are as follows:

(1) $1,200.00 on annual gross revenue up to $1 million;

(2) 0.1215% of annual gross revenue greater than $1 million up to $25 million;

(3) 0.2599% of annual gross revenue greater than $25 million up to $50 million;

(4) 0.0518% of annual gross revenue greater than $50 million up to $100 million;

(5) 0.0365% of annual gross revenue greater than $100 million up to $5 billion;

(6) 0.0397% of annual gross revenue greater than $5 billion up to $25 billion; and

(7) 0.0855% of annual gross revenue greater than $25 billion.

As a result of this structure, GIA revenues are derived overwhelmingly from medium-sized and larger firms. Due to rebates, firms with revenues of $1 million or less effectively have paid no GIA since 2008.

In November 2009, the Commission approved changes to the GIA and PA intended to help FINRA achieve a more consistent and predictable funding stream to carry out its regulatory mandate.[7] The economic and industry downturns in 2008 and 2009 had exposed FINRA's vulnerability to year-to-year volatility in members' gross revenues. GIA revenues in 2009 dropped precipitously due to write-offs

[5] FINRA's primary member regulatory pricing structure also includes the Trading Activity Fee, the Personnel Assessment (''PA'') and the Branch Office Assessment, as well as the processing of new and continuing membership applications.

[6] Schedule A to the FINRA By-Laws defines gross revenue for assessment purposes as total income as reported on FOCUS form Part II or IIA, excluding commodities income.

[7] *See* Securities Exchange Act Release No. 61042 (November 20, 2009), 74 FR 62616 (November 30, 2009) (Order Approving File No. SR–FINRA–2009–057).

taken in late 2008, particularly by the largest securities firms.

To ameliorate this vulnerability and smooth out the volatility inherent in the GIA, FINRA amended Schedule A to base the GIA on the greater of (1) the tier rate applied to a member's annual gross revenue from the preceding calendar year (''current year GIA'') or (2) a three-year average of GIA to be calculated by adding the current year GIA to the GIA assessed on the member in the previous two calendar years and dividing by three (''averaged GIA'') (together ''the reformulated calculation''). Thus, the change was intended to maintain the GIA rate structure, while building a buffer against industry downturns.

While the reformulated calculation has been effective in stabilizing FINRA's GIA revenues, an unanticipated impact of the new structure has been that firms can be locked in to a higher GIA as the result of a spike in gross revenue during a single year. The following example of a hypothetical Tier 2 firm illustrates the effect:

Year	Prior year assessable gross FOCUS revenue	GIA based on prior year revenue only	GIA based reformulated calculation (current rule)	Variance in GIA fee
2008	$4 million	$4,860	n/a	n/a
2009	$4 million	4,860	n/a	n/a
2010	$4 million	4,860	$4,860	$0
2011	$10 million	12,150	12,150	0
2012	$6 million	7,290	8,100	810
2013	$4 million	4,860	8,370	3,510
2014	$3 million	3,645	6,705	3,060

Thus, in years 2012 through 2014, the firm would be assessed an amount based on the average GIA that is significantly greater than the current GIA calculation, despite declining or flattening revenues during those years. This is due to the knock-on effect that the higher GIA fee in 2011 has created on the rolling three-year average calculations.

The original purpose of the previous rule change was to minimize the impact on FINRA revenues of down years suffered by mid-sized and large firms. FINRA had not contemplated the effect that intermittent significant *increases* in gross revenue could have on the GIA in subsequent years for smaller firms, where the relative impact can be greater. Accordingly, the proposed rule change would eliminate the averaged GIA component of the assessment calculation where a firm's prior year gross revenue does not exceed $25 million; *i.e.,* those firms that fall within the lowest two tiers. In those circumstances, the firm would be assessed the current year GIA.

Based on 2013 FOCUS revenues, FINRA estimates that 87% (1,365) of the firms with revenues of $25 million or less would benefit from the pricing change. FINRA further estimates that the change would result in savings to those firms of approximately $3.5 million, or approximately 2.0% of total GIA revenue. FINRA found that the proposed assessment approach would have had similar impacts as applied to firm revenues in 2011 and 2012; in other words, the back tested impact is generally consistent for the past three years' worth of FOCUS data for active firms. FINRA notes that no firms would be worse off due to the pricing change. Since the current reformulated calculation assesses the greater of current year GIA or averaged GIA, the firms that would benefit from the change are those firms that have been subject to the higher averaged GIA. The remaining firms have paid only the current year GIA, which would continue under the proposed rule change, even if their revenues decrease.

FINRA recognizes this effect of averaging potentially affects all firms, so FINRA also considered the impact of eliminating the averaging component from the remaining tiers. Based on an analysis, FINRA found that a significantly lower number of firms with revenues in these higher revenue tiers were impacted by the averaging calculation. However, extending this pricing change to these firms would have a material financial impact on the funding of FINRA's regulatory program.

Therefore, FINRA is proposing to apply the modified pricing structure to firms that do not exceed the $25 million tier. The relative negative impact of the current calculation falls disproportionately on those firms with gross revenues of $25 million or less, while the revenue impact on FINRA would be less at that threshold. At the same time, with a $25 million threshold, the reformulated calculation that includes the averaged GIA would continue to apply to the largest concentration of firms with potentially significant year-to-year volatility in gross revenues.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be January 1, 2015.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[8] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. The Commission previously found both the current year GIA and the reformulated calculation to be an equitable allocation of reasonable fees.[9] FINRA believes the proposed modification to the GIA pricing structure remains reasonable, since it continues to apply either the current year GIA or the averaged GIA to all members and does not increase the assessment rates. FINRA also believes the proposed rule change retains an equitable allocation of fees, as it would continue to apply the reformulated calculation on members that accounted for approximately 98% of the revenue from GIA in 2013, while potentially lessening, under very particular circumstances, the assessment on members that accounted for only about 2% of revenue from the GIA. Furthermore, the proposed rule change is both reasonable and equitable with respect to the firms in the $25 million tier, as no firm within that tier would be worse off. Instead, the proposed rule change would align those firms that have had to pay the higher averaged GIA

[8] 15 U.S.C. 78*o*–3(b)(5).

[9] *See* Securities Exchange Release No. 57474 (March 11, 2008), 73 FR 14517 (March 18, 2008) (Order Approving File No. SR–FINRA–2008–001) and Securities Exchange Act Release No. 61042 (November 20, 2009), 74 FR 62616 (November 30, 2009) (Order Approving File No. SR–FINRA–2009–057).

with those firms that have only paid the current year GIA.

The GIA is predicated on the fact that larger firms individually require greater regulatory resources. The proposed rule change largely keeps in place a GIA pricing structure that, as the Commission noted in approving the reformulated calculation in SR–FINRA–2009–057, ''is reasonable in that it achieves a generally equitable impact across FINRA's membership and correlates the fees assessed to the regulatory services provided by FINRA.'' [10]

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would reduce the costs of approximately one-third of FINRA members. As described in Item II.A. above, FINRA considered various thresholds for applying the modified GIA pricing structure to strike the appropriate balance between providing limited relief to smaller firms negatively impacted by the current GIA calculation, while maintaining a pricing structure that adequately supports its regulatory programs and minimizes revenue volatility.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f)(2) of Rule 19b–4 thereunder.[12] 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.

[10] *See supra* note 9.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–046 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.

All submissions should refer to File Number SR–FINRA–2014–046. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2014–046 and should be submitted on or before December 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27708 Filed 11–21–14; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73622; File No. SR–FINRA–2014–047]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 2241 (Research Analysts and Research Reports) in the Consolidated FINRA Rulebook

November 18, 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 November 14, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 2711 (Research Analysts and Research Reports) as a FINRA rule, with several modifications. The proposed rule change also would amend NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 to create an exception from the research analyst qualification requirement. The proposed rule change would renumber NASD Rule 2711 as FINRA Rule 2241 in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt in the Consolidated FINRA Rulebook NASD Rule 2711 (Research Analysts and Research Reports) with several modifications as FINRA Rule 2241. The proposed rule change also would amend NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 (Research Analysts and Supervisory Analysts) to create an exception from the research analyst qualification requirements.

Background

NASD Rule 2711 and Incorporated NYSE Rule 472 (Communications with the Public) (''the Rules'') set forth requirements to foster objectivity and transparency in equity research and provide investors with more reliable and useful information to make investment decisions. The Rules were intended to restore public confidence in the objectivity of research and the veracity of research analysts, who are expected to function as unbiased intermediaries between issuers and the investors who buy and sell those issuers' securities. The integrity of research had eroded due to the pervasive influences of investment banking and other conflicts that became apparent during the market boom of the late 1990s.

The current NASD and Incorporated NYSE rules have no significant differences.[4] In general, the Rules require disclosure of conflicts of interest in research reports and public appearances by research analysts. The Rules further prohibit conflicted conduct—investment banking personnel involvement in the content of research reports and determination of analyst compensation, for example—where the conflicts are too pronounced to be cured by disclosure. Several of the Rules' provisions implement provisions of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley''), which mandates separation between research and investment banking, proscribes conduct that could compromise a research analyst's objectivity and requires specific disclosures in research reports and public appearances.[5]

NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 (Research Analysts and Supervisory Analysts) require any person associated with a member and who functions as a research analyst to be registered as such and pass the Series 86 and 87 exams, unless an exemption applies. NASD Rule 1050 defines ''research analyst'' as ''an associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report.'' Incorporated NYSE Rule 344 has a substantially similar definition.

In December 2005, in response to a Commission Order, FINRA and the NYSE submitted to the Commission a joint report on the operation and effectiveness of the research analyst conflict of interest rules (''Joint Report'').[6] Among other things, the Joint Report analyzed the impact of the Rules based on academic studies, media reports and commentary. The Joint Report concluded that the Rules have been effective in helping to restore integrity to research by minimizing the influence of investment banking and promoting transparency of other potential conflicts of interest. Evidence from academic studies, among other sources, further suggested that investors are benefiting from more balanced and accurate research to aid their investment decisions. A January 2012 GAO report on securities research (''GAO Report'') also concluded that empirical results suggest the Rules have resulted in increased analyst independence and weakened the influence of conflicts of interest on analyst recommendations.[7]

The Joint Report also recommended changes to the Rules to strike an even better balance between ensuring objective and reliable research on the one hand, and permitting the flow of information to investors and minimizing costs and burdens to members on the other.[8] The recommendations resulted from a comprehensive review of the Rules. In evaluating the Rules, FINRA staff considered several analytical touchstones: whether a provision was accomplishing its intended purpose; findings from examinations, sweeps and enforcement actions; interpretive requests and member questions; a comparison of provisions of the ''Global Settlement''; [9] potential gaps or overbreadth in the provisions; and input from members and industry groups. The proposed rule change maintains those aforementioned objectives and therefore incorporates many of the recommendations in the Joint Report not already incorporated into the current rules.[10]

[3] The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] The one substantive difference between the rules involves the recordkeeping obligations when a research analyst makes a public appearance. Incorporated NYSE Rule 472(k)(2) requires a record of the public appearance to be made within 48 hours and include specific information about the nature of the appearance and applicable disclosures. NASD Rule 2711(h)(12) provides that members must maintain records of public appearances sufficient to demonstrate compliance with the applicable disclosure requirements.

[5] 15 U.S.C. 78*o*–6.

[6] *Joint Report by NASD and the NYSE on the Operation and Effectiveness of the Research Analyst Conflict of Interest Rules* (December 2005), available at *http://www.finra.org/web/groups/industry/@ip/@issues/@rar/documents/industry/p015803.pdf.*

[7] United States Government Accountability Office, *Securities Research, Additional Actions Could Improve Regulatory Oversight of Analyst Conflicts of Interest,* January 2012.

[8] FINRA previously filed two proposed rule changes to implement recommendations from the Joint Report. On October 17, 2006, FINRA filed for immediate effectiveness a proposed rule change to codify previously issued interpretive guidance. *See* Securities Exchange Act Release No. 54616 (October 17, 2006), 71 FR 62331 (October 24, 2006) (Notice of Filing File Nos. SR–NYSE–2006–77; SR–NASD–2006–112). However, FINRA withdrew the second proposal in anticipation of filing this more comprehensive consolidated proposed rule change. *See* Securities Exchange Act Release No. 55072 (January 9, 2007), 72 FR 2058 (January 17, 2007) (Notice of Filing File Nos. SR–NYSE–2006–78; SR–NASD–2006–113) (Withdrawn October 25, 2012).

[9] In 2003, federal and state authorities and self-regulatory organizations reached a settlement with 10 of the nation's largest broker-dealers to resolve allegations of misconduct involving conflicts of interest between their research analysts and investment bankers. In 2004, two additional firms settled substantively under the same terms, which included provisions to effectively separate research from investment banking.

[10] FINRA has not incorporated all of the Joint Report recommendations in the proposed rule change. As discussed *infra* at 72, FINRA is not incorporating the recommendation to exclude direct participation programs from the definition of ''research report.'' FINRA previously addressed a

The proposed rule change would retain the core provisions of the current rules, broaden the obligations on members to identify and manage research-related conflicts of interest, restructure the rules to provide some flexibility in compliance without diminishing investor protection, extend protections where gaps have been identified, and provide clarity to the applicability of existing rules. Where consistent with protection of users of research, the proposed rule change reduces burdens: For example, it would modify or eliminate requirements (*e.g.,* quiet periods and the annual attestation), expand the exemption for firms with limited investment banking activity, and create a new limited exemption from the registration requirements for ''research reports'' produced by persons whose primary job function is something other than producing research. Taken together, FINRA believes the proposed amendments will result in rules that more effectively and efficiently achieve their intended goals of objective, transparent and useful research for investors. The proposed rule change reflects input from FINRA advisory committees and market participants and includes changes made in response to comments received to an earlier consolidated rule proposal set forth in *Regulatory Notice* 08–55. The substantive proposed changes to the existing research rules are described below.[11]

Definitions

The proposed rule change mostly maintains the definitions in current NASD Rule 2711, with the following modifications:

• Minor changes to the definition of ''investment banking services'' to clarify that such services include all acts in furtherance of a public or private offering on behalf of an issuer.[12]

• clarification in the definition of ''research analyst account'' that the definition does not apply to a registered investment company over which a research analyst has discretion or control, provided that the research analyst or a member of that research analyst's household has no financial interest in the investment company, other than a performance or management fee.[13]

• exclusion from the definition of ''research report'' of communications concerning open-end registered investment companies that are not listed or traded on an exchange (''mutual funds'').[14]

• move into the definitional section the definitions of ''third-party research report'' and ''independent third-party research report'' that are now in a separate provision of the rules.[15]

The current rules define ''research analyst account'' to include any account over which a research analyst or member of the research analyst's household has a financial interest, or over which such person has discretion or control, other than an investment company registered under the Investment Company Act of 1940. The purpose of the exception is to accommodate circumstances where a research analyst also manages a registered investment company; otherwise, every transaction in the investment company's fund would be subject to personal trading restrictions, including any blackout periods a firm may establish, creating substantial logistical difficulties in operating the fund. The proposed change is intended to clarify that the exception does not apply where the research analyst account has a financial interest in the fund, other than a performance or management fee. In those circumstances, FINRA believes the conflict is too serious because the research analyst account could benefit more directly by taking positions in advance of publishing research or making a public appearance that could affect the price of the holdings.

''Research report'' currently is defined in Rule 2711(a)(9) as a ''written (including electronic) communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.'' Since shares of mutual funds are ''equity securities'' as defined in Section 3(a)(11) of the Exchange Act, a written communication that contains an analysis of mutual fund securities and information sufficient upon which to base an investment decision technically is covered by the definition.

However, FINRA believes that communications concerning mutual funds should be excluded from the definition of ''research report.'' Sales material regarding mutual funds is already subject to a separate regulatory regime, including FINRA Rule 2210 and Securities Act of 1933 (''Securities Act'') Rule 482, and, subject to certain exceptions, retail communications regarding registered investment companies must be filed with FINRA within 10 business days of first use.[16] The extensive content standards of these rules, combined with the filing and review of mutual fund sales material by FINRA staff, substantially reduce the likelihood that such material will include materially misleading information about the funds. Moreover, FINRA does not believe that the conflicts underpinning the research rules are manifest to the same extent with respect to reports on mutual funds. For example, a mutual fund's share price is determined by the fund's net asset value (''NAV''), which is based on the total value of the fund's portfolio. Because most mutual funds hold a large

recommendation to provide guidance with respect to the road show prohibition. FINRA set forth guidance in *Regulatory Notice* 07–04 that it is permissible for research analysts to listen to or view a live webcast of a road show or other widely attended presentation to investors or the sales force from a remote location. That guidance remains applicable to the proposed rule change. As discussed *infra* at 21, FINRA is not incorporating the recommendation to completely eliminate the quiet period after secondary offerings. FINRA also is not incorporating the recommendation to expand the exceptions to the personal trading restrictions because, as discussed *infra* at 27, FINRA is proposing to replace the prescriptive restrictions with a requirement to establish, maintain and enforce policies and procedures that obviate the need to set out specific exceptions to those provisions. In addition, as discussed *infra* at 34–35, FINRA is not proposing to replace the current disclosure requirements with a prominent warning on the cover of a research report that conflicts of interest exist, together with information on how the reader may obtain more detail about the conflicts on the member's Web site.

[11] For economy, the discussion generally refers only to NASD Rules; however, those references apply equally to the corresponding Incorporated NYSE Rules.

[12] *See* proposed FINRA Rule 2241(a)(5). The current definition includes, without limitation, many common types of investment banking services. FINRA is proposing to add the language ''or otherwise acting in furtherance of'' either a public or private offering to further emphasize that the term ''investment banking services'' is meant to be construed broadly.

[13] *See* proposed FINRA Rule 2241(a)(9).

[14] *See* proposed FINRA Rule 2241(a)(11).

[15] *See* proposed FINRA Rules 2241(a)(3) and (13). FINRA believes it creates a more streamlined and user friendly rule to combine defined terms in a single definitional section.

[16] *See* FINRA Rule 2210(c)(3)(A). A retail communication concerning a registered investment company that includes a performance ranking or performance comparison of the investment company with other investment companies that is not generally published or is created by the fund or its affiliates must be filed with FINRA at least 10 business days prior to first use or publication. FINRA Rule 2210(c)(7) lists categories of member communications that are excluded from the rule's filing requirements, including certain retail communications concerning investment companies. For example, FINRA Rule 2210(c)(7)(I) excludes from the rule's filing requirements certain independently prepared reprints or excerpts of articles or reports concerning investment companies. However, this filing exclusion only applies to articles or reports where the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint, and neither the member using the reprint nor any underwriter or issuer of a security mentioned in the reprint has commissioned the reprinted article or report.

number of individual securities, it is much less likely that a report on a mutual fund would affect the fund's NAV to the same extent that a research report on a single stock might impact its share price.

Identifying and Managing Conflicts of Interest

The proposal creates a new section entitled ''Identifying and Managing Conflicts of Interest.'' This section contains an overarching provision that requires members to establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to the preparation, content and distribution of research reports and public appearances by research analysts and the interaction between research analysts and persons outside of the research department, including investment banking and sales and trading personnel, the subject companies and customers.[17] A second provision sets forth more specifically what those written policies and procedures must address. They must promote objective and reliable research that reflects the truly held opinions of research analysts and prevent the use of research or research analysts to manipulate or condition the market or favor the interests of the member or a current or prospective customer or class of customers.[18] These provisions, therefore, set out the fundamental obligation for a member to establish and maintain a system to identify and mitigate conflicts to foster integrity and fairness in its research products and services. The provisions are also intended to require firms to be more proactive in identifying and managing conflicts as new research products, affiliations and distribution methods emerge.

The proposed rule change then sets forth minimum requirements for those written policies and procedures. This approach allows for some flexibility to manage identified conflicts, with some specified prohibitions and restrictions where disclosure does not adequately mitigate them. Most of the minimum requirements have been experience tested and found effective.

Sarbanes-Oxley mandates specific rules to prohibit or restrict conduct related to the preparation, approval and distribution of research reports and the determination of research analyst compensation. Thus, the proposal requires members to establish, maintain and enforce written policies and procedures reasonably designed specifically to achieve compliance with those Sarbanes-Oxley requirements. This approach provides firms with more flexibility to adopt policies and procedures to effectuate those mandates in a manner consistent with the member's size and organizational structure. The proposed rule changes also goes beyond Sarbanes-Oxley to require additional written policies and procedures that further the separation between research and not only investment banking, but also other non-research personnel, such as sales and trading, that may have interests that conflict with independent, unbiased research.

Thus, the proposed rule change mostly retains or slightly modifies the current structural safeguards that the Joint Report found effective to promote analyst independence and objective research, but in the form of mandated written policies and procedures with some baseline proscriptions.[19] FINRA believes this approach will provide the same investor protections as the current rules, but impose less cost than a pure prescriptive approach by requiring firms to adopt a compliance system that aligns with their particular structure, business model and philosophy. FINRA notes that the approach is consistent with FINRA's general supervision rule, which similarly provides firms flexibility to establish and maintain supervisory programs best suited to their business models, reasonably designed to achieve compliance with applicable federal securities law and regulations and FINRA rules.[20]

Prepublication Review

The required policies and procedures must, at a minimum, be reasonably designed to prohibit prepublication review, clearance or approval of research reports by persons engaged in investment banking services activities and restrict or prohibit such review, clearance or approval by other persons not directly responsible for the preparation, content and distribution of research reports, other than legal and compliance personnel.[21] Thus, this provision maintains the current prohibition on prepublication review by investment banking personnel, but eliminates the exception in paragraph (b)(3) of Rule 2711 that permits pre-publication review of research by investment banking to verify the factual accuracy of information in a research report. FINRA believes that review of facts in a report by investment banking is unnecessary in light of the numerous other sources available to verify factual information, including the subject company, and only raises concerns about the objectivity of the report. Such review may invite pressure on a research analyst from such personnel that could be difficult to monitor. Factual review by investment banking personnel is not permitted under the terms of the Global Settlement, and FINRA staff is not aware of any evidence that the factual accuracy of research produced by Global Settlement firms has suffered. Moreover, legal and compliance can adequately perform a conflict review without sharing draft research reports with investment banking.

The proposal requires policies and procedures reasonably designed to at least restrict prepublication review by other non-research personnel, other than legal and compliance personnel. Thus, a firm must specify in its policies and procedures the circumstances, if any, where such review would be permitted as necessary and appropriate; for example, where non-research personnel are best situated to verify select facts or where administrative personnel review for formatting. FINRA notes that members still would be subject to the overarching requirement to have policies and procedures reasonably designed to effectively manage conflicts of interest between

[17] *See* proposed FINRA Rule 2241(b)(1).

[18] *See* proposed FINRA Rule 2241(b)(2).

[19] Among the structural safeguards, FINRA believes separation between investment banking and research is of particular importance. As such, while the proposed rule change does not mandate physical separation between the research and investment banking departments (or other person who might seek to influence research analysts), FINRA would expect such physical separation except in extraordinary circumstances where the costs are unreasonable due to a firm's size and resource limitations. In those instances, a firm must implement written policies and procedures, including information barriers, to effectively achieve and monitor separation between research and investment banking personnel.

[20] *See* NASD Rule 3010, recently adopted with changes as a consolidated FINRA rule by Securities Exchange Act Release No. 71179 (December 23, 2013), 78 FR 79542 (December 30, 2013) (Order Approving File No. SR–FINRA–2013–025). The consolidated rule becomes effective December 1, 2014. FINRA further notes that the policies and procedures approach is consistent with the effective practices highlighted by FINRA in its *Report on Conflicts of Interest,* among them that firms should implement a robust conflicts management framework that includes structures, processes and policies to identify and manage conflicts of interest. *See Report on Conflicts of Interest,* FINRA (October 2013) at 5, available at *http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p359971.pdf.* The proposed changes also help to harmonize with approaches in international jurisdictions, such as the rules of the Financial Conduct Authority in the United Kingdom. *See* COBS 12.2.5 R, The Financial Conduct Authority Handbook, available at *http://fshandbook.info/FS/html/handbook/COBS/12/2.*

[21] *See* proposed FINRA Rule 2241(b)(2)(A).

research analysts and those outside of the research department.

Coverage Decisions

The required policies and procedures must be reasonably designed to restrict or limit input by investment banking department into research coverage decisions to ensure that research management independently makes all final decisions regarding the research coverage plan.[22] This provision makes express FINRA's interpretation that the separation requirements in current Rule 2711(b)(1) prohibit investment banking personnel from making any final coverage decisions. The proposed provision does not preclude investment banking personnel from conveying customer interests or providing input into coverage considerations, so long as final decisions regarding the coverage plan are made by research management.

Supervision and Control of Research Analysts

The required policies and procedures must be reasonably designed to prohibit persons engaged in investment banking activities from supervision or control of research analysts, including influence or control over research analyst compensation evaluation and determination.[23] The provision is substantively the same as current Rule 2711(b)(1), a core structural separation requirement that FINRA believes is essential to safeguarding analyst objectivity.

Research Budget Determinations

The required policies and procedures must be reasonably designed to limit determination of research department budget to senior management, excluding senior management engaged in investment banking services activities.[24] This provision makes express FINRA's interpretation that the separation requirements of current Rule 2711(b)(1) prohibit investment banking personnel from making any determination of research budget decisions.

Compensation

The required policies and procedures must be reasonably designed to prohibit compensation based upon specific investment banking services transactions or contributions to a member's investment banking services activities.[25] The policies and procedures further must require a committee that reports to the member's board of directors—or if none exists, a senior executive officer—to review and approve at least annually the compensation of any research analyst who is primarily responsible for preparation of the substance of a research report. The committee may not have representation from a member's investment banking department. The committee must consider, among other things, the productivity of the research analyst and the quality of his or her research and must document the basis for each research analyst's compensation.[26] These provisions are consistent with the requirements in current Rule 2711(d).

Information Barriers

The required policies and procedures must be reasonably designed to establish information barriers or other institutional safeguards to ensure that research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services activities or other persons, including sales and trading department personnel, who might be biased in their judgment or supervision.[27] FINRA believes the other policies and procedures required by the proposed rule change to identify and manage research-related conflicts of interest should effectively result in compliance with this Sarbanes-Oxley-based provision. However, FINRA is including the provision to emphasize that the conflicts management must extend to persons other than investment banking personnel, including sales and trading department personnel, who may be placed in a position to supervise or influence the content of research reports or public appearances.

Retaliation

The required policies and procedures must be reasonably designed to prohibit direct or indirect retaliation or threat of retaliation against research analysts employed by the member or its affiliates by persons engaged in investment banking services activities or other employees as the result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made by the research analyst that may adversely affect the member's present or prospective business interests.[28] This provision is consistent with current Rule 2711(j), except that it extends the retaliation prohibition to employees other than investment banking personnel. FINRA believes it is essential to a research analyst's independence and objectivity that no person employed by a member that is in a position to retaliate or threaten to retaliate should be permitted to do so based on the content of a research report or public appearance.

Quiet Periods

The required policies and procedures must be reasonably designed to define quiet periods of a minimum of 10 days after an initial public offering, and a minimum of three days after a secondary offering, during which the member must not publish or otherwise distribute research reports, and research analysts must not make public appearances, relating to the issuer if the member has participated as an underwriter or dealer in the initial public offering or, with respect to the quiet periods after a secondary offering, as a manager or co-manager of that offering.[29] This provision represents a significant change from the current rules, which impose a 40-day quiet period on a member acting as manager or co-manager of an IPO, a 25-day quiet period on a member participating as an underwriter or dealer (other than manager or co-manager) in an IPO, and a 10-day quiet period on a member acting as manager or co-manager of a secondary offering. As mentioned above, the quiet periods do not apply to EGCs.

With respect to these quiet-period provisions, the proposed rule change reduces the current 40-day quiet period for IPOs to a minimum of 10 days after the completion of the offering for any member that participated as an underwriter or dealer, and reduces the 10-day secondary offering quiet period to three days after the completion of the offering for any member that participated as a manager or co-manager in the secondary offering.

The lengthier quiet period for managers and co-managers was intended to allow other voices to publicly analyze and value a subject company before members most vested in the success of the offering expressed a view in their reports and public appearances. However, in light of the objectivity safeguards in other

[22] *See* proposed FINRA Rule 2241(b)(2)(B).

[23] *See* proposed FINRA Rule 2241(b)(2)(C).

[24] *See* proposed FINRA Rule 2241(b)(2)(D).

[25] *See* proposed FINRA Rule 2241(b)(2)(E).

[26] *See* proposed FINRA Rule 2241(b)(2)(F).

[27] *See* proposed FINRA Rule 2241(b)(2)(G).

[28] *See* proposed FINRA Rule 2241(b)(2)(H). This provision is not intended to limit a member's authority to discipline or terminate a research analyst, in accordance with the member's written policies and procedures, for any cause other than writing an adverse, negative, or otherwise unfavorable research report or for making similar comments during a public appearance.

[29] *See* proposed FINRA Rule 2241(b)(2)(I). Consistent with the Jumpstart Our Business Startups Act (''JOBS Act''), those quiet periods do not apply following the IPO or secondary offering of an Emerging Growth Company (''EGC''), as that term is defined in Section 3(a)(80) of the Exchange Act.

provisions of the research rules and the certification requirement of SEC Regulation AC, FINRA believes it is no longer necessary to impose a longer period on managers and co-managers. Both the Joint Report and the GAO Report noted that analysts have been issuing less optimistic recommendations since the regulatory reforms, particularly at firms involved in underwriting subject company securities.[30] FINRA believes that the separation, disclosure and certification requirements in the rules and Regulation AC have had greater impact on the objectivity of research than maintaining quiet periods during which research may not be distributed and research analysts may not make public appearances. FINRA has observed—and media reports have documented—instances when a manager or co-manager of an IPO has initiated coverage of the subject company with a ''hold'' or even ''sell'' rating once the quiet period ended.[31] These examples buttress FINRA's belief that the other provisions of the rules and Regulation AC have been effective in deterring biased research. FINRA also notes that there is a cost to investors when they are deprived of information and analysis during quiet periods.

Accordingly, FINRA is proposing to reduce all of the quiet periods after IPOs and secondary offerings. By doing so, FINRA believes the proposed rule change would promote more information flow to investors without jeopardizing the objectivity of research. As reflected in the Joint Report, FINRA was in favor of completely eliminating the quiet periods around secondary offerings; however, SEC staff has since indicated its view that the Sarbanes-Oxley reference to ''public offering of securities'' [32] encompasses both initial public offerings and secondary offerings and therefore mandates a quiet period after such public offerings, except for EGCs. FINRA will read with interest comments with evidence that suggests that maintaining longer quiet periods for manager and co-managers after the IPO of a non-EGC issuer would provide a meaningful benefit to investors.

As recommended in the Joint Report, the proposed rule change also eliminates the current quiet periods 15 days before and after the expiration, waiver or termination of a lock-up agreement. FINRA believes that research issued during such periods potentially offers valuable market information, and the other provisions of the research rules and SEC Regulation AC provide sufficient protection that such research will reflect the analyst's honest beliefs and be free from other conflicts that would undermine the value or integrity of research issued during these periods. FINRA understands from some underwriters that issuers will time release of negative news to occur during these quiet periods, thereby depriving investors of timely analysis of the impact of the news on their holdings. FINRA also notes that the change will bring consistency to the application of the rules, irrespective of the subject company, because, as noted above, recent amendments implementing the JOBS Act exempt research regarding EGCs from the current quiet periods.[33]

Solicitation and Marketing

In addition, the proposed rule change requires firms to adopt written policies and procedures to restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity.[34] This includes the existing prohibitions on participation in pitches and other solicitations of investment banking services transactions and road shows and other marketing on behalf of issuers related to such transactions. FINRA notes that consistent with existing guidance analysts may listen to or view a live webcast of a transaction-related road show or other widely attended presentation by investment banking to investors or the sales force from a remote location, or another room if they are in the same location.[35]

Pursuant to the recent amendments implementing the JOBS Act, the prohibition on participation in pitch meetings does not apply to a research analyst that attends a pitch meeting in connection with an IPO of an EGC that is also attended by investment banking personnel. However, FINRA notes that research analysts still are prohibited from soliciting an investment banking services transaction or promising favorable research during permissible attendance at those pitch meetings.[36]

The proposed rule change also adds Supplementary Material .01, which codifies the existing interpretation that the pitch provision prohibits members from including in pitch materials any information about a member's research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable research coverage.[37] By way of example, the Supplementary Material explains that FINRA would consider the publication in a pitch book or related materials of an analyst's industry ranking to imply the potential outcome of future research because of the manner in which such rankings are compiled. The Supplementary Material further notes that a member would be permitted to include in the pitch materials the fact of coverage and the name of the research analyst, since that information alone does not imply favorable coverage.

Joint Due Diligence and Other Interactions With Investment Banking

The proposed rule establishes a new proscription with respect to joint due diligence activities—*i.e.,* due diligence by the research analyst in the presence of investment banking department personnel—during a specified time period. Specifically, proposed Supplementary Material .02 states that FINRA interprets the overarching principle requiring members to, among other things, establish, maintain and enforce written policies and procedures that address the interaction between research analysts, banking and subject companies, to prohibit the performance of joint due diligence prior to the selection of underwriters for the investment banking services transaction. FINRA understands that in some instances, due diligence activities take place even before an issuer has awarded the mandate to manage or co-manage an offering. FINRA believes there is heightened risk in those circumstances that investment bankers may pressure analysts to produce favorable research that may bolster the firm's bid to become an underwriter for the offering. Once the mandate has been awarded, FINRA believes joint due diligence may take place in accordance with appropriate policies and procedures to guard against interactions to further the interests of the investment banking department. At that time, FINRA believes that the efficiencies of joint due diligence outweigh the risk of pressure

[30] *See* Joint Report, *supra* note 6 at 17–20; *see* GAO Report, *supra* note 7 at 12–15.

[31] *See* Facebook Shares No Lock for Pop After Quiet Period, available at *http://blogs.wsj.com/marketbeat/2012/06/27/facebook-shares-no-lock-for-pop-after-quiet-period/; see also* Warburg Analyst Advises Investors to Sell JetBlue, available at *http://articles.latimes.com/2002/may/08/business/fi-wrap8.*

[32] 15 U.S.C. 78*o*–6(a)(2).

[33] FINRA notes that the proposed changes to the quiet periods do not affect any quiet periods that may be required under federal law.

[34] *See* proposed FINRA Rule 2241(b)(2)(L).

[35] *See* NASD *Notice to Members* 07–04 (January 2007) and NYSE *Information Memo* 07–11 (January 2007).

[36] *See* Jumpstart Our Business Startups Act, Frequently Asked Questions About Research Analysts and Underwriters, available at *http://www.sec.gov/divisions/marketreg/tmjobsact-researchanalystsfaq.htm.*

[37] *See* proposed FINRA Rule 2241.01 and *Notice to Members* 07–04 (January 2007).

on research analysts by investment banking. Also, FINRA understands that typically an analyst that is participating in due diligence activities will not be publishing research at that time due to quiet periods under the offering rules of the Securities Act or because the analyst has been brought ''over the wall.'' FINRA notes that this provision is consistent with restrictions in the Global Settlement.

The proposed rule continues to prohibit investment banking department personnel from directly or indirectly directing a research analyst to engage in sales or marketing efforts related to an investment banking services transaction, and directing a research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction.[38] Supplementary Material .03 clarifies that three-way meetings between research analysts and a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction are prohibited by this provision.[39] FINRA believes that the presence of investment bankers or issuer management could compromise a research analyst's candor when talking to a current or prospective customer about a deal. Supplementary Material .03 also retains the current requirement that any written or oral communication by a research analyst with a current or prospective customer or internal personnel related to an investment banking services transaction must be fair, balanced and not misleading, taking into consideration the overall context in which the communication is made.

Promises of Favorable Research and Prepublication Review by Subject Company

The proposal maintains the current prohibition against promises of favorable research, a particular research recommendation, rating or specific content as inducement for receipt of business or compensation.[40] It further prohibits prepublication review of a research report by a subject company for purposes other than verification of facts.[41]

Supplementary Material .05 maintains the current guidance applicable to the prepublication submission of a research report to a subject company. Specifically, sections of a draft research report may be provided to non-investment banking personnel or the subject company for factual review, provided: (1) That the draft section does not contain the research summary, research rating or price target; (2) a complete draft of the report is provided to legal or compliance personnel before sections are submitted to non-investment banking personnel or the subject company; and (3) any subsequent proposed changes to the rating or price target are accompanied by a written justification to legal or compliance and receive written authorization for the change. The member also must retain copies of any draft and the final version of the report for three years.[42]

Personal Trading Restrictions

The proposal provides for a more encompassing and flexible supervisory approach with respect to research analyst account trading in securities of companies the research analyst covers. The current rules impose specific blackout periods during which a research analyst account may not trade covered securities and require pre-approval by legal and compliance of transactions in covered securities by persons who oversee research analysts. The current rules also provide several exceptions to the blackout periods, including where a report or change in rating or price target results from ''significant news or a significant event concerning the subject company.'' In addition, the blackout periods do not apply to: (1) Transactions in the securities of a registered diversified investment company as defined under Section (5)(b)(1) of the Investment Company Act of 1940; or (2) purchases or sales of securities in other investment funds over which neither the research analyst nor a member of a research analyst's household has any investment discretion or control, provided that the research analyst account collectively owns interests representing no more than 1% of the fund's assets and that the fund invests no more than 20% of its assets in securities of issuers principally engaged in the same types of businesses as companies in the research analyst's coverage universe. The rules further prohibit a research analyst account from purchasing or selling any security or any option or derivative of such security in a manner inconsistent with the research analyst's recommendation as reflected in the most recent research report published by the member. Legal or compliance may authorize transactions otherwise prohibited by the rules based on an unanticipated significant change in the personal financial circumstances of the beneficial owner of the research analyst account, provided that the authorization is in accordance with policies and procedures reasonably designed to avoid a conflict between the professional responsibilities of the research analyst and his or her personal trading and that the member maintains for three years written records documenting the justification for permitting the transaction.

The proposal instead requires that firms establish written policies and procedures that restrict or limit research analyst account trading in securities, any derivatives of such securities and funds whose performance is materially dependent upon the performance of securities covered by the research analyst.[43] Such policies and procedures must ensure that research analyst accounts, supervisors of research analysts and associated persons with the ability to influence the content of research reports do not benefit in their trading from knowledge of the content or timing of a research report before the intended recipients of such research have had a reasonable opportunity to act on the information in the research report.[44] The proposal maintains, as minimum standards, the current prohibitions on research analysts receiving pre-IPO shares in the sector they cover and trading against their most recent recommendations. However, members may define financial hardship circumstances, if any, in which a research analyst would be permitted to trade against his or her most recent recommendation.[45] While the proposed rule change does not include a recordkeeping requirement, FINRA expects members to evidence compliance with their policies and procedures and retain any related documentation in accordance with FINRA Rule 4511. The proposed rule change includes Supplementary Material .10, which provides that FINRA would not consider a research analyst account to have traded in a manner inconsistent with a research

[38] *See* proposed FINRA Rule 2241(b)(2)(M). FINRA notes that this provision does not prohibit investment banking personnel from forwarding to a research analyst the name of a prospective investor in an investment banking transaction, provided that the research analyst retains discretion whether to contact the investor and for the content of any discussion that ensues. *See Regulatory Notice* 12–49 (November 2012).

[39] *See* proposed FINRA Rule 2241.03.

[40] *See* proposed FINRA Rule 2241(b)(2)(K). FINRA provided additional guidance on the current provision, NASD Rule 2711(e), in *Regulatory Notice* 11–41 (September 2011).

[41] *See* proposed FINRA Rule 2241(b)(2)(N).

[42] *See* proposed FINRA Rule 2241.05.

[43] *See* proposed FINRA Rule 2241(b)(2)(J).

[44] *See* proposed FINRA Rule 2241(b)(2)(J)(i).

[45] *See* proposed FINRA Rule 2241(b)(2)(J)(ii).

analyst's recommendation where a member has instituted a policy that prohibits any research analyst from holding securities, or options on or derivatives of such securities, of the companies in the research analyst's coverage universe, provided that the member establishes a reasonable plan to liquidate such holdings consistent with the principles in paragraph (b)(2)(J)(i) and such plan is approved by the member's legal or compliance department.[46] This provision is intended to provide a mechanism by which a firm's analysts can divest their holdings to comply with a more restrictive personal trading policy without violating the trading against recommendation provision in circumstances where an analyst has, for example, a ''buy'' rating on a subject company.

FINRA believes these provisions will provide enhanced investor protection, while allowing firms to tailor management of conflicts related to personal trading of subject company securities to their particular size and business model. The enhanced protection results from expanding the scope of persons covered by the provisions to include not only research analyst accounts, but also those of supervisors and persons with an ability to influence the content of research reports. The proposal also preserves the key protections of the current rules by preventing research analysts from trading ahead of their customers and by generally requiring consistency between personal trading and recommendations to customers.

Content and Disclosure in Research Reports

With a couple of modifications, the proposed rule change maintains the current disclosure requirements. Thus, the proposed rule change maintains the mandated Sarbanes-Oxley disclosure requirements,[47] as well as additional disclosure obligations—meanings and distribution of ratings and price charts, for example—that are designed to provide investors with useful information on which to base their investment decisions. The proposed rule change also maintains the requirement that disclosures be presented on the front page of the research report or the front page must refer to the page on which the disclosures are found. Electronic research reports may provide a hyperlink directly to the required disclosures. All disclosures and references to required disclosures must be clear, comprehensive and prominent.[48]

The proposed rule change adds a requirement that a member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that purported facts in its research reports are based on reliable information.[49] FINRA has included this provision because it believes members should have policies and procedures to foster verification of facts and trustworthy research on which investors may rely. The policies and procedures also must be reasonably designed to ensure that any recommendation or rating has a reasonable basis in fact and is accompanied by a clear explanation of any valuation method used and a fair presentation of the risks that may impede achievement of the recommendation or rating.[50]

In addition, the proposed rule change would require a member to disclose in any research report at the time of publication or distribution of the report:[51]

- If the research analyst or a member of the research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), and the nature of such interest;[52]
- if the research analyst has received compensation based upon (among other factors) the member's investment banking revenues;[53]
- if the member or any of its affiliates: (i) Managed or co-managed a public offering of securities for the subject company in the past 12 months; (ii) received compensation for investment banking services from the subject company in the past 12 months; or (iii) expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months;[54]
- if, as of the end of the month immediately preceding the date of publication or distribution of a research report (or the end of the second most recent month if the publication or distribution date is less than 30 calendar days after the end of the most recent month), the member or its affiliates have received from the subject company any compensation for products or services other than investment banking services in the previous 12 months;[55]
- if the subject company is, or over the 12-month period preceding the date of publication or distribution of the research report has been, a client of the member, and if so, the types of services provided to the issuer. Such services, if applicable, must be identified as either investment banking services, non-investment banking services, non-investment banking securities-related services or non-securities services;[56]
- if the member was making a market in the securities of the subject company at the time of publication or distribution of the research report;[57] and
- if the research analyst received any compensation from the subject company in the previous 12 months.[58]

The proposal also expands upon the current ''catch all'' disclosure, which mandates disclosure of any other material conflict of interest of the research analyst or member that the research analyst knows or has reason to know of at the time of the publication or distribution of a research report or public appearance.[59] The proposed rule change goes beyond the existing provision by requiring disclosure of material conflicts known not only by the research analyst, but also by any ''associated person of the member with the ability to influence the content of a research report.''[60] In so doing, the proposed rule change would capture

[46] *See* proposed FINRA Rule 2241.10.

[47] *See* Section 501 Sarbanes-Oxley Act, Public Law 107–204, 116 Stat. 745 (2002).

[48] *See* proposed FINRA Rule 2241(c)(6).

[49] *See* proposed FINRA Rule 2241(c)(1)(A).

[50] *See* proposed FINRA Rule 2241(c)(1)(B). This is substantively the same as NASD Rule 2711(h)(7) but in the form of policies and procedures.

[51] *See* proposed FINRA Rule 2241(c)(4). In comparing the proposed disclosure provisions to those in NASD Rule 2711, FINRA notes that in some instances the proposed rule change makes minor word or grammatical changes, uses streamlined language or has moved some text to Supplementary Material, but does not intend to change the substantive disclosure requirements. In those circumstances, FINRA considers the proposed disclosure provisions to be ''substantively the same'' as the current provisions.

[52] *See* proposed FINRA Rule 2241(c)(4)(A). This is substantively the same as NASD Rule 2711(h)(1).

[53] *See* proposed FINRA Rule 2241(c)(4)(B). This is substantively the same as NASD Rule 2711(h)(2)(A)(i)a.

[54] *See* proposed FINRA Rule 2241(c)(4)(C). This is substantively the same as NASD Rule 2711(h)(2)(A)(ii).

[55] *See* proposed FINRA Rule 2241(c)(4)(D). This provision, together with proposed FINRA Rule 2241.04, is substantively the same as NASD Rules 2711(h)(2)(A)(iii)a., (iv) and (v).

[56] *See* proposed FINRA Rule 2241(c)(4)(E). This is substantively the same as NASD Rule 2711(h)(2)(A)(iii)b.

[57] *See* proposed FINRA Rule 2241(c)(4)(G). This is substantively the same as NASD Rule 2711(h)(8).

[58] *See* proposed FINRA Rule 2241(c)(4)(H). This is substantively the same as NASD Rule 2711(h)(2)(A)(i)b.

[59] For example, FINRA would consider it to be a material conflict of interest if the research analyst or a member of the research analyst's household serves as an officer, director or advisory board member of the subject company.

[60] *See* proposed FINRA Rule 2241(c)(4)(I).

material conflicts of interest that, for example, only a supervisor or the head of research may be aware of. The ''reason to know'' standard would not impose a duty of inquiry on the research analyst or others who can influence the content of a research report. Rather, it would cover disclosure of those conflicts that should reasonably be discovered by those persons in the ordinary course of discharging their functions.

The proposed rule change also modifies the requirement to disclose when a member or its affiliates own securities of the subject company to include any ''significant financial interest in the debt or equity of the subject company,'' including, at a minimum, beneficial ownership of 1% or more of any class of common equity securities of the subject company.[61] Thus, among other things, the proposal delineates the obligation to disclose significant debt holdings as a material conflict of interest that currently is captured by the ''other material conflict of interest'' provision referenced above. FINRA believes that an equity research report that analyzes the creditworthiness of the subject company could impact the price of the company's debt securities, and therefore a material conflict exists where the member or its affiliates maintains significant debt holdings in the subject company. The determination of beneficial ownership would continue to be based upon the standards used to compute ownership for the purposes of the reporting requirements under Section 13(d) of the Exchange Act.

The proposal retains the general exception for disclosure that would reveal material non-public information regarding specific potential future investment banking transactions of the subject company.[62] The proposal also continues to permit a member that distributes a research report covering six or more companies (compendium report) to direct the reader in a clear manner as to where the applicable disclosures can be found. An electronic compendium research report may hyperlink to the disclosures. A paper compendium report must include a toll-free number or a postal address where the reader may request the disclosures. In addition, paper research reports may include a web address where the disclosures can be found.[63]

As detailed in the Joint Report, FINRA believes that a web-based disclosure approach would be at least as effective and a more efficient means to inform investors of conflicts of interests. To that end, FINRA recommended—and eventually proposed in SR–NASD–2006–113—to permit members, in lieu of publication in the research report itself, to disclose their conflicts of interest by including a prominent warning on the cover of a research report that conflicts of interest exist, together with information on how the reader may obtain more detail about these conflicts on the member's Web site. However, FINRA has subsequently been informed by SEC staff that it believes such a web-based disclosure approach would not be consistent with the Sarbanes-Oxley requirement ''to disclose [conflicts of interest] in each report'';[64] therefore, FINRA has not re-proposed it here.

Disclosures in Public Appearances

The proposal groups in a separate provision the disclosures required when a research analyst makes a public appearance.[65] The required disclosures remain substantively the same as under the current rules,[66] with one exception: Consistent with the modification referenced above with respect to disclosure in research reports, a research analyst is similarly required to disclose in a public appearance if a member or its affiliates maintain a ''significant financial interest in the debt or equity of the subject company,'' including, at a minimum, if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company, as computed in accordance with Section 13(d) of the Exchange Act. Unlike in research reports, the ''catch all'' disclosure requirement in public appearances applies only to a conflict of interest of the research analyst or member that the research analyst knows or has reason to know at the time of the public appearance and does not extend to conflicts that an associated person with the ability to influence the content of a research report or public appearance knows or has reason to know. The proposed rule change defines a person with the ''ability to influence the content of a research report'' as an associated person who, in the ordinary course of that person's duties, has the authority to review the research report and change that research report prior to publication or distribution.[67] FINRA understands that supervisors typically do not have the opportunity to review and insist on changes to public appearances, many of which are extemporaneous in nature. The proposal also retains the current requirement in NASD Rule 2711(h)(12) to maintain records of public appearances sufficient to demonstrate compliance by research analysts with the applicable disclosure requirements.[68]

Disclosure Required by Other Provisions

With respect to both research reports and public appearances, members and research analysts would continue to be required to comply with applicable disclosure provisions of FINRA Rule 2210, Incorporated NYSE Rule 472 and the federal securities laws.[69]

Termination of Coverage

The proposal retains with non-substantive modifications the provision in the current rules that requires a member to notify its customers if it intends to terminate coverage of a subject company.[70] Such notification must be made promptly[71] using the member's ordinary means to disseminate research reports on the subject company to its various customers. Unless impracticable, the notice must be accompanied by a final research report, comparable in scope and detail to prior research reports, and include a final recommendation or rating. If impracticable to provide a final research report, recommendation or rating, a firm must disclose to its customers the reason for terminating coverage. FINRA expects such circumstances to be exceptional, such as where a research analyst covering a subject company or sector has left the member or the member has discontinued coverage of the industry or sector. FINRA believes this provision, which is consistent with the current rules, has been effective in achieving its original purpose to prevent firms from dropping coverage without notice or explanation instead of issuing a negative report on a current or prospective investment banking client.

[61] *See* proposed FINRA Rule 2241(c)(4)(F). The requirement to disclose beneficial ownership of 1% or more of any class of common equity securities of the subject company is the same as NASD Rule 2711(h)(1)(B).

[62] *See* proposed FINRA Rule 2241(c)(5).

[63] *See* proposed FINRA Rule 2241(c)(7). This is substantively the same as Rule 2711(h)(11).

[64] 15 U.S.C 78o–6(b).

[65] *See* proposed FINRA Rule 2241(d).

[66] *See* NASD Rules 2711(h)(1), (h)(2)(B) and (C), (h)(3) and (h)(9).

[67] *See* proposed FINRA Rule 2241.08.

[68] *See* proposed FINRA Rule 2241(d)(3).

[69] *See* proposed FINRA Rule 2241(e). This is substantively the same as NASD Rule 2711(h)(9).

[70] *See* proposed FINRA Rule 2241(f).

[71] While current Rule 2711(f)(6) does not contain the word ''promptly,'' FINRA has interpreted the provision to require prompt notification of termination of coverage of a subject company.

Distribution of Member Research Reports

The proposal codifies an existing interpretation of FINRA Rule 2010 and provides additional guidance regarding selective—or tiered—dissemination of a firm's research reports. In that regard, the proposal requires firms to establish, maintain and enforce written policies and procedures reasonably designed to ensure that a research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that the firm has previously determined are entitled to receive the research report.[72] The proposal includes further guidance to explain that firms may provide different research products and services to different classes of customers, provided the products are not differentiated based on the timing of receipt of potentially market moving information and the firm discloses its research dissemination practices to all customers that receive a research product.[73]

A member, for example, may offer one research product for those with a long-term investment horizon (''investor research'') and a different research product for those customers with a short-term investment horizon (''trading research''). These products may lead to different recommendations or ratings, provided that each is consistent with the meaning of the member's ratings system for each respective product. Thus, for example, a firm may define a ''buy'' rating in investor research to mean that a stock will outperform the S&P 500 over the next 12 months. The same firm may define ''sell'' in trading research to mean a stock will underperform its sector index over the next month. The firm could maintain a ''buy'' in investor research at the same time it had a ''sell'' in trading research on the same stock if the firm believed, for example, that the company would report an earnings shortfall next week that would lead to a short-term drop in price relative to the sector index, but that the stock would recover to outperform the S&P 500 over the next 12 months. However, a member may not differentiate a research product based on the timing of receipt of a recommendation, rating or other potentially market moving information, nor may a member label a research product with substantially the same content as a different research product as a means to allow certain customers to trade in advance of other customers.

In addition, a member that provides different research products and services for certain customers must inform its other customers that its alternative research products and services may reach different conclusions or recommendations that could impact the price of the security. Thus, for example, a member that offers trading research must inform its investment research customers that its trading research product may contain different recommendations or ratings that could result in short-term price movements contrary to the recommendation in its investment research. FINRA understands, however, that customers may actually receive at different times research reports originally made available at the same time because of the mode of delivery elected by the customer eligible to receive such research services (*e.g.,* in paper form versus electronic). However, members may not design or implement a distribution system intended to give a timing advantage to some customers over others. FINRA will read with interest comments as to whether a member should be required to disclose to its other customers when an alternative research product or service does, in fact, contain a recommendation contrary to the research product or service that those customers receive.

Distribution of Third-Party Research Reports

The proposal expands upon the third-party research report distribution requirements in the current rules. The proposal generally maintains the existing third-party disclosure requirements,[74] with one modification. Consistent with the proposed disclosure requirement discussed above with respect to a member's own research reports, a distributing member would be required to disclose if the member or its affiliates maintain a significant financial interest in the debt or equity securities of the subject company, including, at a minimum, if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. The proposed rule change also would require members to disclose any other material conflict of interest that can reasonably be expected to have influenced the member's choice of a third-party research provider or the subject company of a third-party research report.[75] FINRA believes that it is important that readers be made aware of any conflicts of interest present that may have influenced either the selection or content of research disseminated to investors. As is the case in the existing Rules, the proposal requires that a member establish, maintain and enforce written policies and procedures reasonably designed to ensure the completeness and accuracy of all of the applicable disclosures to any third-party research it distributes.

In addition, the proposal continues to address qualitative aspects of third-party research reports. For example, the proposal maintains, but in the form of policies and procedures, the existing requirement that a registered principal or supervisory analyst review and approve third-party research reports distributed by a member. To that end, the proposed rule change requires a member to establish, maintain and enforce written policies and procedures reasonably designed to ensure that any third-party research it contains no untrue statement of material fact and is otherwise not false or misleading. For the purpose of this requirement, a member's obligation to review a third-party research report extends to any untrue statement of material fact or any false or misleading information that should be known from reading the research report or is known based on information otherwise possessed by the member.[76] The proposal further prohibits a member from distributing third-party research if it knows or has reason to know that such research is not objective or reliable.[77] FINRA believes that, where a member is distributing or ''pushing-out'' third-party research, the member must have policies and procedures to vet the quality of the research producers. A member would satisfy the standard based on its actual knowledge and reasonable diligence; however, there would be no duty of inquiry to definitively establish that the third-party research is, in fact, objective and reliable.

The proposal maintains the existing exceptions for ''independent third-party research reports.'' Specifically, such

[72] *See* proposed FINRA Rule 2241(g).

[73] *See* proposed FINRA Rule 2241.07.

[74] NASD Rule 2711(h)(13)(A) currently requires the distributing member firm to disclose the following, if applicable: (1) If the member owns 1% or more of any class of equity securities of the subject company; (2) if the member or any affiliate has managed or co-managed a public offering of securities of the subject company or received compensation for investment banking services from the subject company in the past 12 months, or expects to receive or intends to seek compensation for such services in the next three months; (3) if the member makes a market in the subject company's securities; and (4) any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time the research report is distributed or made available.

[75] *See* proposed FINRA Rule 2241(h)(4).

[76] *See* proposed FINRA Rules 2241(h)(1) and (h)(3).

[77] *See* proposed FINRA Rule 2241(h)(2).

research does not require principal pre-approval or, where the third-party research is not ''pushed out,'' the third-party disclosures.[78] As to the latter, a member will not be considered to have distributed independent third-party research where the research is made available by the member: (a) Upon request; (b) through a member-maintained Web site; or (c) to a customer in connection with a solicited order in which the registered representative has informed the customer, during the solicitation, of the availability of independent research on the solicited equity security and the customer requests such independent research.

Finally, under the proposal, members also must ensure that a third-party research report is clearly labeled as such and that there is no confusion on the part of the recipient as to the person or entity that prepared the research report.[79] This requirement codifies guidance provided in *Notice to Members* 04–18.

Exemption for Firms With Limited Investment Banking Activity

The current rule exempts firms with limited investment banking activity—those that over the previous three years, on average per year, have managed or co-managed 10 or fewer investment banking transactions and generated $5 million or less in gross revenues from those transactions—from the provisions that prohibit a research analyst from being subject to the supervision or control of an investment banking department employee because the potential conflicts with investment banking are minimal.[80] However, those firms remain subject to the provision that requires the compensation of a research analyst to be reviewed and approved annually by a committee that reports to a member's board of directors, or a senior executive officer if the member has no board of directors.[81] That provision further prohibits representation on the committee by investment banking department personnel and requires the committee to consider the following factors when reviewing a research analyst's compensation: (1) The research analyst's individual performance, including the research analyst's productivity and the quality of research; (2) the correlation between the research analyst's recommendations and the performance of the recommended securities; and (3) the overall ratings received from clients, the sales force and peers independent of investment banking, and other independent ratings services.[82] Thus, the current exemption provides limited relief with respect to research analyst compensation determination, even where it is permissible for an investment banker to supervise and control a research analyst. FINRA believes it follows logically to allow those who supervise research analysts under such circumstances also to be involved in all aspects of the evaluation and determination of those analysts' compensation. Therefore, the proposed rule change extends the exemption for firms with limited investment banking activity so that such firms would not be subject to the compensation committee provision. FINRA notes that the proposal still prohibits these firms from compensating a research analyst based upon specific investment banking services transactions or contributions to a member's investment banking services activities.[83]

The proposed rule change further exempts firms with limited investment banking activity from the provisions restricting or limiting research coverage decisions and budget determination. While these two provisions are not in the current rules, as noted above, FINRA interprets NASD Rule 2711(b) to prohibit investment banking from making any final coverage decisions or determination of research budget. As such, the current exemption in NASD Rule 2711(k) effectively covers these two new provisions and so the proposal does not represent a substantive change. In addition, the proposal exempts eligible firms from the requirement to establish information barriers or other institutional safeguards to insulate research analysts from the review or oversight by investment banking personnel or other persons, including sales and trading personnel, who may be biased in their judgment or supervision. However, those firms still are required to establish, maintain and enforce written policies and procedures reasonably designed to ensure that research analysts are insulated from pressure by investment banking and other non-research personnel who might be biased in their judgment or supervision. FINRA believes that even where research analysts need not be structurally separated from investment banking or other non-research personnel, they should not be subject to pressures that could compromise their independence and objectivity.

FINRA reviewed and analyzed deal data for calendar years 2009 through 2011 to determine whether any adjustments should be made to these exemption standards. The review targeted firms that either managed or co-managed deals and earned underwriting revenues from those transactions during the review period. The analysis found that 155 of 317 such firms—or 49%—would have been eligible for the exemption. The data further suggested that incremental upward adjustments to the exemption thresholds would not result in a significant number of additional firms eligible for the exemption. For example, increasing both of the thresholds by 33% (to 40 transactions managed or co-managed and $20 million in gross revenues over a three-year period) would result in 18 additional exempted firms. As such, FINRA believes the current exemption produces a reasonable and appropriate universe of exempted firms.

Exemption From Registration Requirements for Certain ''Research Analysts''

As recommended in the Joint Report, the proposed rule change amends the definition of ''research analyst'' for the purposes of the registration and qualification requirements to limit the scope to persons who produce ''research reports'' and whose primary job function is to provide investment research (*e.g.* registered representatives or traders generally would not be included).[84] The revised definition is not intended to carve out anyone for whom the preparation of research is a significant component of their job; rather, it is intended to provide relief for those who produce research reports on an occasional basis. The existing research rules, in accordance with the Sarbanes-Oxley mandates, are constructed such that the author of a communication that meets the definition of a ''research report'' is a ''research analyst,'' irrespective of his or her title or primary job. FINRA believes that the registration and qualification requirements, which are not mandated by Sarbanes-Oxley, were intended for those individuals whose principal job function is to produce research, while the balance of the research rules are intended to foster objective analysis, transparency of certain conflicts and to provide beneficial information to investors. As such, the proposed exemption would extend only to the

[78] *See* proposed FINRA Rule 2241(h)(5) and (6).

[79] *See* proposed FINRA Rule 2241(h)(7).

[80] *See* NASD Rule 2711(k).

[81] *See* NASD Rule 2711(d)(2).

[82] *See* NASD Rule 2711(d) and (k).

[83] *See* proposed FINRA Rules 2241(b)(2)(E) and (i).

[84] *See* proposed NASD Rule 1050(b) and proposed Incorporated NYSE Rule 344.10.

registration requirements, while all other obligations applicable to the production and distribution of research reports would remain.

Attestation Requirement

The proposal deletes the requirement to attest annually that the firm has in place written supervisory policies and procedures reasonably designed to achieve compliance with the applicable provisions of the rules, including the compensation committee review provision. FINRA notes that firms already are obligated pursuant to NASD Rule 3010 (Supervision) to have a supervisory system reasonably designed to achieve compliance with all applicable securities laws and regulations and FINRA rules. Moreover, the research rules also are subject to the supervisory control rules (NASD Rule 3012) and the annual certification requirement regarding compliance and supervisory processes (FINRA Rule 3130).[85] As such, FINRA believes a separate attestation requirement for the research rules is unnecessary.

Obligations of Persons Associated With a Member

Supplementary Material .09 clarifies the obligations of each associated person under those provisions of the proposed rule change that require a member to restrict or prohibit certain conduct by establishing, maintaining and enforcing particular written policies and procedures. Specifically, the rule provides that, consistent with FINRA Rule 0140, persons associated with a member must comply with such member's policies and procedures as established pursuant to proposed FINRA Rule 2241.[86] Failure of an associated person to comply with such policies and procedures shall constitute a violation of the rule itself. In addition, consistent with Rule 0140, the rule states that it shall be a rule violation for an associated person to engage in the restricted or prohibited conduct to be addressed through the establishment, maintenance and enforcement of policies and procedures required by provisions of Rule 2241, including applicable Supplementary Material, that embed in the policies and procedures specific obligations on individuals. This Supplementary Material reflects FINRA's position that associated persons can be held liable for engaging in conduct that is proscribed by the member under FINRA rules. FINRA is clarifying this point in the Supplementary Material because the proposed rule change would adopt a policies and procedures approach to restricted and prohibited conduct with respect to research in place of specific proscriptions in the current rules.

Thus, for example, where the proposed rule requires a member to establish policies and procedures to prohibit research analyst participation in road shows, associated persons also are directly prohibited from engaging in such conduct, even where a member has failed to establish policies and procedures. FINRA believes that it is incumbent upon each associated person to familiarize themselves with the regulatory requirements applicable to his or her business and should not be able to avoid responsibility where minimum standards of conduct have been established for members.

General Exemptive Authority

The proposed rule change would provide FINRA, pursuant to the Rule 9600 Series, with authority to conditionally or unconditionally grant, in exceptional and unusual circumstances, an exemption from any requirement of the proposed rule for good cause shown, after taking into account all relevant factors and provided that such exemption is consistent with the purposes of the rule, the protection of investors, and the public interest.[87] Given the scope of the rule's subject matter and the diversity of firm sizes, structures and research business and distribution models, FINRA believes it would be useful and appropriate to have the ability to provide relief from a particular provision of the proposed rules under specific factual circumstances.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[88] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes the proposed rule change protects investors and the public interest by maintaining, and in some cases expanding, structural safeguards to insulate research analysts from influences and pressures that could compromise the objectivity of research reports and public appearances on which investors rely to make investment decisions. FINRA further believes that the proposed rule change prevents fraudulent and manipulative acts and practices by requiring firms to identify and manage, often with extensive disclosure, conflicts of interest related to the preparation, content and distribution of research. At the same time, the proposal furthers the public interest by increasing information flow to investors in select circumstances—*e.g.,* before and after the expiration of lock up provisions—where FINRA believes the integrity of research will not be compromised.

Moreover, the proposed rule change is consistent with Section 15D of the Act,[89] which requires rules reasonably designed to address conflicts of interest that can arise when research analysts recommend equity securities in research reports and public appearances. The proposed rule change requires firms to establish, maintain and enforce written policies and procedures reasonably designed to achieve compliance with the provisions of Section 15D, including: Restricting prepublication clearance or approval of research reports by investment banking personnel or other persons not directly responsible for the preparation, content and distribution of research reports; prohibiting persons engaged in investment banking activities from supervision or control of research analysts, including influence or control over research analyst compensation evaluation and determination; prohibiting retaliation or threat of retaliation against research analysts for research or public appearances that are unfavorable to the member's business interests; establishing quiet periods after public offerings during which members that have participated in the offering may not publish or otherwise distribute research; and establishing structural or institutional safeguards to protect analysts from the review, pressure or oversight of investment bankers or other non-research personnel that might be biased in their judgment or supervision. In addition, the proposed rule change

[85] NASD Rules 3010 and 3012 have been adopted with changes as consolidated FINRA rules. The new rules become effective December 1, 2014. *See supra* note 20.

[86] *See* proposed FINRA Rule 2241.09. FINRA Rule 0140(a), among other things, provides that persons associated with a member shall have the same duties and obligations as a member under the Rules.

[87] *See* proposed FINRA Rule 2241(j).

[88] 15 U.S.C. 78*o*–3(b)(6).

[89] 15 U.S.C. 78*o*–6.

requires disclosures consistent with Section 15D, including the requirement to disclose any material conflict of interest of the research analyst or member that the research analyst knows or has reason to know at the time of publication or distribution of a research report or during a public appearance.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change primarily reorganizes and restructures the current research rules, while maintaining the core provisions that have generally proven effective to promote objective and reliable research, as detailed through academic studies and other observations in the Joint Report and the GAO Report.[90] The GAO Report, for example, concluded that empirical results suggest the rules have resulted in increased analyst independence and weakened the influence of conflicts of interest on analyst recommendations.[91] The proposed rule change also amends the current rules to ensure the objectives of independent research analysts and unbiased research are achieved in the most effective manner.

In some places, the proposed rule change reduces regulatory uncertainty around the applicability of current rules. For example, the new provision regarding distribution of member research clarifies an existing interpretation prohibiting selective dissemination of research and provides guidance as to how members may differentiate research products to customers. In other places, the proposed rule change extends existing protections and adds new protections to fill gaps in the rules. Thus, the proposed rule change requires members to proactively identify and mitigate emerging conflicts related to the production and distribution of research, as members are best situated to spot such conflicts that may arise based on their particular business models or structures. As another example, the proposed rule change also extends the obligation to disclose material conflicts to associated persons with the ability to influence the content of a research report. This provision would close a gap that exists whereby persons who oversee research and research analysts could influence the recommendation or conclusions in a research report without disclosing their own material conflicts of interest or those of the member of which only they, and not the research analyst, know or have reason to know.

The new rules would impose burdens primarily arising from establishing, maintaining and enforcing new written policies and procedures to comply with the rule change, as well as a few new disclosures to customers to the extent a member's research activities require them. FINRA believes the additional burdens associated with these new provisions are minimal, but necessary to ensure the protections of the rules cannot be frustrated. At the same time, the proposed rule change provides increased flexibility for members to create compliance programs more closely tailored to their businesses and organizational structures, without diminishing investor protection. For example, as detailed in Item 3 of this filing, the proposed rule change replaces the many current prescriptive requirements with respect to personal trading by research analyst accounts with a more flexible approach that requires policies and procedures to ensure that such accounts do not benefit in their trading from knowledge of the content and timing of research before the intended recipients have a reasonable opportunity to act on the information. FINRA believes this proposed change will maintain the current protection against a research analyst putting his or her own financial interests ahead of the analyst's customers' interest, but the increased flexibility will reduce costs and create fewer impediments to competition.

The proposed rule change also promotes capital formation and lessens compliance costs for firms by eliminating or reducing quiet periods during which research cannot be published or otherwise disseminated. FINRA further analyzed deal data to confirm that the parameters for the exemption for firms with limited investment banking activity remain appropriate and extended the exemption to include compensation determination provisions, thereby relieving eligible firms from an appreciable burden. The proposed rule change also lessens costs by creating a new limited exemption from the registration requirements for ''research reports'' produced by persons whose primary job function is something other than producing research and by eliminating the annual attestation requirement.

To help assess and minimize any burden on competition resulting from the proposal, FINRA consulted with several of its advisory committees and other industry members to solicit suggested changes to the existing rules and to obtain feedback on FINRA's proposed changes. Finally, as set forth in Item 5 of this filing, FINRA carefully considered comments to an earlier version of the proposed rule change and made several changes in response to those comments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FINRA solicited comments on an earlier iteration of the proposed rule change in *Regulatory Notice* 08–55 (''Notice Proposal''). The comment deadline expired on November 14, 2008. FINRA received five responses to the Notice Proposal.[92] Commenters expressed support for many aspects of the proposal, including reductions to the quiet period provisions, the exemption for members with limited investment banking activity and the more flexible supervisory approach with respect to research analyst account trading. SIFMA further expressed appreciation for the guidance with respect to selective dissemination of research products. Commenters nevertheless urged several modifications to the proposal, some of which have been incorporated into the proposed rule change. FINRA responds to the material comments to the Notice Proposal below.

Policies and Procedures

Both the Notice Proposal and the proposed rule change differ in several respects from current NASD Rule 2711, perhaps most notably in adopting a policies and procedures approach to identification and management of equity research-related conflicts. FINRA has reintroduced several current provisions to the proposed rule change to clarify certain minimum standards and disclosure requirements. However, FINRA notes that the proposed rule change also establishes new standards of conduct. FINRA will provide

[90] *See* Joint Report, *supra* note 6 at 16–26; *see* GAO Report, *supra* note 7 at 12–23.

[91] *See* GAO Report, *supra* note 7 at 12–15.

[92] Letter from Daniel H. Kolber, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 10, 2008 (''Kolber''); letter from John I. Fitzgerald, Leerink Swann LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 10, 2008 (''Leerink''); letter from Goodwin Procter LLP, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 11, 2008 (''NVCA''); letter from Elliot R. Curzon, Dechert LLP, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 14, 2008 (''Dechert''); and letter from Amal Aly, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 14, 2008 (''SIFMA'').

guidance, where appropriate, as to the application of the new standards. FINRA cautions that members should not conclude that, where specific conduct prohibitions or disclosure requirements that exist in the current provisions have not been expressly included in the proposed rule change, such conduct is now permissible or such disclosures are no longer required. Firms must apply the new proposed standards to make those determinations. FINRA notes that some of the new standards are intended to require thoughtful compliance by members that may require them to adapt and change their policies and procedures as they gain experience and encounter new circumstances that may impact on the objectivity and reliability of research.

SIFMA endorsed the principle in the Notice Proposal and proposed rule change that members must implement policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to the preparation, content and distribution of research reports and public appearances by research analysts. Yet SIFMA found ambiguous and overbroad the companion principle that such policies and procedures should promote ''reliable'' research that reflects the ''truly held opinions'' of research analysts and prevent the use of research to ''manipulate or condition the market'' or ''favor the interests of the member or certain current or prospective clients.'' SIFMA asked FINRA to delete this introductory sentence and substitute the following alternative: ''a member's policies and procedures must be reasonably designed to promote independent and objective research that reflects the personal views of the analyst.'' Among other things, SIFMA asserted that the concept of ''reliable'' research is new and undefined.

FINRA believes that the term ''reliable'' is commonly understood. FINRA further believes that the other terms referenced above and cited by SIFMA as vague are similarly unambiguous in describing the conduct that a member's policies and procedures must address or guard against. SIFMA made similar comments with respect to the words ''reliable information'' in the content and disclosure requirements of the Notice Proposal. As discussed below in response to that comment, that term is used in Sarbanes-Oxley without definition.

SIFMA requested that FINRA confirm that with respect to the proposed prohibitions on analyst compensation, consistent with current rules, the proposal would not prevent a member from compensating analysts for engaging in permissible vetting, commitment committee participation, due diligence, teach-ins, investor education, and other permissible banking-related activities. SIFMA also recommended that the proposal be amended so that compensation committees are required to consider the enumerated factors when reviewing a research analyst's compensation only to the extent they are applicable. SIFMA suggested adding two new factors that are permissible for members to consider in determining analyst compensation, including the analyst's seniority and experience, and the market for hiring and retention of analysts, noting that these factors are critical to the proper determination of analyst compensation and are specifically identified in the Global Settlement.

The proposal prohibits compensation based upon specific investment banking transactions or contributions to a member's investment banking services activities. It also requires the compensation review committee to consider the research analyst's productivity and quality of research. Both of these standards exist in the current rules. As SIFMA noted, FINRA staff previously stated that ''screening potential investment banking clients is one of many factors to measure the quality of an analyst's research.'' [93] As such, FINRA concluded that the activity could be considered in determining a research analyst's compensation but ''may not be given undue weight relative to evaluating the quality of other research work product.'' FINRA further cautioned, however, that ''the size of any resultant or excluded investment banking deals should be irrelevant in assessing the quality of research.'' [94] The same guidance applies to the compensation provisions in the proposed rule change. FINRA considers commitment committee participation to be part of the vetting process and further views permissible due diligence and education of the sales force and investors as other legitimate factors to consider in measuring the productivity and quality of research, with the same caveats previously articulated regarding undue weight and the size of related investment banking services transactions. FINRA has amended the proposed rule text to clarify that the enumerated factors must be considered only to the extent applicable. The proposed rule change does not preclude consideration of additional factors, including the analyst's experience and market factors. The proposed rule change only sets out requirements and prohibitions with respect to compensation, and therefore FINRA has not included in the rule text the suggested permissible factors.

SIFMA stated its support for ''the general principle that members should implement policies and procedures reasonably designed to prevent market manipulation or front running of research.'' However, SIFMA questioned the necessity of FINRA's language in proposed Rule 2241(b)(2) that would require a firm's policies and procedures to be reasonably designed to prevent the use of research reports or research analysts to ''manipulate or condition the market or favor the interests of the member or certain current or prospective clients.'' According to SIFMA, that principle is already codified in existing SEC anti-manipulation rules and FINRA's front running prohibition in FINRA Rule 5270. Even if true, FINRA believes it is entirely appropriate to include that important principle as it relates to research reports and research analysts in a rule that is dedicated to research conflicts of interest and the conduct of research analysts. Moreover, FINRA notes that the proscribed conduct in its proposal is not congruent with either the SEC anti-manipulation or FINRA front running rules.

The Notice Proposal required members to ''establish information barriers and other institutional safeguards to ensure that research analysts are insulated from the review, pressure or oversight of persons engaged in investment banking services activities or other persons who might be biased in their judgment or supervision.'' SIFMA suggested that members should be able to establish information barriers or other institutional safeguards to foster the required research analyst objectivity, since some information barriers are not always the most appropriate or efficient means to manage research conflicts. FINRA agrees and has amended the proposed rule change accordingly.

SIFMA further urged FINRA to replace the phrase ''persons who might be biased in their judgment or supervision'' with ''persons within the firm who may try to improperly influence analysts' views'' because SIFMA contended that the former might sweep in salespeople, traders or subject companies that could have biases. FINRA notes that the proposed rule text came directly from the provisions of Sarbanes-Oxley related to management of research conflicts. FINRA believes

[93] *See* Letter from Philip A. Shaikun, Associate General Counsel, NASD, to James A. Brigagliano, Assistant Director, Division of Market Regulation, SEC, dated July 29, 2003, at page 8.

[94] *Id.*

that language is intended to apply only to persons within the firm and does not extend to subject companies, which have no oversight or supervisory role with respect to research analysts within a broker-dealer. Moreover, FINRA believes it's appropriate for this conflict management provision to include salespeople or traders to the extent that a member employs such individuals in an oversight or supervisory capacity and has reason to know that some or all of those individuals might be biased in discharging those obligations. As such, FINRA has maintained the provision in the proposed rule change.

The Notice Proposal required members to prevent direct or indirect retaliation or threat of retaliation against research analysts by persons engaged in investment banking or other employees as the result of content of a research report. The proposed rule change maintains this requirement, but substitutes ''prohibit'' for ''prevent'' to align with the current rule language. SIFMA stated that the proposed provision is too broad because it applies to all employees, not just those involved in the investment banking department, and recommended that FINRA retain the current anti-retaliation provision in NASD Rule 2711(j). FINRA disagrees. As stated in the Joint Report, FINRA believes that under no circumstances is retaliation appropriate against a research analyst who expresses his or her truly held beliefs about a subject company. To the extent a person outside the investment banking department is in a position to retaliate or threaten to retaliate against a research analyst—*e.g.,* if the person is the chief executive officer, supervises the research analyst or is a member of the compensation review committee—FINRA believes the ban should cover them.

The Notice Proposal provided a more flexible supervisory approach with respect to trading by analyst accounts in securities of companies covered by the research analyst. SIFMA supported the proposed approach but asked FINRA to confirm that if members have adopted internal policies prohibiting analysts from owning securities issued by companies the analyst covers, members may permit an analyst to divest any such holdings pursuant to a reasonable plan of liquidation within 120 days of the effective date of the member's policy even if the sale is inconsistent with the analyst's current recommendation.

In response, FINRA has included in the proposed rule change Supplementary Material .10, which states that FINRA shall not consider a research analyst account to have traded in a manner inconsistent with a research analyst's recommendation where a member has instituted a policy that prohibits any research analyst from holding securities, or options on or derivatives of such securities, of the companies in the analyst's coverage universe, provided that the member establishes a reasonable plan to liquidate such holdings consistent with the principles that prohibit an analyst from benefitting from his or her personal trading based on the knowledge of the timing or content of a research report and that such plan is approved by the member's legal or compliance department.

The Notice Proposal required members to establish, maintain and enforce policies and procedures that prohibit participation by research analysts in ''road shows and other marketing on behalf of issuers.'' SIFMA asked FINRA to clarify that the proscription does not apply to ''investor education activities'' and further is limited only to activities in connection with investment banking services transactions. By way of example, SIFMA suggested that the proposal would prohibit the practice by research analysts to facilitate meetings between investors and company management—so-called ''non-deal road shows.'' Leerink also questioned the scope of the provision and requested clarification with respect to whether the proposed language intends to eliminate the condition in Rule 2711 that the prohibition relate to the analyst's participation in the marketing of a specific investment banking services transaction and, instead, would prohibit all participation in marketing by research analysts whether or not related to investment banking services. Leerink noted that not every contact with a company should be viewed as marketing the investment banking services of the analyst's firm or jeopardizing the analyst's objectivity. Leerink further noted that it would deprive analysts of important information necessary for their role if they are prohibited from contacts with an issuer in circumstances where the issuer may be marketing itself, including attendance by a research analyst at a research conference or investor forum. SIFMA also requested that FINRA confirm that consistent with existing guidance (NASD *Notice to Members* 07–04 and NYSE *Information Memo* 07–11) analysts may listen to or view a live webcast of a transaction-related road show or other widely attended presentation by investment banking to investors or the sales force from a remote location, or another room if they are in the same location.

FINRA agrees that research analysts should be able to educate investors, provided such education occurs outside the presence of investment bankers and issuer management and any such presentations are done in a fair and balanced manner. The proposed rule change therefore contains Supplementary Material .03 setting forth such permissible conduct, thus maintaining the current standard.

As discussed in the Purpose section, FINRA believes the primary role of research analysts is to function as unbiased intermediaries between issuers and the investors who buy the issuers' securities. FINRA believes marketing by research analysts on behalf of issuers is antithetical to promoting objective research on such issuers' securities. FINRA is primarily concerned with marketing by research analysts in connection with an investment banking services transaction, and therefore FINRA has added that clarification to the provision in the proposed rule change.

FINRA notes, however, that the overarching requirement to have policies and procedures to manage conflicts related to the interaction between research analysts and, among others, subject companies would apply to other marketing activity on behalf of an issuer. FINRA does not believe that merely facilitating a meeting between issuer management and investors, absent other facts, would constitute marketing on behalf of the issuer. Similarly, to Leerink's question, FINRA does not believe that mere attendance by a research analyst at a conference or forum where an issuer makes a presentation about its business prospects constitutes marketing ''on behalf of an issuer.'' Nor would FINRA consider it marketing on behalf on an issuer for a member to sponsor such a conference or forum and permit its research analysts to attend or facilitate discussion. FINRA believes that there is a fundamental distinction between an issuer that markets itself and a research analyst who markets on behalf of the issuer. It is the latter conduct that FINRA believes creates a conflict for a research analyst that must be prohibited or otherwise managed.

As noted in the Purpose section, the existing guidance in *Notice to Members* 07–04 would continue to apply to research analyst participation in road shows. Therefore, a research analyst would be able to listen to or view a live webcast of a transaction-related road show or other widely attended presentation by investment banking to

investors or the sales force from a remote location, or another room if they are in the same location.

Distribution of Member Research Reports

Leerink sought clarification regarding the scope of proposed Rule 2241(g) in the Notice Proposal, a codification of an interpretation to then NASD Rule 2110[95] that prohibits selective dissemination of a research report to internal trading personnel or a particular customer or class of customers in advance of other customers that are entitled to receive the report. Leerink questioned whether the proposed Supplementary Material regarding that provision would extend the prohibition beyond research reports to other services because it refers to ''research products and services'' and is not limited to ''research reports.'' Leerink requested clarification as to how FINRA would define ''research products and services'' and whether it would prohibit more generally favoring one type of client over another. The proposed Supplementary Material requires a member that provides different research products and services to different customers to notify the other customers that its alternative research products and services may reach different conclusions or recommendations that could impact the price of the equity security. Leerink also asked whether there should be a carve out from the notification provision for institutional clients, and, if not, whether an oral notification would be sufficient, given the nature of firms' relationships with institutional clients.

FINRA first notes that Leerink mistakenly believed that FINRA was proposing to modify its prohibition regarding trading ahead of research reports found in then NASD IM–2110–4. In fact, that Interpretive Material referred to similar but distinct conduct regarding adjusting a member's inventory based upon non-public information regarding the timing or content of an impending research report. The Commission has since approved FINRA Rule 5280, which transferred NASD IM–2110–4 into the Consolidated FINRA Rulebook with changes.[96] The proposed rule change incorporates the aspect in FINRA Rule 5280 that the content of a research report may not be provided to internal trading personnel prior to public dissemination, but goes beyond that more narrow focus to address dissemination of a research report to one or more customers prior to other customers that the firm has previously determined are entitled to that report. The provision and accompanying Supplementary Material in the proposed rule change are limited by their terms to the dissemination of research products and services and do not address the broader question of when a member may not favor one client over another. FINRA included research ''products and services'' because FINRA understands that some customers receive not only different types of research reports than other customers, but also might receive other additional services related to research, such as more opportunity to interact directly with a research analyst. The Supplementary Material explains that offering those different services are permissible, provided they do not include differential timing in the receipt of potentially market moving information, including oral dissemination.

FINRA believes that the notification requirement in the Supplementary Material should apply to all customers that receive a research product or service from the member if the member provides different research products to different customers. FINRA notes that, consistent with Sarbanes-Oxley, the other provisions of the current and proposed rules do not differentiate between retail and institutional customers and further notes that not all institutional customers have the sophistication and experience to know without disclosure the nature and impact of differing research products and services. However, FINRA believes firms may put in place any reasonably designed notification process, provided they can evidence compliance with the requirement.

Quiet Periods

SIFMA, Leerink and NVCA generally supported the provisions in the Notice Proposal that would reduce the quiet period after IPOs for managers and co-managers from 40 days to 10 days, eliminate the quiet period after secondary offerings and eliminate the quiet periods around the waiver, expiration or termination of a lock-up agreement. These commenters believed that the Notice Proposal struck an appropriate balance between addressing conflicts and facilitating the flow of important information to investors. NVCA agreed with FINRA that other provisions of the Notice Proposal, together with SEC Regulation AC, would sufficiently maintain the integrity of research issued during what are now quiet periods.[97] The proposed rule change maintains these provisions, except that it imposes a minimum three-day quiet period after a secondary offering, unless an exception applies. FINRA made this change because SEC staff determined that Sarbanes-Oxley mandates a minimum quiet period for underwriters after a secondary offering. FINRA believes the proposed three-day period will fairly effectuate that mandate while minimizing the effect on information flow.

Content and Disclosure in Research Reports

With a couple of modifications, the Notice Proposal and the proposed rule change maintain the current content and disclosure requirements. The proposed rule change adds a requirement that a member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that purported facts in its research reports are based on reliable information. The proposed rule change maintains the mandated Sarbanes-Oxley disclosure requirements,[98] as well as additional disclosure obligations—meanings and distribution of ratings and price charts, for example—that are designed to provide investors with useful information on which to base their investment decisions.

SIFMA was concerned by the use of the term ''reliable'' in the proposed provision that would require members to ensure that purported facts in their research reports are based on reliable information. As stated above, FINRA believes that term ''reliable'' is commonly understood. We note, for example, that the term ''reliable information'' is used in the research provisions of Sarbanes-Oxley without definition. Furthermore, SIFMA recommended the following as an alternative to the provision that members ensure that purported facts in research reports be based on reliable information: ''Policies and procedures reasonably designed to ensure that facts are based on 'sources believed by the member firm to be *reliable.*' '' (emphasis added). SIFMA appears to have borrowed the latter phrase from Exchange Act Rule 15c2–11(a), which also uses the term ''reliable'' without definition.

[95] FINRA has since adopted NASD Rule 2110 as FINRA Rule 2010 without change. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File No. SR–FINRA–2008–028).

[96] *See* Securities Exchange Act Release No. 59254 (January 15, 2009), 74 FR 4271 (January 23, 2009) (Order Approving File No. SR–FINRA–2008–054).

[97] The remainder of the NVCA letter addressed more general matters concerning the strength and competitiveness of the U.S. IPO market that were not specifically directed at the FINRA proposal.

[98] *See* Section 501 Sarbanes-Oxley Act, Public Law 107–204, 116 Stat. 745 (2002).

The Notice Proposal required a member to ensure that any recommendation, rating or price target have a ''reasonable basis in fact'' and be accompanied by a ''clear explanation of the valuation method utilized and a fair presentation of the risks that may impede achievement of the recommendation, rating or price target.'' SIFMA recommended two changes to this provision. First, SIFMA suggested that FINRA substitute the term ''reasonable basis'' rather than ''reasonable basis in fact.'' FINRA believes that even judgments and estimates on which recommendations, ratings and price targets are based must be grounded in certain facts, but we also believe that the term ''reasonable basis'' implies as much. Therefore, the proposed rule change maintains the ''reasonable basis'' standard in the current rule. SIFMA also noted that not all ratings are based on a valuation method, so FINRA has modified the language in the proposed rule change to that effect.

SIFMA also objected to the requirement in the proposal that a member must disclose in any research report ''all conflicts that reasonably could be expected to influence the objectivity of the research report and that are known or should have been known by the member or research analyst on the date of publication or distribution of the report.'' SIFMA contended that the language would require members to identify ''all possible conflicts (material or immaterial) that may be known to anyone at the member.'' SIFMA recommended that FINRA revise the language to require only the enumerated disclosures, including the ''catch-all'' disclosure of ''any other material conflict of interest of the research analyst or member that the research analyst or an associated person of the member with the ability to influence the content of a research report knows or has reason to know at the time of the publication or distribution of the research report.'' In addition, SIFMA urged FINRA to revise this provision so that it is consistent with current requirements because the mandate that the disclosures be made with respect to material conflicts of interest that are known not only at the time of publication, but also at the time of the distribution of a research report, is unworkable.

In general, FINRA believes that an immaterial conflict could not reasonably be expected to influence the objectivity of a research report, and therefore a materiality standard is essentially congruent with the proposed standard. FINRA agrees that the ''catch-all'' disclosure provision captures such material conflicts that the research analyst and persons with the ability to influence the content of a research report know or have reason to know. Therefore, FINRA has amended the proposal to delete as superfluous the overarching obligation to disclose ''all conflicts that reasonably could be expected to influence the objectivity of the research report and that are known or should have been known by the member or research analyst on the date of publication or distribution of the report.'' FINRA notes that the term ''distribution'' is drawn from the provisions of Sarbanes-Oxley that apply to equity research reports and is intended to capture research that may only be distributed electronically as opposed to published in hard copy. However, FINRA interprets this language to require the disclosures to be current only as of the date of first publication or distribution, provided that the research report is prominently dated, and the disclosures are not known to be misleading.

SIFMA also labeled as unnecessary and burdensome the proposal's requirement to disclose if the member or its affiliates maintain a significant financial interest in the debt of a subject company. It asserted that such disclosure has little utility for investors, yet would require considerable resources to track such information. SIFMA also noted that to the extent that a member's ownership interest in a debt security presents a material conflict of interest, disclosure is already required by the ''catch-all'' provision that requires a member to disclose ''any other material conflict of interest of the research analyst or member that the research analyst or a person associated with a member with the ability to influence the content of a research report knows or has reason to know at the time of the publication or distribution of a research report.''

FINRA believes that a significant debt holding in the subject company could very well present a material conflict of interest that could inform an investor's decision making. For example, a negative equity research report that discusses a subject company's ability to meet its debt service or certain bond covenants could impact the value of high yield or other debt held by the member. FINRA also notes that the proposed disclosure is similar to that required by the United Kingdom's Financial Conduct Authority, whose rules many of SIFMA's members with global operations are already subject to. And while it is true that material conflicts can be captured by the ''catch-all'' provision, that should not preclude FINRA from delineating specific disclosures as it has with several other disclosures, including investment banking relationships.

SIFMA stated that it continues to believe that web-based disclosure promotes efficiency, provides important information to investors in a meaningful and effective manner, and is consistent with important initiatives by the SEC to promote the use of electronic media, particularly with respect to price charts and ratings distribution tables, which are often cumbersome and difficult to produce in individual research reports. SIFMA contended that web-based disclosure would greatly ease production burdens and streamline the research reports themselves if they could be provided through Web sites. SIFMA also urged FINRA to consider permitting a web-based disclosure regime for public appearances because it would allow investors to consider and appreciate more fully the disclosures related to these activities. SIFMA states that web-based disclosures would allow investors to download, review, and assess the disclosures (as opposed to simply hearing them recited before or after an appearance, at which time investors may not focus on the substance of the disclosures). As stated in the Purpose section, FINRA was informed by SEC staff that it believes a web-based disclosure approach would not be consistent with Sarbanes-Oxley; therefore, FINRA has not proposed it here.

Third-Party Research

SIFMA noted that the Notice Proposal would impose a new requirement that members adopt policies and procedures to ensure that third-party research distributed by a member ''is reliable and objective'' in addition to the review standard in current Rule 2711(h) that would also be required by the Notice Proposal and proposed rule change. The current standard requires a members to review non-independent third-party research for any ''untrue statement of material fact or any false or misleading information that: (i) Should be known from reading the report; or (ii) is known based on information otherwise possessed by the member.'' Independent third-party research is excepted from the review requirements. SIFMA asked FINRA to eliminate the new requirement or, at a minimum, allow an exception for independent third-party research. Also, instead of requiring disclosure of the specific points of information delineated by the current rules, the Notice Proposal and the

proposed rule change would include an overarching requirement that members disclose ''any material conflict of interest that can reasonably be expected to have influenced the choice of a third party research provider or the subject company of a third party research report.'' SIFMA believed that the existing specific disclosure requirements struck the appropriate balance and urged FINRA to eliminate the proposed new requirement.

We do not think it unreasonable to require screening procedures for third-party research to help ensure, for example, that the third-party provider is not being paid by the issuer or that the research has some kind of track record or good reputation. In fact, in a 2006 comment letter, SIFMA stated that firms should ''demand high standards'' from providers of third-party research.[99] However, FINRA has amended the proposal to prohibit a member from distributing third-party research that it knows or has reason to know is not objective or reliable. FINRA believes this standard more appropriately requires reasonable diligence without a duty of inquiry to definitively ascertain whether the research is, in fact, objective and reliable. As for disclosures, FINRA has built back in to the proposed rule change the specific required third-party disclosures in the current rule, but we also think it reasonable to overlay a principle to require disclosure of any material conflict that may have influenced the choice of the third-party provider or subject company.

Definitions

SIFMA and Dechert supported the provisions in the Notice Proposal to exclude from the definition of ''research report'' any communication on an open-end registered investment company that is not listed or traded on an exchange or a public direct participation program (''DPP''), but strongly urged FINRA to go further by carving-out written communications covering open-end exchange traded funds (''ETFs'') as well as private funds. These commenters argued that the same rationale that applies to the determination to exclude open-end investment companies also equally applies to ETFs and private funds (*e.g.,* sales materials on ETFs and private funds are already subject to an extensive regulatory regime). Dechert stated that even though private fund sales literature is not subject to post-use review by FINRA, it does not need to be, because unlike open-end registered investment companies and public DPPs, it is only distributed to sophisticated investors. Dechert also believed that sales material on private funds are clearly prepared for marketing purposes and do not contain an analysis and, therefore, should not be subject to a regulatory regime that is intended to preserve the objectivity of analysis. Dechert further noted that sales literature cannot manipulate the price of a private fund because its value is calculated as the value of an open-end registered investment company using the NAV, not by the market. SIFMA also recommended that FINRA exclude from the definition of ''research report'' any type of periodic report or other communication for any managed client account, whether such account is ''discretionary,'' as the current rule provides, or non-discretionary in nature. SIFMA believed that the rationale for excluding discretionary accounts is equally applicable to non-discretionary accounts because clients who use these accounts, in general, rely on their individual money managers, not research reports, to make investment decisions in line with their goals.

FINRA believes the carve-out should be limited to sales material related to mutual funds, which trade at NAV and are subject to the filing requirements of FINRA's advertising rules. ETFs, which are expanding in number and nature, are more susceptible to market-moving comments because they trade on an exchange and do not always trade at NAV, particularly if an ETF holds thinly traded securities or securities that are traded on a foreign exchange, or if an ETF is highly concentrated in a single or small number of securities.

For many of the same reasons, FINRA has reconsidered the proposed exemption for research on DPPs. FINRA has recently become more aware of research reports on master limited partnerships (''MLPs'') that technically fall under the definition of a DPP due to questions that have arisen since FINRA's new Rule 2210 (Communications with the Public) became effective in February 2013. MLPs more closely resemble individual stocks since they do not invest in an underlying portfolio of securities and therefore do not have a NAV and, in fact, FINRA has observed that research on MLPs largely resembles research on any other exchange-traded stock. FINRA notes, however, that not every communication concerning a DPP will be a research report—only those that include an analysis of the equity securities of the issuer and information sufficient upon which to base an investment decision would meet the definition of a research report. Sales material on private funds is not subject to FINRA's advertising review filing requirements. To the extent that the sales material does not, as Dechert asserts, contain an analysis, then it would not meet the definition of a research report. FINRA further notes that the rules do not currently except research on private securities nor is there an institutional carve-out, so to except research on hedge funds, for example, might set up an inconsistency.

SIFMA stated that the proposed revisions to the definition of ''investment banking services'' are overly broad and that FINRA should retain the current definition for this term. SIFMA expressed concern that the added language would broaden the definition to include personnel and departments not traditionally viewed as related to investment banking, including sales activities. As noted in the Purpose section, the current definition includes, without limitation, many common types of investment banking services. FINRA added the language ''or otherwise acting in furtherance of'' in the proposed rule change to further emphasize that the term should be broadly construed to cover all aspects of facilitating a public or private offering, as well as other investment banking activities. However, the new language is not intended to capture sales activities.

Pitch Book Materials

The proposed rule change requires policies and procedures reasonably designed to prohibit research analyst participation in pitches and other solicitation of investment banking services transactions. Supplementary Material .01 codifies previous guidance in *Notice to Members* 07–04, which sets out the principle that pitch materials may not contain any information about a member's research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable research coverage. The supplementary material specifies that members may include the fact of coverage and the name of the research analyst because such information alone does not imply favorable coverage. The supplementary material also states FINRA's view that including an analyst's industry ranking in pitch materials implies favorable research because of the manner in which such rankings are compiled; *i.e.,* they are voted on by institutional investors that tend to benefit from positive coverage of their holdings. SIFMA requested that FINRA revise the example provided in

[99] *See* Letter from Michael D. Udoff, Vice President and Associate General Counsel, SIFMA, to Nancy M. Morris, Secretary, SEC, dated November 14, 2006.

the proposed supplementary material to clarify what sort of materials are prohibited or provide an alternative example of prohibited pitch materials. SIFMA also asked that FINRA confirm that members may disclose in pitch materials the fact that research coverage will be provided for a particular issuer.

FINRA believes the principle is clear and has included examples to illustrate FINRA's view of its application. Whether other information included in pitch materials violate the principle will depend on the facts and circumstances.

Effective Date

SIFMA requested that FINRA provide a 120-day grace period between the adoption of the proposal and the implementation of the proposed rules because some of the proposals will require major systems changes to firms' information technology systems, research report templates, and policies and procedures. FINRA is sensitive to the time firms will require to update their policies and procedures and systems to comply with the proposed rule change and will take those factors into consideration when establishing an implementation date.

Other Comments

Kolber supported the proposed change to exempt from FINRA's research analyst registration and qualification requirements those individuals who produce ''research reports'' but whose primary job function is something other than to provide investment research. The remainder of Kolber's comments with respect to the research registration and qualification requirements addressed more generally the scope and difficulty of the Series 86 examination, which is not the subject of the proposal. Kolber also stated that the definition of ''research report'' can be difficult to apply because it sets forth a standard and then lists several exceptions from the definition. FINRA notes that the structure is very similar to the definition of research report in Regulation AC and is not an uncommon drafting method. Kolber's other comments are directed to the difficulty of distinguishing between the definitions of ''sales literature'' and ''advertisement'' in former NASD Rule 2210. That rule has since been replaced by consolidated FINRA Rule 2210, where those definitions no longer exist.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–047 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–FINRA–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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2014–047 and should be submitted on or before December 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[100]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27700 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73621; File No. SR–NASDAQ–2014–095]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Provide a New Optional Functionality to Minimum Quantity Orders

November 18, 2014.

On September 18, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASDAQ Rule 4751(f)(5) to provide a new optional functionality for Minimum Quantity Orders. The proposed rule change was published for comment in the **Federal Register** on October 6, 2014.[3] The Commission received no comment letters regarding the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether these proposed rule changes should be disapproved. The 45th day for this filing is November 20, 2014.

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[100] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73266 (September 30, 2014), 79 FR 60207 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. The proposed rule change would, among other things, provide new optional functionality for minimum quantity orders.

Accordingly, pursuant to Section 19(b)(2) of the Act [5] and for the reasons stated above, the Commission designates January 4, 2015, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rulechange.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27699 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73628; File No. SR–CBOE–2014–085]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Professional Orders

November 18, 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 November 10, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the definition of ''Professional'' in Rule 1.1(ggg) and adopt Interpretation and Policy .01 to Rule 1.1(ggg) concerning the definition of an ''order'' for purposes of Rule 1.1(ggg). The text of the proposed rule change is provided below and in Exhibit 1.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

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CHAPTER I

Definitions

¶ 2001 Definitions

RULE 1.1 When used in these Rules, unless the context otherwise requires:

(a) Any term defined in the Bylaws and not otherwise defined in this Chapter shall have the meaning assigned to such term in the Bylaws.

(b)–(fff)

Professional

(ggg) The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Professional will be treated in the same manner as a broker or dealer in securities for purposes of Rules 6.2A, 6.2B, 6.8C, 6.9, 6.13A, 6.13B, 6.25, 6.45, 6.45A (except for Interpretation and Policy .02), 6.45B (except for Interpretation and Policy .02), 6.53C(c)(ii), 6.53C(d)(v), subparagraphs (b) and (c) under Interpretation and Policy .06 to Rule 6.53C, 6.74 (except Professional orders may be considered public customer orders subject to facilitation under paragraphs (b) and (d)), 6.74A, 6.74B, 8.13, 8.15B, 8.87, 24.19, 43.1, 44.4, 44.14. The Professional designation is not available in Hybrid 3.0 classes. *All Professional orders shall be marked with the appropriate origin code as determined by the Exchange.*

. . . Interpretations And Policies

.01 For purposes of this Rule 1.1(ggg), an order which is placed for the beneficial account(s) of a person or entity that is not a broker or dealer in securities that is broken into multiple parts by a broker or dealer or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer, but which is housed with the customer in order to achieve a specific execution strategy including, for example, a basket trade, program trade, portfolio trade, basis trade, or benchmark hedge, constitutes a single order and shall be counted as one order.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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 definition of ''Professional'' to clarify how orders are computed under Rule 1.1(ggg). Specifically, the Exchange proposes to adopt Interpretation and Policy .01 to Rule 1.1(ggg) to its definition of ''Professional'' in Rule 1.1(ggg) to provide that for purposes of Rule 1.1(ggg), an order which is placed for the beneficial account(s) of a person or entity that is not a broker or dealer in securities that is broken into multiple parts by a broker or dealer or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer, but which is housed with the customer in order to achieve a specific execution strategy including, for example, a basket trade, program trade, portfolio trade, basis trade, or benchmark hedge, constitutes a single order and shall be counted as one order. The Exchange also proposes to add a provision to Rule 1.1(ggg), which would provide that all Professional orders shall be marked with the appropriate origin code as determined by the Exchange.

The Exchange believes that the proposed rule changes will add clarity and transparency to its current rules, which is in the interests of all market participants. The purpose of this rule filing is to codify the details of the Exchange's existing policies within the Rules. The Exchange is continuously

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

evaluating clarifying additions to the Rules, particularly with respect to order handling. The Exchange believes that the proposed rule change and adoption of proposed Interpretation and Policy .01 to Rule 1.1(ggg) is consistent with this effort.

Background

Under the Exchange's Rules, ''public customers'' are granted certain marketplace advantages over non-customers. In particular, public customer orders receive priority over non-customer orders and Market-Maker quotes at the same price. Subject to certain exceptions, public customer orders also do not incur transaction charges. These marketplace advantages are intended to promote various business and regulatory objectives including, but not limited to the Exchange's goals of providing competitive pricing and attracting retail order flow.

Prior to 2009, the Exchange designated all orders as either customer orders or non-customer orders based on whether an order was placed for the account of a registered securities broker or dealer. In general, order priority and transaction fees were determined solely on this distinguishing criterion. As investors' access to technology and information increased, however, the Exchange's distinction between public customers and non-customers became less effective in promoting the intended purpose of the Rules. As the Exchange noted at the time, it did not believe that the definitions of public customer and non-customer properly distinguished between the kind of non-professional retail investors that the order priority rules and transaction fees exceptions were intended to benefit.[3] Furthermore, the Exchange believed that distinguishing solely between registered broker-dealers and non-broker-dealers with respect to these advantages was no longer appropriate in the marketplace because some non-broker-dealer individuals and entities have access to information and technology that enables them to trade listed options in the same manner as a broker or dealer in securities.[4] The Exchange therefore did not believe that it was consistent with fair competition for these professional account holders to continue to receive the same marketplace advantages that retail investors have over broker-dealers trading on the Exchange.[5] Accordingly, in 2009, the Exchange adopted a definition of ''Professional'' under Rule 1.1(ggg) to further distinguish different types of orders placed on the Exchange.[6]

Under Rule 1.1(ggg), a person or entity that is not a securities broker or dealer that places more than 390 listed options orders per day on average during a calendar month for its own beneficial account(s) is considered a ''Professional.'' Furthermore, under Rule 1.1(ggg), a person or entity that is not a securities broker or dealer that places more than 390 listed options orders per day on average during a calendar month for its own beneficial account(s) is considered a ''Professional'' and treated in the same manner as a broker or dealer in securities with respect to order priority and transaction fees.[7] In general, ''Professionals'' are treated as broker-dealers with respect to priority of order and transaction fees under the current Rules of the Exchange. Rule 1.1(ggg) is based on and substantially similar to International Securities Exchange (''ISE'') Rule 100(a)(31A) as well as NASDAQ OMX BX Chapter I, Section I(a)(49), BATS Exchange Rule 16.1(a)(45), NASDAQ OMX Phlx Rule 1000(b)(14), BOX Options Exchange Rule 100(a)(50), and NYSE Amex Exchange Rule 900.2NY(18A).[8] Notably, several of these exchanges cited uniform application of Professional Order rules and discouraging regulatory arbitrage as primary reasons for adopting a Professional Order rule.[9]

Upon adopting Rule 1.1(ggg), the Exchange issued a Regulatory Circular, interpreting Rule 1.1(ggg).[10] With respect the counting of single original orders that are then broken up into multiple orders to achieve a specific execution strategy, the Exchange followed ISE's interpretation of its Rule 100(a)(31A).[11] Under ISE Rule 100(a)(31A), if a customer places a ''parent'' order that is then broken up by an executing firm into multiple ''child'' orders to achieve a specific execution strategy, the original order is counted as one order for professional order purposes.[12] ISE recently clarified this interpretation further, providing that original orders that are placed on behalf of the beneficial account of a non-broker-dealer, which are then broken up by a broker-dealer (or pursuant to an algorithm licensed from a broker-dealer) in order to achieve a specific execution strategy, such original orders will be counted as one order for professional order purposes.[13] In order to clarify the Rules and ensure uniformity with Professional Order rules in place throughout the industry, the Exchange is proposing to codify this interpretation in the Rules.

Proposal

The Exchange proposes to adopt Interpretation .01 to Rule 1.1(ggg) to clarify the Rules and help ensure uniform compliance. Specifically, the

[3] *See* Securities Exchange Act Release No. 34–61198 (December 17, 2009), 74 FR 248 (December 29, 2009) (Order Granting Approval of the Proposed Rule Change, as Modified by Amendment No. 1, Related to Professional Orders) (SR–CBOE–2009–078).

[4] *See id.*

[5] *See id.*

[6] *See* Rule 1.1(ggg).

[7] Under Rule 1.1(ggg), ''Professionals'' are treated in the same manner as a broker or dealer in securities for purposes of Rules 6.2A (Rapid Opening System), 6.2B (Hybrid Opening System), 6.8C (Prohibition Against Members Functioning as Market-Makers), 6.9 (Solicited Transactions), 6.13A (Simple Auction Liaison), 6.13B (Penny Price Improvement), 6.45 (Priority of bids and Offers—Allocation of Trades), 6.45A (Priority and Allocation of Equity Option Trades on the CBOE Hybrid System) (except that Professional orders may be considered public customer orders, and therefore not be subject to the exposure requirements for solicited broker-dealer orders, under Interpretation and Policy .02), 6.45B (Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System) (except that Professional orders may be considered public customer orders, and therefore not be subject to the exposure requirements for solicited broker-dealer orders, under Interpretation and Policy .02), 6.53C(c)(ii) and (d)(v) and 6.53C.06(b) and (c) (Complex Orders on the Hybrid System), 6.74 (Crossing Orders) (except that Professional orders may be considered public customer orders subject to facilitation under paragraphs (b) and (d)), 6.74A (Automated Improvement Mechanism) (except Professional orders may be considered customer Agency Orders or solicited orders eligible for customer-to-customer immediate crosses under Interpretation and Policy .09), 6.74B (Solicitation Auction Mechanism), 8.13 (Preferred Market-Maker Program), 8.15B (Participation Entitlement of LMMs), 8.87 (Participation Entitlement of DPMs and e-DPMs), 24.19 (Multi-Class Broad-Based Index Option Spread Orders), 43.1 (Matching Algorithm/Priority), 44.4 (Obligations of SBT Market-Makers), and 44.14 (SBT DPM Obligations). *See* Securities and Exchange Act Release No. 34–61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) (Order Granting Approval of the Proposed Rule Change, as Modified by Amendment No. 1, Related to Professional Orders) (SR–CBOE–2009–078).

[8] *See* Securities and Exchange Act Release No. 34–61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) (Order Granting Approval of the Proposed Rule Change, as Modified by Amendment No. 1, Related to Professional Orders) (SR–CBOE–2009–078).

[9] *See, e.g.;* Securities and Exchange Act Release No. 34–62724 (August 16, 2010), 75 FR 51509 (August 20, 2010) (Notice of Filing of a Proposed Rule Change by the NASDAQ Stock Market LLC To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked) SR–NASDAQ–2010–099;Securities and Exchange Act Release No. 34–65500 (October 6, 2011), 76 FR 63686 (October 13, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked) SR–BATS–2011–041.

[10] *See* CBOE RG09–148 (Professional Orders).

[11] *See* ISE Regulatory Information Circular 2009–179 (Priority Customer Orders and Professional Orders (FAQ)).

[12] *Id.*

[13] *See* ISE Regulatory Information Circular 2014–007 (Priority Customer Orders and Professional Orders (FAQ)).

Exchange proposes to codify its current practice of counting ''parent'' orders, placed on a single ticket for the beneficial account(s) of a person or entity that is not a broker or dealer in securities and which are broken into multiple parts by a broker or dealer or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer, but which is housed with the customer in order to achieve a specific execution strategy as one order for Professional Order purposes. The Exchange believes that the proposed rule will add transparency to and completeness to the Rules, which is in the best interests of all market participants.

The Exchange notes that the proposed rule is in-line with current Exchange practices and interpretations of nearly identical rules of other exchanges.[14] The Exchange believes that disparate rules with respect to Professional order designation, and lack of uniform application of such rules, do not promote the best regulation and may, in fact, encourage regulatory arbitrage. The Exchange believes that the risk of regulatory arbitrage is heightened in an environment where similar rules are interpreted differently amongst different exchanges and there is a lack of uniformity in marking Professional Orders when routing such orders away. The Exchange also proposes to amend Rule 1.1(ggg) to provide that all Professional orders shall be marked with the appropriate origin code as determined by the Exchange in order to bring the Exchange's rules in-line with the Professional Order rules of other exchanges. The Exchange believes that it is necessary to have uniform interpretations of Professional Order designations throughout the industry.

The Exchange also believes that counting basket trades, program trades, portfolio trades, basis trades, and benchmark hedges placed for the beneficial account(s) of a person or entity that is not a broker or dealer in securities and which are broken into multiple parts by a broker or dealer or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer, but which is housed with the customer as one order for Professional Order purposes is in-line with the purpose of its Professional customer rule and serves the best interests of investors. The types of trades cited above are often used by money managers, pension fund managers, and others to gain exposure to a particular set of securities at exactly the same time on behalf of retail customers and investors. These strategies are singular strategies, placed on a single ticket, that are used to avoid front-running and maintain privacy on behalf of customers. These trades are essentially one trade from a strategic standpoint in that all the terms of the trade are entered at one point in time on a single ticket.[15] Accordingly, the Exchange believes that such trades should be treated as one trade for Professional order purposes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rules is consistent with Section 6(b)(5) of the Act[19] with respect to removal of impediments to, and perfection of the mechanism of, a free and open market and national market system. The Exchange believes that disparate rules regarding Professional order designations, and a lack of uniform application of such rules, do not promote the best regulation and may, in fact, encourage regulatory arbitrage. Accordingly, the Exchange believes that disparate application of similar Professional Order rules is inconsistent with the goals of a national market system. The Exchange believes that it is therefore prudent and necessary to have a Professional designation rule that is in-line with the rules of other exchanges. The Exchange believes that the disparate application of Professional Order designations would result in the different treatment of similar orders, thwarting the principles underlying order protection rules and the national market system. The Exchange believes that an alternative interpretation of Rule 1.1(ggg) would result in the disparate treatment retail investors who the Rules are designed to grant priority and who might otherwise be treated as Professionals under the Rules. As such, the Exchange believes that the proposed rule changes are consistent with the Act.

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. Rather, the Exchange believes that the proposed rule will promote both intramarket and intermarket competition by allowing retail investors to take advantage of the priority rules that are intended to benefit them and placing all investors on equal footing as a result of uniform rules amongst the various exchanges. The Exchange believes that disparate rules with respect to Professional order designation, and lack of uniform application of such rules, do not promote the best regulation and may, in fact, encourage regulatory arbitrage. The Exchange believes that regulatory arbitrage contravenes the notion of fair competition and is not in the best interests of investors.

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 written comments on the proposed rule changes submitted in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21] Because the foregoing proposed rule change does

[14] *See* ISE Regulatory Information Circular 2014–007 (Priority Customer Orders and Professional Orders (FAQ)).

[15] Although a change in a parent order's terms, price, or size would cause the order to be considered an additional order under the Rules, changes to child orders, which are initiated to keep an overall execution strategy in place, would not cause a parent order to refresh or result in multiple orders.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] *Id.*

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and Rule 19b–4(f)(6) [23] 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–CBOE–2014–085 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–CBOE–2014–085. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–085 and should be submitted on or before December 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27706 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73620; File No. SR–NYSEMKT–2014–96]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the NYSE MKT LLC Equities Proprietary Market Data Fee Schedule (''Market Data Fee Schedule'') Regarding Non-Display Use Fees

November 18, 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 November 7, 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 Substance of the Proposed Rule Change

The Exchange proposes Change to the NYSE MKT LLC Equities Proprietary Market Data Fee Schedule (''Market Data Fee Schedule'') regarding non-display use fees.

The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes a change to the Market Data Fee Schedule regarding non-display use fees for NYSE MKT OpenBook, NYSE MKT Trades, NYSE MKT BBO and NYSE MKT Order Imbalances, the market data products to which non-display use fees apply. Specifically, with respect to the three categories of, and fees applicable to, market data recipients for non-display use, the Exchange proposes to describe the three categories in the Market Data Fee Schedule.

In September 2014, the Exchange revised the fees for non-display use of NYSE MKT OpenBook, NYSE MKT Trades, and NYSE MKT BBO and added fees for non-display use of NYSE MKT Order Imbalances.[4] In the 2014 Filing, the Exchange proposed certain changes to the categories of, and fees applicable to, data recipients for non-display use. As set forth in the 2014 Filing: (i) Category 1 Fees apply when a data recipient's non-display use of real-time market data is on its own behalf as

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 72020 (September 9, 2014), 79 FR 55040 (September 15, 2014) (SR–NYSEMKT–2014–72) (''2014 Filing'').

opposed to use on behalf of its clients; (ii) Category 2 Fees apply when a data recipient's non-display use of real-time market data is on behalf of its clients as opposed to use on its own behalf; and (iii) Category 3 Fees apply when a data recipient's non-display use of real-time market data is for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient's own behalf and/or on behalf of its clients. The Market Data Fee Schedule currently lists each category as Category 1, Category 2, and Category 3, without further description.

The Exchange is proposing to amend the Market Data Fee Schedule to add the descriptions of the three categories, as set forth above, as a footnote to the Market Data Fee Schedule. Because there will now be multiple footnotes to the Market Data Fee Schedule, the Exchange proposes non-substantive edits to change the existing footnote references from asterisks to numbers.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [5] of the Act, in general, and furthers the objectives of Section 6(b)(5) [6] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The Exchange believes that adding the description of the three categories of data recipients for non-display use to the Market Data Fee Schedule will remove impediments to and help perfect a free and open market by providing greater transparency for the Exchange's customers regarding the category descriptions that have been previously filed with the Commission and are applicable to the existing Market Data Fee Schedule.[7]

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 because the Exchange is merely adding to the Market Data Fee Schedule information that has been previously filed with the Commission.[8]

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[11] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day delayed operative date so that the proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) [17] thereunder. The Commission believes that the proposal raises no novel issues and that adding the description of the categories of market data recipients for non-display use to the Market Data Fee Schedule is consistent with the protection of investors and the public interest because it will provide more transparency in the Exchange's Market Data Fee Schedule regarding the existing definitions in that schedule. Based on the foregoing, the Commission has determined to waive the 30-day operative date so that the proposal may take effect upon filing.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–96 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–2014–96. 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

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See supra* n. 4.

[8] *See supra* n. 4.

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] The Exchange has satisfied this requirement.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] *Id.*

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–96 and should be submitted on or before December 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27698 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73629; File No. SR–Phlx–2014–75]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Pricing Schedule

November 18, 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 November 14, 2014 NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Pricing Schedule to conform certain terminology to Rule 507, Application for Approval as an SQT, RSQT, RSQTO and Assignment in Options'' as it relates to Remote Market Makers or ''RMMs.'' The Exchange also proposes to make other clarifying and corrective amendments to various sections of the Pricing Schedule.

The text of the proposed rule change is set forth below. Proposed new language is italicized; deleted text is in brackets.

NASDAQ OMX PHLX LLC [1] PRICING SCHEDULE

ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ OMX PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. AS OF JANUARY 3, 2011, THE EXCHANGE WILL CALCULATE FEES ON A TRADE DATE BASIS.

[1] PHLX® is a registered trademark of The NASDAQ OMX Group, Inc.

* * * * *

PREFACE

For purposes of assessing fees, the following references should serve as guidance.

The term ''Customer'' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of *a* broker or dealer or for the account of a ''Professional'' (as that term is defined in Rule 1000(b)(14)). [2]

The term ''Specialist'' applies to transactions for the account of a Specialist [3] (as defined in Exchange Rule 1020(a)).

The term ''ROT, SQT and RSQT'' applies to transactions for the accounts of Registered Option Traders[4] (''ROTs''), Streaming Quote Traders (''SQTs''),[5] and Remote Streaming Quote Traders (''RSQTs''). [6] For purposes of the Pricing Schedule, the term ''Market Maker'' will be utilized to describe fees and rebates applicable to ROTs, SQTs and RSQTs. *RSQTs may also be referred to as Remote Market Markers (''RMMs'').*

The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

The term ''Professional'' applies to transactions for the accounts of Professionals (as defined in Exchange Rule 1000(b)(14)).

The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

The term ''Joint Back Office'' or ''JBO'' [7] applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer. [as of September 1, 2014.]

The term ''Common Ownership'' shall mean members or member organizations under 75% common ownership or control.

For purposes of determining average daily volume or volume-based pricing hereunder, any day that the market is not open for the entire trading day will be excluded from such calculation.

[2] Rule 1000(b)(14) provides in relevant part: ''The term ''professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[3] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is [a] defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

[4] A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes SQTs and RSQTs as well as on and off-floor ROTS.

[5] A Streaming Quote Trader is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[6] A Remote Streaming Quote Trader is defined *in* Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or ''RSQTO,'' which may also be referred to as a Remote Market Making Organization (''RMO''), is a member organization in good

standing that satisfies the RSQTO readiness requirements in Rule 507(a).

[7] A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer (''JBO Broker'') subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Exchange Rule 703.

* * * * *

A. Mini Options Fees

The following fees will apply to Mini Options as specified in Rule 1012, Commentary .13.

[Mini Options symbols are AAPL7, AMZN7, GLD7, GOLG7, SPY7]

	Customer	Professional	Specialist and market maker	Broker-dealer	Firm
Mini Options Transaction Fee—Electronic Adding Liquidity	$0.00	$0.03	$0.02	$0.03	$0.03
Mini Options Transaction Fee—Electronic Removing Liquidity	0.00	0.09	0.04	0.09	0.09
Mini Options Transaction Fee—Floor and QCC	0.00	0.09	0.09	0.09	0.09

For executions that occur as part of PIXL, the following fees and rebates will apply:

- Initiating Order: $0.015 per contract
- PIXL Order (Contra-party to the Initiating Order): Customer is $0.00 and all others will be assessed a transaction fee of $0.03 per contract.
- PIXL Order (Contra-party to other than the Initiating Order): Customer will be assessed a transaction fee of $0.00 and all others will be assessed a transaction fee of $0.03 per contract. The contra-party will be assessed a transaction fee of $0.03 per contract.

Payment for Order Flow fees will be as follows:

- Penny Pilot Options: $0.02
- All Other Options: $0.06

QCC Transaction Fees and rebates defined in Section II do not apply to Mini Options. Routing Fees set forth in Section V apply to Mini Options.

The Monthly Market Maker Cap and the Monthly Firm Fee Cap set forth in Section II as well as other options transaction fee caps, discounts or rebates will not apply to transactions in Mini Options.

Mini Options volume will be included in the calculations for the Customer Rebate Program eligibility but will not be eligible to receive the rebates associated with the Customer Rebate Program.

B. Customer Rebate Program

The Customer Rebate Tiers described below will be calculated by totaling Customer volume in Multiply Listed Options (including SPY) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o). Rebates will be paid on Customer Rebate Tiers according to the below categories. Members and member organizations under Common Ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates.

Customer rebate tiers	Percentage thresholds of national customer volume in multiply-listed equity and ETF options classes, excluding SPY options (monthly)	Category A	Category B
Tier 1	0.00%–0.60%	$0.00	$0.00
Tier 2	Above 0.60%–1.10%	*0.10	*0.17
Tier 3	Above 1.10%–1.60%	*0.12	*0.17
Tier 4	Above 1.60%–2.50%	0.16	0.19
Tier 5	Above 2.50%	0.17	0.19

Category A: Rebate will be paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols. Rebate will be paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order will be paid a rebate of $0.14 per contract.

Category B: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebate will be paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will be paid a rebate of $0.17 per contract. The Category B Rebate will not be paid when an electronically-delivered Customer Complex Order, *including Customer Complex PIXL Order,* executes against another electronically-delivered Customer Complex Order.

* The Exchange will pay a $0.02 per contract rebate in addition to the applicable Tier 2 and 3 rebate to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in Section II.

* * * * *

VI. MEMBERSHIP FEES

* * * * *

B. STREAMING QUOTE TRADER (''SQT'') FEES

Number of Option Class Assignments [22]	SQT Fees
Tier 1: Up to 200 classes	$0.00 per calendar month.
Tier 2: Up to 400 classes	$2,200 per calendar month.
Tier 3: Up to 600 classes	$3200.00 per calendar month.
Tier 4: Up to 800 classes	$4200.00 per calendar month.
Tier 5: Up to 1000 classes	$5200.00 per calendar month.

B. STREAMING QUOTE TRADER ("SQT") FEES—Continued

Number of Option Class Assignments [22]	SQT Fees
Tier 6: Up to 1200 classes	$6200.00 per calendar month.
Tier 7: All equity issues	$7,200 per calendar month.

[22] In calculating the number of option class assignments, equity options including ETFs and ETNs will be counted. Currencies and indexes will not be counted in the number of option class assignments.

C. [REMOTE STREAMING QUOTE TRADER ORGANIZATION ("RSQTO") FEE] *Remote Market Maker Organization (RMO) Fee*

Number of Option Class Assignments [23]	[RSQTO]*RMO* Fee
Tier 1: less than 100 classes	$5,000 per month.
Tier 2: More than 100 classes and less than 999 classes	8,000 per month.
Tier 3: 1000 or more classes	11,000 per month.
Remote Specialist Fee [24]	200 per option allocation per month.

[23] In calculating the number of option class assignments, equity options including ETFs and ETNs will be counted. Currencies and indexes will not be counted in the number of option class assignments.
[24] The Remote Specialist Fee will be capped at $4,500 per month.

* * * * *

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 is proposing to amend various sections of the Pricing Schedule, which applies to options, to add rule text to clarify the Pricing Schedule. Each change will be discussed in more detail below.

Preface—Joint Back Office (''JBO'')

The Exchange notes in the Preface to the Pricing Schedule that a JBO will be priced the same as a Broker-Dealer. [sic] as of September 1, 2014. The Exchange believes that the date is no longer necessary and proposes to remove this reference.

Preface—RMM Amendment

The Exchange proposes to add a sentence to the term ''ROT, SQT and RSQT'' to state that ''RSQTs may also be referred to as Remote Market Makers (''RMMs'').'' The Exchange already includes this statement in note 6 of the Preface. The Exchange proposes to add this in the definition of the term for ease of reference.

Chapter VI—RMO Amendment

The Exchange also proposes to utilize this term to describe the fees at Chapter VI, Membership Fees, Section C, currently titled ''Remote Streaming Quote Trader Organization Fee.'' The Exchange believes that titling this fee as ''Remote Market Maker Organization (RMO) Fee'' more specifically defines the fee. The Exchange also proposes to add the term ''RMO'' in place of ''RSQTO'' throughout Section C fee table for consistency.

Chapter VI—Adding Tier Numbers

The Exchange proposes to amend Chapter VI, Section B, Streaming Quote Trader (''SQT'') Fees and Section C to assign tier numbers before each tier in each of those fees for ease of reference in referring to the fees.

The Exchange believes that each of the aforementioned amendments will make the Pricing Schedule easier to understand and reference.

Section A—Mini Options Symbols

The Exchange is also proposing to delete the Mini Options symbols listed in Section A, Mini Options Fees and instead note that the pricing applies to all Mini Options as specified in Rule 1012, Commentary .13. The Exchange believes this will assist the Exchange in maintaining a current, accurate Pricing Schedule.

Section B—Customer Rebate Program

The Exchange is proposing to clarify rule text in Section B, Customer Rebate Program, related to Category B rebates. Currently the Category B rebate is paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. The rebate will be paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will be paid a rebate of $0.17 per contract. The Category B Rebate will not be paid when an electronically-delivered Customer Complex Order executes against another electronically-delivered Customer Complex Order. The Exchange proposes to amend the last sentence to state, ''The Category B Rebate will not be paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order.'' The Exchange believes that this sentence helps further clarify the manner in which the Category B rebate is applied today.

The Exchange is also making other clarifying amendments in the definitions to correct typographical errors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(5) of the Act [4]

[3] 15 U.S.C. 78f(b).
[4] 15 U.S.C. 78f(b)(5).

in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, in that the amendments will provide greater clarity to the Pricing Schedule.

The Exchange believes that removing the historical reference date to the JBO definition in the Preface will provide greater clarity to the Pricing Schedule.

The Exchange believes that the amendments provide greater specificity and conforms word usage with the Rulebook with respect to the usage of the terms RMM and RMO. Also, by adding tier numbers, it will be easier to reference the various streaming fees.

The Exchange believes that generally referring to Mini Options as specified in the Rulebook will assist the Exchange in maintaining a current list of Mini Options which are subject to Section A pricing. The NASDAQ Options Market LLC pricing for Mini Options does not specifically reference the Mini Options symbols.[5]

The Exchange believes that further clarifying the manner in which a Category B Customer Rebate is paid by stating that a Customer Complex PIXL Order is excluded in the same manner as other Customer Complex Orders adds further clarity to the rule text. The Exchange excludes Customer Complex PIXL Orders today from the Category B rebate. The Exchange will not change the manner in which the Exchange pays a rebate as a result of this filing. Customer Complex PIXL Orders will continue to be excluded.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is merely seeking to add greater clarity to the Pricing Schedule by conforming the RMM and RMO language to the current usage in Rule 507 of the Rulebook. The Exchange also believes that the addition of tiers provides greater clarity and transparency to the Pricing Schedule which benefits all market participants. Generally citing to all Mini Options provides greater accuracy to the Pricing Schedule. Specifically stating that Customer Complex PIXL Orders are excluded in a manner similar to Customer Complex Orders adds more specificity to the manner in which the Exchange pays the Category B Customer Rebate. Finally, correcting typographical errors and removing historical dates avoid confusion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[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: (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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2014–75 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–Phlx–2014–75. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2014–75 and should be submitted on or before December 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27710 Filed 11–21–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73630; File No. SR–NASDAQ–2014–038]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2 Thereto, Relating to the Listing and Trading of the Shares of the Reality Shares NASDAQ–100 DIVS Index ETF Under Nasdaq Rule 5705

November 18, 2014.

I. Introduction

On April 10, 2014, The NASDAQ Stock Market LLC (''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and

[5] *See* Chapter XV, Section 2(4).

[6] 15 U.S.C. 78s(b)(3)(a)(ii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Reality Shares NASDAQ–100 DIVS Index ETF (''Fund'') under Rule 5705. The proposed rule change was published for comment in the **Federal Register** on April 30, 2014.[3] On May 13, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.[4] On June 4, 2014, the Exchange filed Amendment No. 2 to the proposed rule change.[5] On June 13, 2014, pursuant to Section 19(b)(2) of the Act,[6] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[7]

On July 29, 2014, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change.[9] In response to the Order Instituting Proceedings, the Commission received two comment letters on the proposal.[10] On October 23, 2014, the Commission designated a longer period for Commission action on the Order Instituting Proceedings.[11] This order grants approval of the proposed rule change, as modified by Amendments No. 1 and No. 2 thereto.

II. Description of the Proposal, as Modified by Amendments No. 1 and No. 2 Thereto

The Exchange proposes to list and trade the Shares of the Fund under NASDAQ Rule 5705(b), which governs the listing and trading of Index Fund Shares on the Exchange.[12]

A. The Fund, Generally

The Fund is an exchange-traded fund (''ETF'') that will seek long-term capital appreciation by tracking the Reality Shares NASDAQ–100 DIVS Index (''Index''). The Index measures market expectations for dividend growth of the companies included in the NASDAQ–100 Index.[13] The Shares of the Fund will be offered by the Reality Shares ETF Trust (''Trust''), which was established as a Delaware statutory trust on March 26, 2013. The Fund is a series of the Trust. The Exchange represents that the Trust will be registered with the Commission as an open-end management investment company.[14] Reality Shares Advisors, LLC will serve as the investment adviser to the Fund (''Adviser'').[15] ALPS Distributors, Inc. will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon will serve as administrator, custodian, and transfer agent for the Fund. The Exchange states that the Adviser is not a broker-dealer and is not affiliated with any broker-dealers.[16]

B. The Exchange's Description of the Fund

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including permitted portfolio holdings and investment restrictions.[17]

Reality Shares NASDAQ–100 DIVS Index ETF

The Exchange states that the Index was developed by Reality Shares, Inc., the parent company of the Adviser, in conjunction with The NASDAQ OMX Group, Inc., and is maintained by Reality Shares, Inc. (''Index Provider'').[18] The Index Provider is not a broker-dealer and is not affiliated with any broker-dealers.[19] The Exchange

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72014 (Apr. 24, 2014), 79 FR 24465 (''Notice'').

[4] In Amendment No. 1, the Exchange confirmed the hours of the three trading sessions on the Exchange, clarified the valuation of investments for purposes of calculating net asset value, clarified what information would be available on the Fund's Web site, and provided additional information relating to surveillance with respect to certain assets held by the Fund. Amendment No. 1 provided clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change or raise novel or unique regulatory issues, Amendment No. 1 is not subject to notice and comment.

[5] The Exchange filed Amendment No. 2 to the proposal to reflect a change to the name of the Fund and the underlying index. Specifically, the Exchange replaced each reference in the proposal to the ''Reality Shares NASDAQ–100 Isolated Dividend Growth ETF'' (the original name of the Fund) with a reference to the ''Reality Shares NASDAQ–100 DIVS Index ETF.'' Similarly, the Exchange replaced each reference in the proposal to the ''Reality Shares NASDAQ–100 Isolated Dividend Growth Index'' with a reference to the ''Reality Shares NASDAQ–100 DIVS Index.'' Amendment No. 2 is a technical amendment and is not subject to notice and comment as it does not materially affect the substance of the filing.

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 72384, 79 FR 35205 (Jun. 19, 2014). The Commission designated a longer period within which to take action on the proposed rule change and designated July 29, 2014, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 72715, 79 FR 45556 (Aug. 5, 2014) (''Order Instituting Proceedings''). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' *See id.*

[10] *See* Letter from Eric R. Ervin, President, Reality Shares ETF Trust and Reality Shares Advisors, LLC, and President and CEO, Reality Shares, Inc., to Kevin M. O'Neill, Deputy Secretary, Commission, dated August 22, 2014 (''Reality Shares Letter 1''); Letter from Eric R. Ervin, President, Reality Shares ETF Trust and Reality Shares Advisors, LLC, and President and CEO, Reality Shares, Inc., to Arun Manoharan, Financial Economist, Commission, dated October 21, 2014 (''Reality Shares Letter 2'').

[11] *See* Securities Exchange Act Release No. 73418, 79 FR 64431 (Oct. 29, 2014).

[12] Index Fund Shares that are issued by an open-end investment company and listed and traded on the Exchange under NASDAQ Rule 5705 seek to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof. *See* Rule 5705(b)(1)(A).

[13] The NASDAQ–100 Index is an index of 100 of the largest domestic and international securities (based on market capitalization) listed on The NASDAQ Stock Market. The NASDAQ–100 Index includes companies across major industry groups, including computer hardware and software, telecommunications, retail/wholesale trade and biotechnology, and excludes securities of financial companies.

[14] According to the Exchange, the Trust will be registered under the Investment Company Act of 1940 (''1940 Act''). On November 12, 2013, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 and the 1940 Act relating to the Fund, as amended by Pre-Effective Amendment Number 1, filed with the Commission on February 6, 2014 (File Nos. 333–192288 and 811–22911) (''Registration Statement''). In addition, the Exchange states that the Trust has obtained certain exemptive relief under the 1940 Act. Investment Company Act Release No. 30678 (Aug. 27, 2013) (''Exemptive Order''). The Exchange represents that investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

[15] The Adviser is a wholly-owned subsidiary of the Index Provider.

[16] *See* note 19, *infra.*

[17] Additional information regarding the Trust, the Fund, and the Shares, including investment strategy, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice, Registration Statement, and Exemptive Order, as applicable. *See* Notice, *supra* note 3; *see also* Registration Statement and Exemptive Order, *supra* note 14.

[18] The Index will be calculated by International Data Corporation, which is not affiliated with the Adviser, Index Provider, or The NASDAQ OMX Group, and which is not a broker-dealer or fund advisor.

[19] According to the Exchange, the Adviser and the Index Provider have represented that a fire wall exists around the respective personnel who have access to information concerning changes and adjustments to the Index. The Exchange further represents that in the event (a) the Adviser, any sub-adviser, or the Index Provider becomes registered as a broker-dealer or is newly affiliated with a broker dealer, or (b) any new adviser, sub-adviser, or Index Provider is a registered broker-dealer or becomes affiliated with a broker dealer, the Adviser, sub-adviser or Index Provider will implement a fire wall with respect to its relevant personnel or such broker dealer affiliate, as applicable, regarding access to information concerning the composition or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio. The Fund does not currently intend to use

Continued

states that the Index for the Fund does not meet all of the ''generic'' listing requirements of paragraph (b)(3)(A)(i) of Rule 5705 applicable to the listing of Index Fund Shares based upon an index of ''U.S. Component Stocks.'' [20] Specifically, Rule 5705(b)(3)(A)(i) sets forth the requirements to be met by components of an index or portfolio of U.S. Component Stocks. The Index will consist primarily of U.S. exchange-listed and traded options on the NASDAQ–100 Index and U.S. exchange-listed and traded options on ETFs that track the NASDAQ–100 Index.[21] The Fund may also invest up to 20% of its total assets in other securities such as over-the-counter (''OTC'') options, futures, and forward contracts on the NASDAQ–100 Index, and OTC options, futures, and forward contracts on ETFs that track the NASDAQ–100 Index. The Exchange has represented that the Shares will conform to the initial and continued requirements of listing criteria under Rule 5705(b), except to the extent that the Index is composed of options based on U.S. Component Stocks (*i.e.,* ETFs based on the NASDAQ–100 Index) and options on an index of U.S. Component Stocks (*i.e.,* the NASDAQ–100 Index).

Principal Investments of the Fund

The Fund will seek long-term capital appreciation and will seek investment results that, before fees and expenses, generally correspond to the performance of the Index. At least 80% of the Fund's total assets (exclusive of collateral held from securities lending, if any) will be invested in the component securities of the Index. The Fund will seek a correlation of 0.95 or better between its performance and the performance of its Index (a figure of 1.00 would represent perfect correlation). The Fund generally will use a representative sampling investment strategy.

The Fund will buy (*i.e.,* hold a ''long'' position in) and sell (*i.e.,* hold a ''short'' position in) put and call options. The strategy of taking both a long position in a security through its ex-dividend date (the last date an investor can own the security and receive dividends paid on the security) and a corresponding short position in the same security immediately thereafter is designed to allow the Fund to isolate its exposure to the growth of the level of dividends expected to be paid on such security while minimizing its exposure to changes in the trading price of such security.

The Fund will buy and sell U.S. exchange-listed options on the NASDAQ–100 Index and U.S. exchange-listed options on ETFs designed to track the NASDAQ–100 Index. A put option gives the purchaser of the option the right to sell, and the issuer of the option the obligation to buy, the underlying security or instrument on a specified date or during a specified period of time. A call option on a security gives the purchaser of the option the right to buy, and the writer of the option the obligation to sell, the underlying security or instrument on a specified date or during a specified period of time. The Fund will invest in a combination of put and call options designed to allow the Fund to isolate its exposure to the growth of the level of expected dividends reflected in options on the NASDAQ–100 Index and options on ETFs tracking the NASDAQ–100 Index, while minimizing the Fund's exposure to changes in the trading price of such securities.

Index Methodology

The Index will be calculated using a proprietary, rules-based methodology designed to track market expectations for dividend growth conveyed in real-time using the mid-point of the bid-ask spread on NASDAQ–100 Index options and options on ETFs designed to track the NASDAQ–100 Index.[22] All options included in the Index will be listed and traded on a U.S. national securities exchange. The Index will consist of a minimum of 20 components.[23]

The prices of index and ETF options reflect the market trading prices of the securities included in the applicable underlying index or ETF, as well as market expectations regarding the level of dividends to be paid on such indexes or ETFs during the term of the option. The Index constituents, and, therefore, most of the Fund's portfolio holdings, will consist of multiple corresponding near-term and long-term put and call option combinations on the same reference assets (*i.e.,* options on the NASDAQ–100 Index or options on NASDAQ–100 ETFs) with the same strike price. Because option prices reflect both stock price and dividend expectations, they can be used in combination to isolate either price exposure or dividend expectations. The use of near-term and long-term put and call options combinations on the same reference asset with the same strike price, but with different maturities, is designed to gain exposure to the expected dividends reflected in options on the NASDAQ–100 Index and options on ETFs tracking the NASDAQ–100 Index while neutralizing the impact of stock price.

Once established, this portfolio construction of options combinations will accomplish two goals. First, the use of corresponding buy or sell positions on near and long-term options at the same strike price is designed to neutralize underlying stock price movements. In other words, the corresponding ''buy'' and ''sell'' positions on the same reference asset are designed to net against each other and eliminate the impact that changes to the stock price of the reference asset would otherwise have on the value of the Index (and Fund Shares). Second, by minimizing the impact of price fluctuations through the construct of the near- and long-term contract combinations, the strategy is designed to isolate market expectations for dividends implied between expiration dates of the near-term and long-term option contracts. Over time, the Index will increase or decrease in value as the dividend spread between the near-term and long-term options combinations increases or decreases as a result of changing market expectations for dividend growth.

Other Fund Investments

While, as described above, at least 80% of the Fund's total assets (exclusive of collateral held from securities lending, if any) will be invested in the component securities of the Index, the Fund may invest up to 20% of its total assets in other securities and financial instruments, as described below.

The Fund may invest in: (a) U.S. exchange-listed futures contracts based

a sub-adviser. *See* Rule 5705(b)(1)(C); Rule 5705(b)(5)(A).

[20] Paragraph (b)(1)(D) of Rule 5705 states that the term ''U.S. Component Stock'' shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act, or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act. *See* Rule 5705(b)(1)(D).

[21] Paragraph (b)(3)(A)(i) of Rule 5705 states, in relevant part, that upon the initial listing of a series of Index Fund Shares pursuant to 19b–4(e) under the Act, all securities in the index or portfolio shall be U.S. Component Stocks listed on NASDAQ (including The NASDAQ Capital Market) or another national securities exchange, and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act. The Exchange states that each component stock of the NASDAQ–100 Index is a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock. Options, however, are excluded from the definition of NMS Stock. The Fund and the Index meet all of the requirements of the listing standards for Index Fund Shares in Rule 5705 except the requirements in 5705(b)(3)(A)(i)(a)–(e), because the Index includes options on U.S. Component Stocks.

[22] The Exchange notes that there is no guarantee that either the level of overall dividends paid by such companies will grow over time, or that the Index or Fund's investment strategies will capture such growth. The Fund will include appropriate risk disclosure in its offering documents disclosing these risks, which will be available for free on the Commission's Web site and on the Fund's Web site, *www.realityshares.com.*

[23] *See* Rule 5705(b)(3).

on the NASDAQ–100 Index and ETFs designed to track the NASDAQ–100 Index; and (b) forward contracts based on the NASDAQ–100 Index and ETFs designed to track the NASDAQ–100 Index. The Fund's use of exchange-listed futures contracts and forward contracts is designed to allow the Fund to isolate its exposure to the growth of the level of expected dividends reflected in options on the NASDAQ–100 Index and options on ETFs tracking the NASDAQ–100 Index, while minimizing the Fund's exposure to changes in the trading price of such securities. The Fund may also buy and sell OTC options on the NASDAQ–100 Index and on ETFs designed to track the NASDAQ–100 Index.

The Fund may enter into dividend and total return swap transactions (including equity swap transactions) based on the NASDAQ–100 Index and ETFs designed to track the NASDAQ–100 Index.[24] In a typical swap transaction, one party agrees to make periodic payments to another party (''counterparty'') based on the change in market value or level of a specified rate, index, or asset. In return, the counterparty agrees to make periodic payments to the first party based on the return of a different specified rate, index, or asset. Swap transactions are usually done on a net basis, whereby the Fund would receive or pay only the net amount of the two payments. In a typical dividend swap transaction, the Fund would pay the swap counterparty a premium and would be entitled to receive the value of the actual dividends paid on the subject index during the term of the swap contract. In a typical total return swap, the Fund might exchange long or short exposures to the return of the underlying securities or index to isolate the value of the dividends paid on the underlying securities or index constituents. The Fund also may engage in interest rate swap transactions. In a typical interest rate swap transaction one stream of future interest payments is exchanged for another. Such transactions often take the form of an exchange of a fixed payment for a variable payment based on a future interest rate. The Fund intends to use interest rate swap transactions to manage or hedge exposure to interest rate fluctuations.

The Fund may invest up to 20% of its assets (exclusive of collateral held from securities lending, if any) in exchange-listed equity securities and derivative instruments (specifically, futures contracts, forward contracts, and swap transactions, as noted above)[25] relating to the Index and its component securities that the Adviser believes will help the Fund track the Index. For example, the Fund may buy and sell ETFs and, to a limited extent, individual large-capitalization equity securities listed and traded on a U.S. national securities exchange.

The Fund may invest in the securities of other investment companies (including money market funds) to the extent permitted under the 1940 Act.

The Fund's short positions and its investments in swaps, futures contracts, forward contracts and options based on the NASDAQ–100 Index and ETFs designed to track the NASDAQ–100 Index will be backed by investments in cash, high-quality short-term debt securities and money-market instruments in an amount equal to the Fund's maximum liability under the applicable position or contract, or will otherwise be offset in accordance with Section 18 of the 1940 Act. Short-term debt securities and money market instruments include shares of fixed income or money market mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. government securities (including securities issued or guaranteed by the U.S. government or its authorities, agencies, or instrumentalities), repurchase agreements,[26] and bonds that are rated BBB or higher. In addition to the investments described above, and in a manner consistent with its investment objective, the Fund may invest a limited portion of its net assets in high-quality, short-term debt securities and money market instruments for cash management purposes.[27]

The Fund will attempt to limit counterparty risk in non-cleared swap, forward, and OTC option contracts by entering into such contracts only with counterparties the Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty. The Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.[28]

The Fund's investments in swaps, futures contracts, forward contracts and options will be consistent with the Fund's investment objective and with the requirements of the 1940 Act.[29]

Investment Restrictions

To the extent the Index concentrates (*i.e.,* holds 25% or more of its total assets) in the securities of a particular industry or group of industries, the Fund will concentrate its investments to approximately the same extent as the Index.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance.[30] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in

[24] The Fund will transact only with swap dealers that have in place an ISDA agreement with the Fund.

[25] Where practicable, the Fund intends to invest in swaps cleared through a central clearing house (''Cleared Swaps''). Currently, only certain of the interest rate swaps in which the Fund intends to invest are Cleared Swaps, while the dividend and total return swaps (including equity swaps) in which the Fund may invest are currently not Cleared Swaps.

[26] The Fund may enter into repurchase agreements with banks and broker-dealers. A repurchase agreement is an agreement under which securities are acquired by a fund from a securities dealer or bank subject to resale at an agreed upon price on a later date. The acquiring fund bears a risk of loss in the event that the other party to a repurchase agreement defaults on its obligations and the fund is delayed or prevented from exercising its rights to dispose of the collateral securities.

[27] The Fund may invest in shares of money market mutual funds to the extent permitted by the 1940 Act.

[28] The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser will evaluate each approved counterparty using various methods of analysis, such as, for example, the counterparty's liquidity in the event of default, the counterparty's reputation, the Adviser's past experience with the counterparty, and the counterparty's share of market participation.

[29] To limit the potential risk associated with such transactions, the Fund will segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations arising from such transactions. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

[30] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may make secured loans of its portfolio securities; however, securities loans will not be made if, as a result, the aggregate amount of all outstanding securities loans by the Fund exceeds 33⅓% of its total assets (including the market value of collateral received). To the extent the Fund engages in securities lending, securities loans will be made to broker-dealers that the Adviser believes to be of relatively high credit standing pursuant to agreements requiring that the loans continuously be collateralized by cash, liquid securities, or shares of other investment companies with a value at least equal to the market value of the loaned securities.

The Fund will be classified as a ''non-diversified'' investment company under the 1940 Act. The Fund intends to qualify for and to elect treatment as a separate regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code.

The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

III. Summary of Comment Letters

As noted above, the Commission received two comment letters in response to the Order Instituting Proceedings.[31] Both comment letters, which were in favor of the proposal, sought to address certain questions, as outlined in the Order Instituting Proceedings,[32] and provide additional clarification regarding the proposal.

A. Reality Shares Letter 1

In Reality Shares Letter 1, the commenter offers its responses to the Commission's questions. The commenter responds that the Fund's investment strategy is not based on the assumption that dividend growth is underpriced by the options markets, stating that it is instead based on the expected dividend value to be paid on Nasdaq–100 securities (as implied in the price of listed Nasdaq– Index options over time) and the ''historical high correlation between such expected dividend values and the value of actual dividends paid on Nasdaq– securities.'' [33] The commenter then explains that, as the value of actual dividends paid increases or decreases, market expectations for dividends typically move up or down in a corresponding direction and that, if the current expected dividend value of the options in the Fund's portfolio changes, the value of an investment in the Fund changes correspondingly.[34]

The commenter asserts that the Fund's Registration Statement will sufficiently disclose to investors the key features of the Fund, including explanations of how the Fund's strategy works and how the Fund is expected to perform under various market conditions, and disclosures highlighting all material risks of investing in the Fund.[35] The commenter believes that these disclosures, and the disclosures in the Fund's marketing materials, will allow investors to understand the Fund's investment objective, strategy, risks, potential rewards, assumptions, and performance characteristics.[36] Further, the commenter believes that the Exchange's rules governing sales practices are sufficient to ensure the suitability of recommendations to investors regarding the Fund's Shares.[37]

With respect to IIV, the commenter responds that it believes that the market price of the Fund Shares will closely approximate the IIV of the Fund's portfolio and the intraday value of the Fund's underlying Index.[38] While it believes that ''the Fund's IIV and intraday Index values may reflect higher volatility than the market trading price of Fund Shares,'' the commenter does not expect this will have any material impact on secondary market trading of Fund Shares or arbitrage in Fund Shares.[39] The commenter expects that Authorized Participants and other institutional investors will quote and trade the option contracts held by the Fund in combination (by holding simultaneous long and short positions in the same put/call contracts) and that this combination tends to trade at tighter bid/ask spreads than do the individual contracts.[40] The commenter expects that Authorized Participants and other market makers will factor the price of the combination trades into their assessment of the value of Fund Shares, which will be reflected in the trading price of Fund Shares.[41] The commenter explains that the Fund's IIV and the intraday Index values are based on the intraday market price of individual option contracts and do not reflect the trading price of option contracts held in combination. So, while the commenter expects the price of Fund Shares to closely approximate the Fund's IIV and the intraday values of the Index, it also expects that the trading price of Fund shares will be less volatile than the Fund's IIV and the intraday value of the Index.[42]

In times of market stress, the commenter believes that the Fund's Shares will trade within an acceptable spread to the Fund's IIV and the intraday value of the Index.[43] The commenter believes that, because the Fund's portfolio is transparent and the Index constituents are publicly disclosed, market participants will be able to assess the value of the Fund and the Index and access the securities necessary to hedge their position exposures, even during times of market

[31] *See* Reality Shares Letter 1; Reality Shares Letter 2, *supra* note 10.

[32] In the Order Instituting Proceedings, the Commission sought comment on the following questions: (a) Because the Index is designed to reflect changes in market expectations of future dividend growth, rather than to track actual dividend growth, is the Fund's investment strategy fundamentally based on an assumption that the options markets systemically underprice dividend growth? What are commenters' views regarding whether investors would be able to understand the strategy, risks, potential rewards, assumptions, and expected performance of the Fund's strategy? (b) With respect to the trading of the Shares on the Exchange, do commenters believe that the Exchange's rules governing sales practices are adequately designed to ensure the suitability of recommendations regarding the Shares? Why or why not? If not, should the Exchange's rules governing sales practices be enhanced? If so, in what ways? (c) How closely do commenters think the market price of the Shares will track the Fund's intraday indicative value (''IIV'') or the intraday value of the Index? Are certain of these values likely to be more volatile than others? If so, how would this affect trading in the Shares? Are the Shares likely to trade with a significant premium or discount to IIV? What are commenters' views of how effectively the IIV of the Fund would represent the Fund's portfolio? What are commenters' views of how the Shares' market price, the Fund's IIV, and the intraday value of the Index will relate to one another during times of market stress? and (d) Does the liquidity of the long-dated options in which the Fund will invest differ materially from that of the short-dated options in which the Fund will invest? If so, how would that affect the ability of market makers to engage in arbitrage or to hedge their positions while making a market in the Shares? Would the liquidity characteristics of the Index components or of the options in the Fund's portfolio affect the calculation of the Index value, the calculation of the Fund's IIV, the calculation of the Fund's NAV, or the ability of market makers or other market participants to value the Shares? If so, how?

[33] *See* Reality Shares Letter 1, *supra* note 10, at 2–3.

[34] *See id.,* at 3.

[35] *See id.,* at 3–4.

[36] *See id.,* at 4.

[37] *See id.,* at 5.

[38] *See* Reality Shares Letter 1, *supra* note 10, at 6.

[39] *See id.*

[40] *See id.*

[41] *See id.,* at 7.

[42] *See id.*

[43] *See* Reality Shares Letter 1, *supra* note 10, at 9.

stress.[44] Further, the commenter asserts that, ''[b]ecause of the transparency of the Fund's portfolio and the liquidity and transparency of the underlying listed index options . . . investors will continue to have the ability to buy and sell Shares in the secondary market at fair and representative prices should there be any material departure from the IIV.'' [45]

The commenter states that the liquidity of the longer-dated option contracts in the Fund's portfolio will not differ materially from the liquidity of the shorter-dated option contracts.[46] Further, the commenter explains that the liquidity characteristics of the option contracts held by the Fund will not negatively impact the Fund's operation, the calculation of the Index value, the calculation of the Fund's IIV, or the calculation of the Fund's NAV.[47] The commenter believes that the options contracts provide ''sufficient and ample liquidity . . . for Authorized Participants and other investors to engage in efficient hedging activity, to value Fund Shares and to make markets in Fund Shares.'' [48]

B. Reality Shares Letter 2

In Reality Shares Letter 2, the commenter seeks to address whether the Fund's strategy will produce positive returns for buy-and-hold investors over the longer term in light of the efficient nature of markets and the ability of astute market participants to predict dividend growth.[49] The commenter claims that the historical returns of the Fund's strategy have been positive over long periods of time and that an investor can reasonably expect returns in the future that are non-zero and positive in the long term.[50]

In support of this claim, the commenter argues that all investments, even in perfectly efficient markets, are expected to have, at minimum, a risk-free rate associated with them.[51] For example, Treasury Bills (theoretically risk-free assets) are discounted by the risk-free rate in order to entice investors to purchase them.[52] Thus, even in a perfectly efficient market such as the one for Treasury Bills, an investment in a riskless asset will produce a long-term return greater than zero.[53] In addition, the commenter adds that, if any uncertainty surrounds the future payoff of an investment, one would expect a risk premium to be attached to the investment.[54] This would be quantified as the amount of money by which the expected return on the asset exceeds the known return of a risk-free asset.[55] This risk premium compensates investors for the uncertainty in their investment in a risky asset.[56] If the dividend risk premium were low, one would expect the strategy to earn less than the actual growth of dividends; if dividend risk premium were high, one would expect the strategy to earn more than actual dividend growth.[57] The commenter notes that, while expected dividend returns may not match dividend growth exactly, the rate of return would (at a minimum) be expected to be equal to the risk free rate, plus the risk premium.[58]

The commenter further asserts that, beyond the theoretical analogy stated above, an investment in the expected dividend implied in the options markets has historically produced positive returns and that the Fund's strategy can be expected to produce future positive long-term returns.[59] While the commenter believes that it is possible for implied dividend strategies to outperform equity returns, as well as actual dividend growth, the commenter argues that the foundation of the Fund's investment strategy is predicated on its conclusion that implied dividends carry risk and that, in an efficient market, this risk will be reflected in the form of a dividend risk premium.[60]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposal and the comments submitted in response to the questions raised by the Commission in the Order Instituting Proceedings. For the reasons discussed below, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[61] In particular, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2 thereto, is consistent with Section 6(b)(5) of the Exchange Act,[62] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[63] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Quotation and last-sale information for the Shares will be available via *NASDAQ* proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. The value of the Index will be published by one or more major market data vendors every 15 seconds during the Regular Market Session. Information about the Index constituents, the weighting of the constituents, the Index's methodology, and the Index's rules will be available at no charge on the Index Provider's Web site at *www.realityshares.com.* In addition, an estimated value, defined in Rule 5705(b)(3)(C) as the ''Intraday Indicative Value,'' will be disseminated. The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[64] will be based upon the current value for the components of the Disclosed Portfolio (as discussed herein) and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session (currently 9:30 a.m. Eastern time). On each business day, before commencement of trading in Shares in the Regular Market Session on the

[44] *See id.*

[45] *See id.,* at 10.

[46] *See id.*

[47] *See id.,* at 11.

[48] *See* Reality Shares Letter 1, *supra* note 10, at 12.

[49] *See* Reality Shares Letter 2, *supra* note 10, at 1.

[50] *See id.*

[51] *See id.*

[52] *See id.*

[53] *See id.*

[54] *See* Reality Shares Letter 2, *supra* note 10, at 2.

[55] *See id.*

[56] *See id.*

[57] *See id.*

[58] *See id.*

[59] *See* Reality Shares Letter 2, *supra* note 10, at 2.

[60] *See id.,* at 3.

[61] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[62] 15 U.S.C. 78f(b)(5).

[63] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[64] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[65] In addition, a basket composition file, which includes the security names and quantities, as applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of NASDAQ via the National Securities Clearing Corporation. The basket will represent one Creation Unit of the Fund. The portfolio composition file will represent one Creation Unit of Shares of the Fund.

The Fund will calculate its NAV by: (i) taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares outstanding. The Fund will calculate NAV once each business day as of the regularly scheduled close of trading on the NYSE (normally, 4:00 p.m., Eastern Time).[66] Intra-day, executable price quotations on the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information will also be available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by Authorized Participants and other investors. Specifically, the intra-day, closing and settlement prices of the portfolio securities and other Fund investments, including exchange-listed equity securities (which include common stocks and ETFs), exchange-listed futures, and exchange-listed options, will be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, and, with respect to OTC options, swaps, and forwards, from third party pricing sources, or on-line information services such as Bloomberg or Reuters. Price information regarding investment company securities and ETFs will be available from on-line information services and from the Web site for the applicable investment company security. The intra-day, closing and settlement prices of debt securities and money market instruments will be readily available from published and other public sources or on-line information services. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Fund's Web site will include a form of the prospectus for the Fund that may be downloaded and additional data relating to NAV and other applicable quantitative information.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the Fund that the NAV for the Fund will be calculated daily and will be made available to all market participants at the same time. The Exchange represents that it will halt or pause trading in the Shares under the conditions specified in NASDAQ Rules 4120 and 4121, including the trading pauses under NASDAQ Rules 4120(a)(11) and (12). Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[67] Trading in the Shares also will be subject to Rules 5705(b)(1)(B) and 5705(b)(9)(B), which sets forth circumstances under which Shares of the Fund may be halted. In addition, if the IIV, the Index Value or the value of the Index Components is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Commission notes that the Index Provider is not registered as an investment adviser or broker dealer and is not affiliated with any broker-dealers, and the Adviser is not registered as a broker-dealer and is not affiliated with any broker-dealers.[68] Prior to the commencement of trading, the Exchange will inform its members in an

[65] Under accounting procedures to be followed by the 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 Fund 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. On a daily basis, the Adviser, on behalf of the Fund, will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holdings in the Fund's portfolio. The Web site information will be publicly available at no charge.

[66] The Trust will generally value exchange-listed securities (which include common stocks and ETFs), exchange-listed options, and options on the NASDAQ–100 Index or NASDAQ–100 ETFs at market closing prices. Market closing price is generally determined on the basis of last reported sales prices on the applicable exchange, or if no sales are reported, based on the mid-point between the last reported bid and ask. The Trust will generally value exchange-listed futures at the settlement price determined by the applicable exchange. Non-exchange-traded derivatives, including OTC options, swap transactions, and forward transactions, will normally be valued on the basis of quotations or equivalent indication of value supplied by a third-party pricing service or major market makers or dealers. Debt securities and money market instruments generally will be valued based on prices provided by third-party pricing services, which may use valuation models or matrix pricing to determine current value. Investment company securities (other than ETFs) will be valued at NAV. The Trust generally will use amortized cost to value fixed income or money market securities that have a remaining maturity of 60 days or less.

[67] These reasons may include: (1) The extent to which trading is not occurring in the securities or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. The Exchange represents that it may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.

[68] *See supra* note 19 and accompanying text. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

Information Circular of the special characteristics and risks associated with trading the Shares. The Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange,[69] will communicate as needed regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts, and exchange-traded options contracts with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts, and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts, and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[70] All exchange-listed equity securities, ETFs, futures contracts and options held by the Fund will be traded on U.S. exchanges, all of which are members of ISG or are exchanges with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.[71]

(2) The Shares will be subject to Rule 5705, which sets forth the initial and continued listing criteria applicable to Index Fund Shares.

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by both NASDAQ and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) NASDAQ Rule 2111A, which imposes suitability obligations on NASDAQ members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Index Value and Intraday Indicative Value will be disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Index Value and Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Exchange Act.[72]

(6) At least 80% of the Fund's total assets (exclusive of collateral held from securities lending, if any) will be invested in the component securities of the Index. The Fund will seek a correlation of 0.95 or better between its performance and the performance of its Index. A figure of 1.00 would represent perfect correlation. All options included in the Index will be listed and traded on a U.S. national securities exchange.

(7) The Fund's investments in swaps, futures contracts, forward contracts and options will be consistent with the Fund's investment objective and with the requirements of the 1940 Act. To limit the potential risk associated with such transactions, the Fund will segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations arising from such transactions. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk. The Fund may not invest in leveraged or inverse leveraged (*e.g.,* 2X, –2X, 3X, or –3X) ETFs or options on such ETFs. The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

(8) The Fund will transact only with swap dealers that have in place an ISDA agreement with the Fund. Where practicable, the Fund intends to invest in Cleared Swaps. The Fund will attempt to limit counterparty risk in non-cleared swap, forward, and OTC option contracts by entering into such contracts only with counterparties the Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty. The Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis. The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced. The Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser will evaluate each approved counterparty using various methods of analysis, such as, for example, the counterparty's liquidity in the event of default, the counterparty's reputation, the Adviser's past experience with the counterparty, and the counterparty's share of market participation.

(9) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance.

(10) A minimum of 100,000 Shares for the Fund will be outstanding at the

[69] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[70] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[71] *See* NASDAQ Rule 5705(b)(7) (describing the three trading sessions on the Exchange: Regular Market Session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by NASDAQ). In addition, NASDAQ may designate each series of Index Fund Shares for trading during a Pre-Market Session beginning at 4:00 a.m. and/or a Post-Market Session ending at 8:00 p.m.

[72] 17 CFR 240.10A–3.

commencement of trading on the Exchange.

(11) The Fund will include appropriate risk disclosure in its offering documents, which will be available on the Commission's Web site and on the Fund's Web site, *www.realityshares.com.*

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2 thereto, is consistent with Section 6(b)(5) of the Act [73] and the rules and regulations thereunder applicable to a national securities exchange.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[74] that the proposed rule change (SR–Nasdaq–2014–038), as modified by Amendments No. 1 and No. 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[75]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27711 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

[73] 15 U.S.C. 78f(b)(5).

[74] *Id.*

[75] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73633; File No. SR–ISE–2014–52]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Regarding the Short Term Option Series Program

November 18, 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 November 6, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules governing the Short Term Option Series Program to extend current $0.50 strike price intervals in non-index options to short term options with strike prices less than $100. 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 proposes to amend its rules governing the Short Term Option Series Program to introduce finer strike price intervals for certain short term options. In particular, the Exchange proposes to amend Supplementary Material .12 to Rule 504 to extend $0.50 strike price intervals in non-index options to short term options with strike prices less than $100 instead of the current $75. This proposed change is intended to eliminate gapped strikes between $75 and $100 that result from conflicting strike price parameters under the Short Term Option Series and $2.50 Strike Price Programs as described in more detail below.

Under the ISE's rules, the Exchange may list short term options in up to fifty option classes in addition to option classes that are selected by other securities exchanges that employ a similar program under their respective rules.[3] On any Thursday or Friday that is a business day, the Exchange may list short term option series in designated option classes that expire at the close of business on each of the next five Fridays that are business days and are not Fridays in which monthly or quarterly options expire.[4] These short term option series trade in $0.50, $1, or $2.50 strike price intervals depending on the strike price and whether the option trades in dollar increments in the related monthly expiration.[5] Specifically, short term options in non-index option classes admitted to the Short Term Options Series Program currently trade in: (1) $0.50 intervals [sic] for strike prices less than $75, or for option classes that trade in one dollar increments in the related monthly expiration option; (2) $1 intervals [sic] for strike prices that are between $75 and $150; and (3) $2.50 intervals [sic] for strike prices above $150.[6]

The ISE also operates a $2.50 Strike Price Program that permits the Exchange to select up to sixty options classes on individual stocks to trade in $2.50 strike price intervals, in addition to option classes selected by other securities exchanges that employ a similar program under their respective rules.[7] Monthly expiration options in classes admitted to the $2.50 Strike Price Program trade in $2.50 intervals where the strike price is (1) greater than $25 but less than $50; or (2) between $50 and $100 if the strikes are no more than $10 from the closing price of the underlying stock in its primary market on the preceding day.[8] These strike price parameters conflict with strike prices allowed for short term options as dollar strikes between $75 and $100 otherwise allowed under the Short Term Option Series Program may be within $0.50 of strikes listed pursuant to the $2.50 Strike Price Program. In order to remedy this conflict, the Exchange proposes to extend the $0.50 strike price intervals currently allowed for short term options with strike prices less than $75 to short term options with strike prices less than $100. With this proposed change, short term options in non-index option classes will trade in: (1) $0.50 intervals [sic] for strike prices less than $100, or for option classes that trade in one dollar increments in the related monthly expiration option; (2) $1 intervals [sic] for strike prices that are between $100 and $150; and (3) $2.50 intervals [sic] for strike prices above $150.

[3] *See* Supplementary Material .02(a) to Rule 504.

[4] *See* Supplementary Material .02 to Rule 504.

[5] *See* Supplementary Material .12 to Rule 504.

[6] *Id.*

[7] *See* Rule 504(g).

[8] *Id.* The term ''primary market'' is defined in ISE Rule 100(a)(37) as the principal market in which an underlying security is traded.

2. Statutory Basis

The Exchange believes that the proposed rule change 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.[9] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[10] because is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

During the month prior to expiration, the Exchange is permitted to list related monthly option contracts in the narrower strike price intervals available for short term option series.[11] After transitioning to short term strike price intervals, however, monthly options that trade in $2.50 intervals between $50 and $100 under the $2.50 Strike Price Program, trade with dollar strikes between $75 and $150. Due the overlap of $1 and $2.50 intervals, the Exchange cannot list certain dollar strikes between $75 and $100 that conflict with the prior $2.50 strikes. For example, if the Exchange initially listed monthly options on ABC with $75, $77.50, and $80 strikes, the Exchange could list the $76 and $79 strikes when these transition to short term intervals. The Exchange would not be permitted to list the $77 and $78 strikes, however, as these are $0.50 away from the $77.50 strike already listed on the Exchange. This creates gapped strikes between $75 and $100, where investors are not able to trade otherwise allowable dollar strikes on the Exchange. Similarly, these conflicting strike price parameters create issues for investors who want to roll their positions from monthly to weekly expirations. In the example above, for instance, an investor that purchased a monthly ABC option with a $77.50 strike price would not be able to roll that position into a later short term expiration with the same strike price as that strike is unavailable under current Short Term Option Series Program rules. Permitting $0.50 intervals for short term options up to $100 would remedy both of these issues as strikes allowed under the $2.50 Strike Price Program would not conflict with the finer $0.50 strike price interval.

The Short Term Option Series Program has been well-received by market participants and the Exchange believes that introducing finer strike price intervals for short term options with strike prices between $75 and $100, and thereby eliminating the gapped strikes described above, will benefit these market participants by giving them more flexibility to closely tailor their investment and hedging decisions.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange believes that its members will not have a capacity issue as a result of this proposal. The Exchange also represents that it does not believe this expansion will cause fragmentation of liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change will result in additional investment options and opportunities to achieve the investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve or disapprove such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtm*l); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2014–52 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–2014–52. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2014–52 and should be submitted on or before December 15, 2014.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Supplementary Material .02(e) to Rule 504.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27709 Filed 11–21–14; 8:45 am]

BILLING CODE 8011–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Trade Advisory Committee on Small and Minority Business (ITAC–11)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a Partially Open Meeting.

SUMMARY: The Industry Trade Advisory Committee on Small and Minority Business (ITAC–11) will hold a meeting on Monday, December 8, 2014. The meeting will be open to the public from 1:00 p.m. to 3:30 p.m.

DATES: The meeting is scheduled for December 8, 2014, unless otherwise notified.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 1412, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Laura Hellstern, DFO for ITAC–11 at (202) 482–3222, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The open agenda topics to be discussed are the Export-Import Bank Reauthorization and the International Trade Administration's Trade Barrier Reduction Efforts for U.S. Businesses.

Luis Jimenez,

Acting Assistant U.S. Trade Representative, for Intergovernmental Affairs and Public Engagement.

[FR Doc. 2014–27735 Filed 11–21–14; 8:45 am]

BILLING CODE 3290–F5–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 9, 2014. The information is used to determine if applicants satisfy requirements for obtaining a launch license to protect the public from risks associated with reentry operations from a site not operated by or situated on a Federal launch range.

DATES: Written comments should be submitted by December 24, 2014.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0643.

Title: Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulation.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 9, 2014 (79 FR 53507). The data is necessary for a U.S. citizen to apply for and obtain a reusable launch vehicle (RLV) mission license or a reentry license for activities by commercial or non-federal entities (that are not done by or for the U.S. Government) as defined and required by 51 U.S.C. 509, as amended. The information is needed to demonstrate to the FAA Office of Commercial Space Transportation (FAA/AST) that the proposed activity meets applicable public safety, national security, and foreign policy interests of the United States.

Respondents: Approximately 6 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 5,000 hours.

Estimated Total Annual Burden: 30,000 hours.

Issued in Washington, DC, on November 18, 2014.

Yvette Landers,

Manager, IT Strategy, Policy, & Business Planning Division, ASP–100.

[FR Doc. 2014–27802 Filed 11–21–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: General Operating and Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 3, 2014. Part A of Subtitle VII of the Revised Title 49 U.S.C. authorizes the issuance of regulations governing the use of navigable airspace. Information is collected to determine compliance with Federal regulations. Respondents are individual airmen, state or local governments, and businesses.

[12] 17 CFR 200.30–3(a)(12).

DATES: Written comments should be submitted by December 24, 2014.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0005.

Title: General Operating and Flight Rules.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 3, 2014 (79 FR 52404). The requirements of 14 CFR part 91, General Operating and Flight Rules, are authorized by Part A of Subtitle VII of the Revised Title 49 United States Code. 14 CFR part 91 prescribes rules governing the operation of aircraft (other than moored balloons, kites, rockets and unmanned free balloons) within the United States. The reporting and recordkeeping requirements prescribed by various sections of 14 CFR part 91 are necessary for FAA to assure compliance with these provisions.

Respondents: Approximately 21,200 airmen, state or local governments, and businesses.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 34 minutes.

Estimated Total Annual Burden: 241,949 hours.

Issued in Washington, DC, on November 18, 2014.

Yvette Landers,

Manager, IT Strategy, Policy, & Business Planning Division, ASP–100.

[FR Doc. 2014–27797 Filed 11–21–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 2014, there were seven applications approved. Additionally, 12 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

PUBLIC AGENCY: Greater Orlando Aviation Authority, Orlando, Florida.

APPLICATION NUMBER: 14–17–C–00–MCO.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $396,491,622.

EARLIEST CHARGE EFFECTIVE DATE: July 1, 2034.

ESTIMATED CHARGE EXPIRATION DATE: August 1, 2038.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECTS PARTIALLY APPROVED FOR COLLECTION AND USE: South airport automated people mover system, stations, and associated facilities—design and construction.

Determination: Partially approved. The south airport station is planned to be a multi-modal facility however PFC eligibility is limited to that work that is exclusively for airport use. The approved amount was decreased from that requested due to portions of the project not being for exclusive airport use. In addition, other components of the project, including but not limited to roadway lighting and concession space, were determined to be ineligible for PFC funding.

South airport automated people mover systems—roadways, curbs, and infrastructure—design and construction.

Determination: Partially approved. The FAA determined that three of the four roadway segments requested in the project were ineligible for PFC funding.

South airport automated people mover ticketing baggage check-in facility—design and construction.

Determination: Partially approved. The FAA determined that certain elements, including but not limited to concession space and nonaeronautical areas, were not PFC eligible.

DECISION DATE: July 11, 2014.

For Further Information Contact: Marisol Elliott, Orlando Airports District Office, (407) 812–6331.

PUBLIC AGENCY: New Hanover County Airport Authority, Wilmington, North Carolina.

APPLICATION NUMBER: 14–06–C–00–ILM.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $7,947,596.

EARLIEST CHARGE EFFECTIVE DATE: October 1, 2019.

ESTIMATED CHARGE EXPIRATION DATE: August 1, 2024.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Air taxi/commercial operators filing FAA Form 1800–31 and operating at Wilmington International Airport (ILM).

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at ILM.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Passenger loading bridge acquisition Gate 5.

Rehabilitate air carrier apron.

Terminal heating, ventilation, and air conditioning upgrade.

Storm water phase II.

International customs ramp rehabilitation.

Drainage pipe rehabilitation.

Aircraft rescue and firefighting truck—1,500 gallon.

Light emitting diode signs.

Runway 24 pipe ditches—design and permitting.

Taxiways A, D, H and F rehabilitation.

Taxiways B, C, and J shoulders and tapers rehabilitation.

Passenger loading bridge acquisition—Gate 7.
Passenger loading bridge retrofit—Gate 8.
Security checkpoint rehabilitation.
Light emitting diode taxiway lighting.
Runway 17 extension.
Kerr Avenue security fencing.
Runway 17/35 rehabilitation.
Land acquisition—runway 17 approach.
Master plan update.
Airfield lighting vault upgrade.
Security vehicle.
Digital safety sign.
Passenger loading bridge safety upgrades.
PFC application development.
PFC program administration.
Passenger loading bridge Gate 1.
Access control and closed circuit television replacement and enhancements.
Terminal complex rehabilitation.
BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION:
Runway 24 pipe ditches—construction.
Security fence replacement.
Safety boat ramp.
BRIEF DESCRIPTION OF WITHDRAWN PROJECTS:
Air stair truck.
Triturator.
Date of withdrawal: July 9, 2014.
DECISION DATE: July 11, 2014.
For Further Information Contact: Tommy DuPree, Memphis Airports District Office, (901) 322–8185.

PUBLIC AGENCY: Aerostar Airport Holdings LLC, San Juan, Puerto Rico.
APPLICATION NUMBER: 14–07–C–00–SJU.
APPLICATION TYPE: Impose and use a PFC.
PFC LEVEL: $4.50.
TOTAL PFC REVENUE APPROVED IN THIS DECISION: $156,436,007.
EARLIEST CHARGE EFFECTIVE DATE: May 1, 2020.
ESTIMATED CHARGE EXPIRATION DATE: September 1, 2027.
CLASSES OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S:
(1) Air taxi/commercial operators filing FAA Form 1800–31 and operating at Luis Munoz Marin International Airport (SJU); and
(2) certificated route air carriers filing DOT Form T–100 that operate on a non-scheduled basis at SJU and enplane less than 750 annual passengers.
DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that each of the proposed classes accounts for less than 1 percent of the total annual enplanements at SJU.
BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE AT A $4.50 PFC LEVEL:
Airport perimeter security system.
Airfield signage improvements.
BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE AT A $3.00 PFC LEVEL:
Environmental assessment for runway 8/26 runway object free area and drainage system rehabilitation.
PFC application development.
Airport master plan update.
BRIEF DESCRIPTION OF PROJECTS PARTIALLY APPROVED FOR COLLECTION AND USE AT A $4.50 PFC LEVEL:
Terminal capacity enhancement program.
DETERMINATION: Partially approved. The FAA determined that several proposed components were not eligible for PFC funding, including: Design and construction contingencies; Transportation Security Administration break room and office space; explosive detection system machines; concessions and airline ticket office relocations; tenant build-out and finishes; and a pro-rated amount of the building mechanical systems.
Replacement aircraft rescue and firefighting trucks and equipment.
DETERMINATION: Partially approved. The public agency requested replacement of two 1,500-gallon vehicles with two 3,000-gallon vehicles however the FAA determined that the airport only qualified for replacement of a single 1,500-gallon vehicle.
Runway 8/26 overlay.
DETERMINATION: The FAA determined that the contingency and escalation costs included in the project cost estimate were not PFC eligible.
Taxiway N reconstruction.
DETERMINATION: The FAA determined that the contingency and escalation costs included in the project cost estimate were not PFC eligible.
Taxiway S reconstruction.
DETERMINATION: The FAA determined that a portion of the project was completed before control of the airport was transferred to Aerostar Airport Holdings LLC and, therefore, Aerostar is not entitled to reimbursement for costs incurred prior to the transfer.
BRIEF DESCRIPTION OF PROJECT PARTIALLY APPROVED FOR COLLECTION AND USE AT A $3.00 PFC LEVEL:
Wildlife management equipment.
DETERMINATION: Partially approved. The FAA determined that the two operations vehicles were not eligible for PFC funding.
BRIEF DESCRIPTION OF WITHDRAWN PROJECTS:
Aircraft rescue and firefighting access road and demolition of building No. 29.
Taxiway M widening and vehicle service road—phase I design.
DATE OF WITHDRAWAL: March 28, 2014.
DECISION DATE: July 11, 2014.
For Further Information Contact: Parks Preston, Atlanta Airports District Office, (404) 305–7149.

PUBLIC AGENCY: Metropolitan Washington Airports Authority, Washington, District of Columbia.
APPLICATION NUMBER: 14–09–C–00–DCA.
APPLICATION TYPE: Impose and use a PFC.
PFC LEVEL: $4.50.
TOTAL PFC REVENUE APPROVED IN THIS DECISION: $425,514,274.
EARLIEST CHARGE EFFECTIVE DATE: March 1, 2015.
ESTIMATED CHARGE EXPIRATION DATE: February 1, 2023.
CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.
DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Ronald Reagan Washington National Airport (DCA).
BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AT DCA AND USE AT DCA AT A $4.50 PFC LEVEL:
Runway 1/19 runway safety area improvements.
Runway 1/19 overlay.
Runway 15/33 overlay.
Runway 4/22 overlay.
Runway 15/33 runway safety area improvements.
Runway 4/22 runway safety area improvements.
Taxiways B, K and P resurfacing.
River rescue north boat house.
Aircraft rescue and firefighting building.
BRIEF DESCRIPTION OF PROJECT APPROVED FOR COLLECTION AT DCA AND USE AT DCA AT A $3.00 PFC LEVEL: New apron at demolished aircraft rescue and firefighting site.
BRIEF DESCRIPTION OF PROJECT APPROVED FOR COLLECTION AT DCA AND USE AT WAHINGTON DULLES INTERNATIONAL AIRPORT (IAD) AT A $3.00 PFC LEVEL: IAD metrorail station.
DECISION DATE: July 11, 2014.
For Further Information Contact: Jeffrey Breeden, Washington Airports District Office, (703) 661–1363.

PUBLIC AGENCY: Cheyenne Airport Board, Cheyenne, Wyoming.

APPLICATION NUMBER: 14–03–C–00–CYS.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $439,896.

EARLIEST CHARGE EFFECTIVE DATE: September 1, 2014.

ESTIMATED CHARGE EXPIRATION DATE: September 1, 2024.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Rehabilitate taxiway A1.

Rehabilitate apron.

Construct apron.

Conduct wildlife hazard management study.

Rehabilitate runway 13/31.

Safety management system program.

Update airport master plan study.

Conduct environmental assessment for new terminal building.

Rehabilitate taxiways B, B2, A3, and A.

Rehabilitate airfield pavement markings.

New lighting control system.

Airport sustainability plan.

Acquire snow removal equipment—snow plow and broom head.

Acquire snow removal equipment—plow truck and broom.

PFC administration.

DECISION DATE: July 18, 2014.

For Further Information Contact: Jesse Lyman, Denver Airports District Office, (303) 342–1262.

PUBLIC AGENCY: South Jersey Transportation Authority, Egg Harbor Township, New Jersey.

APPLICATION NUMBER: 14–08–C–00–ACY.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $27,459,848.

EARLIEST CHARGE EFFECTIVE DATE: September 1, 2014.

ESTIMATED CHARGE EXPIRATION DATE: March 1, 2025.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Air taxi/commercial operators—non-scheduled/on-demand air carriers filing FAA Form 1800–31.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Atlantic City International Airport.

BRIEF DESCRIPTION OF PROJECT APPROVED FOR COLLECTION AND USE:

Terminal expansion and Federal Inspection Services.

Environmental mitigation—phase VII.

Construct aircraft rescue and firefighting building.

Acquire aircraft rescue and firefighting vehicles.

Rehabilitate terminal apron—phase II.

Environmental and design for perimeter fence.

Rehabilitate taxiway D.

Construct deicing containment facility—design.

DECISION DATE: July 23, 2014.

For Further Information Contact: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Board of Trustees—University of Illinois, Savoy, Illinois.

APPLICATION NUMBER: 14–05–C–00–CMI.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $1,662,600.

EARLIEST CHARGE EFFECTIVE DATE: September 1, 2014.

ESTIMATED CHARGE EXPIRATION DATE: June 1, 2019.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Non-scheduled/on-demand air carriers filing FAA Form 1800–31 and operating at University of Illinois—Willard Airport (CMI).

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at CMI.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Re-alignment of taxiway C.

Improve taxiway A/B geometry and widen taxiway A (reimbursement).

Snow removal equipment—salt spreader.

Snow removal equipment—small snow broom.

Rehabilitate general aviation apron.

Rehabilitate general aviation taxiways.

Snow removal equipment—18-foot snow broom.

Snow removal equipment—snow blower.

Prepare PFC application.

DECISION DATE: July 24, 2014.

For Further Information Contact: Michael Brown, Chicago Airports District Office, (847) 294–7195.

AMENDMENTS TO PFC APPROVALS

Amendments No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
95–02–C–05–BUF Buffalo, NY	07/10/14	$2,528,721	$2,626,057	06/01/05	06/01/05
07–06–C–03–BUF Buffalo, NY	07/10/14	77,745,807	78,223,520	11/01/12	11/01/12
09–07–C–02–BUF Buffalo, NY	07/10/14	14,262,010	14,263,552	03/01/14	03/01/14
10–08–C–01–BUF Buffalo, NY	07/10/14	1,844,274	1,849,371	06/01/14	06/01/14
11–09–C–01–BUF Buffalo, NY	07/10/14	1,702,533	1,983,013	08/01/14	09/01/14
04–06–C–01–ATL Atlanta, GA	07/11/14	18,462,000	22,550,861	09/01/18	09/01/18
06–08–C–03–ATL Atlanta, GA	07/11/14	227,606,163	168,388,941	01/01/20	10/01/19
10–08–C–01–ATL Atlanta, GA	07/11/14	25,166,712	30,758,063	06/01/20	02/01/20
11–04–C–01–RDD Redding, CA	07/18/14	553,103	664,592	09/01/14	02/01/18
08–04–C–01–ELP El Paso, TX	07/22/14	10,098,221	8,622,031	06/01/09	06/01/09
03–02–C–04–LGB Long Beach, CA	07/25/14	62,344,903	62,344,903	10/01/14	02/01/15
10–05–C–01–LGB Long Beach, CA	07/25/14	10,845,000	11,695,000	07/01/30	06/01/32

Issued in Washington, DC, on November 17, 2014.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2014–27804 Filed 11–21–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In August 2014, there were five applications approved. Additionally, 12 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

PUBLIC AGENCY: Massachusetts Port Authority, Boston, Massachusetts.

APPLICATION NUMBER: 13–08–C–00–BOS.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $99,959,096.

EARLIEST CHARGE EFFECTIVE DATE: December 1, 2023.

ESTIMATED CHARGE EXPIRATION DATE: May 1, 2025.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Non-scheduled/on-demand air carriers.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Boston Logan International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE AT A $4.50 PFC LEVEL:

Runway protection zone land acquisition.

Renovations and improvements to terminal B.

Light pier and CAT III.

Terminal B apron improvement.

BRIEF DESCRIPTION OF PROJECT APPROVED FOR COLLECTION AND USE AT A $3.00 PFC LEVEL: Terminal B gate electrification equipment.

DECISION DATE: August 13, 2014.

For Further Information Contact: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

PUBLIC AGENCY: City of Lebanon, New Hampshire.

APPLICATION NUMBER: 14–08–C–00–LEB.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $167,203.

EARLIEST CHARGE EFFECTIVE DATE: October 1, 2014.

ESTIMATED CHARGE EXPIRATION DATE: June 1, 2018.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Air taxi/commercial operators.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Lebanon Municipal Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE AT A $4.50 PFC LEVEL:

Update master plan study.

Analyze and rehabilitate (design only) obstruction lights, runway 36.

Crack sealing airfield pavement surfaces.

Obstruction removal and replace with hazard beacons.

Design only—construct addition to snow removal equipment building.

Environmental assessment, permitting and mitigation for obstruction removal.

Replace terminal building boiler and rooftop air conditioning units.

DECISION DATE: August 13, 2014.

For Further Information Contact: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

PUBLIC AGENCY: City of Wichita Falls, Texas.

APPLICATION NUMBER: 14–02–C–00–SPS.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $7,961,241.

EARLIEST CHARGE EFFECTIVE DATE: December 1, 2017.

ESTIMATED CHARGE EXPIRATION DATE: August 1, 2058.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECT PARTIALLY APPROVED FOR COLLECTION AND USE AT A $4.50 PFC LEVEL: New passenger terminal building.

DETERMINATION: Partially approved. The FAA determined that one component, rental car parking lot, was not PFC eligible in accordance with § 158.15(b)(1).

DECISION DATE: August 15, 2014.

For Further Information Contact: Anthony Mekhail, Texas Airports Development Office, (817) 222–5663.

PUBLIC AGENCY: Pitt County—City of Greenville Airport Authority, Greenville, North Carolina.

APPLICATION NUMBER: 14–06–U–00–PGV.

APPLICATION TYPE: Use PFC revenue.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED FOR USE IN THIS DECISION: $514,283.

CHARGE EFFECTIVE DATE: October 1, 2011.

ESTIMATED CHARGE EXPIRATION DATE: October 1, 2014.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: No change from previous decision.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR USE AT A $4.50 PFC LEVEL:

Land acquisition, runway 20 approach, professional services.

Runway 2/20 runway safety area extension (design and construction).

Land acquisition, runway 20 extension (Lewis parcels).

Land acquisition, runway 20 runway safety area and runway extension.

DECISION DATE: August 20, 2014.

For Further Information Contact: Tommy DuPree, Memphis Airports District Office, (901) 322–8185.

PUBLIC AGENCY: Pitt County—City of Greenville Airport Authority, Greenville, North Carolina.

APPLICATION NUMBER: 14–07–C–00–PGV.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $717,610.

EARLIEST CHARGE EFFECTIVE DATE: October 1, 2014.

ESTIMATED CHARGE EXPIRATION DATE: January 1, 2016.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Air taxi/commercial operators filing FAA Form 1800–31 and operating at Pitt-Greenville Airport (PGV).

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at PGV.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE AT A $4.50 PFC LEVEL:

Runway safety area improvements/runway extension land, phase 2.

Runway 2/20 runway safety area improvements/runway extension land, phase 3.

Acquire security equipment, phase 1.

PFC application development.

PFC application administration.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AT A $4.50 PFC LEVEL:

Construct air carrier apron.

Remove obstructions, runway 8/26 approach clearing.

Construct airfield access road, phase 1.

Acquire security equipment, phase 2.

Construct airfield access road, phase II.

Acquire land for development.

BRIEF DESCRIPTION OF WITHDRAWN PROJECTS:

Install fencing.

Improve airport—airfield drainage improvements, phase I.

DATE OF WITHDRAWAL: August 5, 2014.

Acquire aircraft rescue and firefighting vehicle.

DATE OF WITHDRAWAL: August 21, 2014.

Improve airport—hangar taxilanes and site preparation.

DATE OF WITHDRAWAL: August 26, 2014.

DECISION DATE: August 26, 2014.

For Further Information Contact: Tommy DuPree, Memphis Airports District Office, (901) 322–8185.

AMENDMENTS TO PFC APPROVALS

Amendment No., City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
14–03–C–01–ITH, Ithaca, NY	07/25/14	$677,500	$677,825	02/01/18	02/01/18
04–08–C–05–RNO, Reno, NV	08/06/14	53,000,000	52,073,714	07/01/07	07/01/07
08–05–C–02–UNV, University Park, PA	08/07/14	4,338,028	4,088,027	12/01/14	04/01/15
11–04–C–02–PGV, Greenville, NC	08/13/14	8,731,247	8,408,821	01/01/37	02/01/38
09–07–C–04–GRK, Killeen, TX	08/13/14	3,122,284	4,072,284	04/01/13	05/01/16
07–10–C–01–RNO, Reno, NV	08/15/14	32,878,000	6,358,000	10/01/13	10/01/13
11–06–C–01–TOL, Toledo, OH	08/15/14	2,288,261	2,106,173	03/01/19	12/01/17
06–05–C–05–MOB, Mobile, AL	08/18/14	4,681,541	4,626,407	05/01/13	05/01/13
11–04–C–03–PGV, Greenville, NC	08/20/14	8,408,821	769,017	02/01/38	10/01/14
08–09–C–02–EUG, Eugene, OR	08/25/14	2,400,000	3,380,331	07/01/10	03/01/11
10–03–C–02–DAL, Dallas, TX	08/27/14	383,636,108	374,336,108	04/01/26	04/01/25
12–04–C–02–DAL, Dallas, TX	08/27/14	13,037,816	10,987,816	10/01/27	10/01/27

Issued in Washington, DC, on November 17, 2014.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2014–27791 Filed 11–21–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0379]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 12 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the ''Instructions for Performing and Recording Physical Examinations'' have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for 2 years in interstate commerce.

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

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2014–0379 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an

association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316; January 17, 2008). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Elaine Papp, Chief, Medical Programs Division, (202) 366–4001, or via email at *fmcsamedical@dot.gov,* or by letter FMCSA, Room W64–113, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 12 individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in intrastate commerce. The advisory criteria indicate that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication. Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission. To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0379'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, to submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0379'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Summary of Applications

Theodore C. Banet

Mr. Banet is a 43 year-old driver in Pennsylvania. He has a history of epilepsy and has remained seizure free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted an exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Banet receiving an exemption.

Kieth Boelter

Mr. Boelter is a 57 year-old driver in Wisconsin. He has a history of posttraumatic epilepsy related to a major traumatic brain injury 20 years ago. He has remained seizure free since May 2014, when he suffered a nocturnal seizure after discontinuing his anti-seizure medication. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted an exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Boelter receiving an exemption.

David S. Campbell

Mr. Campbell is a 70 year-old driver in Massachusetts. He has a history of seizures and has remained seizure free since 2005. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted an exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Campbell receiving an exemption.

Philip S. Canales, Jr.

Mr. Canales is a 56 year-old driver in Florida. He has a history of a seizure 30 years ago due to a closed head injury. He has remained seizure free since that time however, it is unclear whether three brief episodes in 2009 were seizures. He takes anti-seizure medication with the dosage and frequency remaining the same since 2009. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Canales receiving an exemption.

Gerald Hodge

Mr. Hodge is a 63 year-old driver in South Carolina. He has a history of a seizure disorder and has remained seizure free since 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he

would like to drive a CMV. His physician states that he is supportive of Mr. Hodge receiving an exemption.

Lewis R. Holbrook

Mr. Holbrook is a 43 year-old driver in North Carolina. He has a history of a seizure disorder and has remained seizure free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since 2005. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Holbrook receiving an exemption.

Donald A. Horst

Mr. Horst is a 65 year-old class A CDL holder in Maryland. He has a history of a seizure disorder and has remained seizure free since 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since 2009. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Horst receiving an exemption.

Dominick Rezza

Mr. Rezza is a 58 year-old class A CDL holder in Texas. He has a history of a seizure disorder and has remained seizure free since 1995. He takes anti-seizure medication with the dosage and frequency remaining the same since 1996. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Rezza receiving an exemption.

David L. Satchell

Mr. Satchell is a 37 year-old driver in New Jersey. He has a history of seizures and has remained seizure free since 2013. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Satchell receiving an exemption.

Eric G. Schams

Mr. Schams is a 43 year-old driver in Wisconsin. He has a history of a seizure in 2006 and remained seizure free for 6 years until, under the direction of his neurologist, his anti-seizure medication was tapered and he had a seizure in 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Schams receiving an exemption.

Edgar A. Snapp

Mr. Snapp is a 52 year-old class B CDL holder in Indiana. He has a history of a seizure disorder and has remained seizure free since 1988. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Snapp receiving an exemption.

Gregory W. Young

Mr. Young is a 50 year-old class A CDL holder in South Carolina. He has a history of seizure and has remained seizure free since 1983. He takes anti-seizure medication with the dosage and frequency remaining the same since 2004. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Young receiving an exemption.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: November 17, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–27755 Filed 11–21–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORATION

Federal Motor Carrier Safety Administration

[FMCSA–2014–0420]

Hours of Service of Drivers: Specialized Carriers & Rigging Association (SC&RA); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the Specialized Carriers & Rigging Association (SC&RA) for an exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. The requested exemption would apply to specialized carriers and drivers responsible for the transportation of loads that exceed normal weight and dimensional limits—oversize/overweight (OS/OW) loads—and require a permit issued by a government authority. Due to the nature of their operation, SC&RA believes that compliance with the 30-minute rest break rule is extremely difficult, primarily due to the limited (usually daylight) hours in which an OS/OW load can be transported as restricted by State permit requirements. SC&RA therefore requests this exemption for all permitted loads. FMCSA requests public comment on SC&RA's application for exemption.

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

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2014–0420 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the *Public Participation* heading below. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the

''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public 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 safety analyses and public comments submitted, 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)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its hours-of-service (HOS) regulations for drivers of property-carrying CMVs. The final rule adopted several changes to the HOS rules, including a new provision requiring drivers to take a rest break during the work day under certain circumstances. Drivers may drive a CMV only if 8 hours or less have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break. This requirement took effect on July 1, 2013.

SC&RA seeks an exemption from the 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii). The 30-minute break uniquely affects OS/OW loads and has exacerbated the number of instances in which drivers have had to park these loads at roadside, consequently impacting the safety of both the general public and the driver. The requested exemption would apply to all specialized carriers and drivers responsible for the transportation of loads that exceed maximum legal weight and dimensional limits—OS/OW loads—that require a permit issued by a government authority. According to SC&RA, the hours of operation in which a driver may move an OS/OW load on a valid permit vary tremendously from State to State, and even among local jurisdictions within a State, differ in terms of the days of the week and hours of the day when transit is allowed. Because hours in which an OS/OW load can travel are restricted by permit requirements, often those hours will be in conflict with the timing of the required 30-minute rest break. SC&RA specifically cites four instances demonstrating this conflict. As less space is available for parking OS/OW trucks, specialized tractor/trailer combinations transporting OS/OW loads will increasingly be parked alongside interstate or other highways and ramp shoulders, further compromising their safety and the safety of the general public on the roadways.

An average OS/OW load may measure approximately 15–16 feet wide and high and in excess of 100 feet in length. Each driver has the additional burden of finding a place large enough to accommodate and park the vehicle until passage is permitted. SC&RA cites the Federal Highway Administration's ''Commercial Motor Vehicle Parking Shortage'' study (May 2012), which documents the existing parking shortage and further provides evidence that locating adequate parking space for such over-dimensional loads is extremely challenging. A copy of this study is included in SC&RA's exemption request filing in the docket identified earlier in this notice.

Occasionally, the safest option for drivers is to park such loads on the shoulders of interstates routes and other highways, and on ramps leading to and from those highways. This decision requires the driver to protect and alert the motoring public by employing traffic control measures such as setting up safety cones, etc. In some instances, the OS/OW load is so large and/or the road shoulder width is so limited, that the tractor trailer combination cannot be properly parked off the roadway and therefore takes up an entire lane of the road.

SC&RA does not foresee any negative impact to safety from the requested exemption. It believes that granting the exemption would have a favorable impact on overall safety by reducing the frequency of drivers resorting to less than ideal parking options, thereby reducing the frequency of lanes being partially or fully obscured.

SC&RA states that the industry has been diligent in ensuring that its drivers are safety compliant by identifying, deploying, analyzing and monitoring best practices. The effectiveness of the industry's efforts is substantiated through its safety record. By demand and due to the type and nature of the size and weight involved, these drivers tend to be more experienced and skilled than many drivers in the industry. Safety is achieved through rigorous, mandated training for all drivers on a daily, weekly, monthly and quarterly basis, in conjunction with annual safety checks, and self-imposed random safety audits. Furthermore, most specialized transportation carriers conduct weekly—or sometimes more frequent—meetings with drivers to ensure that they are current on information with regard to operating OS/OW loads in their industry. This training includes full recognition of the HOS regulations, and compliance with such regulations to ensure OS/OW drivers are not operating while fatigued. A copy of SC&RA's exemption application is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on SC&RA's application for an exemption from certain provisions of the driver's HOS regulations in 49 CFR part 395. The Agency will consider all comments received by close of business on December 24, 2014. The Agency also will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice.

Issued on: November 14, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–27743 Filed 11–21–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0298]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions, request for comments.

SUMMARY: FMCSA announces receipt of applications from 34 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. If granted, the exemptions would enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye.

DATES: Comments must be received on or before December 24, 2014. All comments will be investigated by FMCSA. The exemptions will be issued the day after the comment period closes.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0298 using any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, R.N., Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 34 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Peter H. Bailey

Mr. Bailey, 56, has had a prosthetic in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2014, his optometrist stated, ''It is my professional opinion that Peter Bailey has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Bailey reported that he has driven straight trucks for 5 years, accumulating 28,750 miles, and tractor-trailer combinations for 33 years, accumulating 1.73 million miles. He holds a Class CA CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dewey E. Ballard Jr.

Mr. Ballard, 54, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated that, in his medical opinion, Mr. Ballard has sufficient vision to perform the driving tasks required to operate a commercial vehicle. Mr. Ballard reported that he has driven straight trucks for 15 years, accumulating 60,000 miles. He holds an operator's license from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steven M. Claney

Mr. Claney, 49, has complete loss of vision in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2014, his optometrist stated, ''I feel Steven M [*sic*] Claney has the visual abilities to continue operating a commercial motor vehicle in interstate commerce because the visual loss in his left eye occurred in 1978 and he has been safely operating a commercial vehicle for more than 3 years.'' Mr. Claney reported that he has driven tractor-trailer combinations for 7 years, accumulating 105,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thurman T. Clayton, Jr.

Mr. Clayton, 44, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2014, his optometrist

stated, ''In my professional opinion, I confidently believe that Thurman Clayton can safely operate a commercial motor vehicle despite his Amblyopia [*sic*].'' Mr. Clayton reported that he has driven straight trucks for 19 years, accumulating 138,320 miles. He holds a chauffer's license from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Tig G. Cornell

Mr. Cornell, 40, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/80, and in his left eye, 20/15. Following an examination in 2014, his ophthalmologist stated, ''In my medical opinion, Mr. Cornell has more than sufficient vision to perform the driving tasks required to operate a commercial vehicle without any type of correction.'' Mr. Cornell reported that he has driven straight trucks for 12 years, accumulating 120,000 miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kevin R. Cowger

Mr. Cowger, 47, has optic atrophy in his left eye due to a traumatic incident in 2010. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2014, his optometrist stated, ''In my medical opinion this patient has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Cowger reported that he has driven straight trucks for 4 years, accumulating 152,000 miles, and tractor-trailer combinations for 7 years, accumulating 266,000 miles. He holds a Class AM CDL from Wyoming. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jon R. Davidson

Mr. Davidson, 53, has complete loss of vision in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''I do feel Mr. Davidson has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Davidson reported that he has driven straight trucks for 37 years, accumulating 555,000 miles, and tractor-trailer combinations for 37 years, accumulating 740,000 miles. He holds an operator's license from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David R. Demura

Mr. Demura, 45, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2014, his optometrist stated, ''Amblyopia, OS—Condition is permanent and unchanged since pt [*sic*] was young child, therefore does not affect him in the course of his daily life or job requirements. I see no reason why Mr [*sic*] Demura cannot continue opperating [*sic*] commercial vehicles with his commercial license that he has had until now since nothing found today is recent in any way.'' Mr. Demura reported that he has driven straight trucks for 20 years, accumulating one million miles. He holds a Class AM CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Edwin T. Donaldson

Mr. Donaldson, 43, has had complete loss of vision in his right eye since childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''It is my opinion that the visual loss in his right eye will have minimal, if any, impact on his ability to safely operate a commercial vehicle.'' Mr. Donaldson reported that he has driven buses for 6 years, accumulating 3,000 miles. He holds a Class BM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William W. R. Dunn

Mr. Dunn, 57, has complete loss of vision in his left eye due to a traumatic incident in 1980. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2014, his optometrist stated, ''My opinion is that Mr. Dunn has sufficient vision to operate a commercial vehicle.'' Mr. Dunn reported that he has driven straight trucks for 10 years, accumulating 275,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry E. Emanuel, Jr.

Mr. Emanuel, 44, has retinal damage in his left eye due to a traumatic incident in 2003. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2014, his optometrist stated, ''Patient has good central and peripheral. Vision is good for driving C.V. [*sic*].'' Mr. Emanuel reported that he has driven straight trucks for 3 years, accumulating 259,200 miles, tractor-trailer combinations for 2 years, accumulating 148,800 miles, and buses for 4 years, accumulating 216,000 miles. He holds a Class B CDL from Florida. His driving record for the last 3 years shows one crash, to which he did contribute and for which he was cited, and no convictions for moving violations in a CMV.

Barbara A. Evans

Ms. Evans, 52, has had amblyopia in her right eye since childhood. The visual acuity in her right eye is 20/300, and in her left eye, 20/15. Following an examination in 2014, her optometrist stated, ''Barbara Evans has sufficient vision to perform the driving test [*sic*] required to operate a commercial vehicle.'' Ms. Evans reported that she has driven buses for 23 years, accumulating 575,000 miles. She holds a Class B MC CDL from New Hampshire. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Russell J. Fisher

Mr. Fisher, 42, has had strabismic amblyopia with esotropia in his right eye since childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''In my professional opinion Mr. Russell Fisher has sufficient vision to operate a commercial vehicle.'' Mr. Fisher reported that he has driven straight trucks for 10 years, accumulating 300,000 miles, and tractor-trailer combinations for 10 years, accumulating 5,000 miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Timothy J. Fisher

Mr. Fisher, 45, has had strabismic amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''In my professional medical opinion, Mr. Fisher has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Fisher reported that he has driven straight trucks for 23 years, accumulating 115,000 miles, and tractor-trailer combinations for 21 years,

accumulating 1.31 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Bradley J. Gaspard

Mr. Gaspard, 62, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/25, and in his left eye, 20/200. Following an examination in 2014, his ophthalmologist stated, ''I think he has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Gaspard reported that he has driven straight trucks for 3 years, accumulating 18,750 miles. He holds a chauffer's license from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Perry D. Hamilton

Mr. Hamilton, 63, has had a corneal scar and rubiosis iridis in his left eye since 2009. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2014, his optometrist stated, ''The right eye has sufficient vision to operate a commercial vehicle.'' Mr. Hamilton reported that he has driven straight trucks for 40 years, accumulating 600,000 miles, and tractor-trailer combinations for 4.5 years, accumulating 94,500 miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jerome A. Henderson

Mr. Henderson, 48, has a macular scar in his left eye due to a traumatic incident in 1985. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2014, his optometrist stated, ''Vision sufficient for CMV driving tasks.'' Mr. Henderson reported that he has driven straight trucks for 5 years, accumulating 104,000 miles, and tractor-trailer combinations for 15 years, accumulating 312,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William A. Hill III

Mr. Hill, 50, has had strabismic amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2014, his optometrist stated, ''In my professional opinion, Mr. Hill's vision will not affect his ability to safely drive a commercial vehicle.'' Mr. Hill reported that he has driven straight trucks for 20 years, accumulating 150,720 miles. He holds an operator's license from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James C. Jankowski

Mr. Jankowski, 71, has had amblyopia and a cataract in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2014, his ophthalmologist stated that, in his medical opinion, Mr. Jankowski has sufficient vision to operate a commercial motor vehicle. Mr. Jankowski reported that he has driven straight trucks for 5 years, accumulating 5,000 miles, and tractor-trailer combinations for 17 years, accumulating 1.62 million miles. He holds a Class ABCD CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Glen L. Joens

Mr. Joens, 73, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2014, his optometrist stated, ''He has sufficient vision to successfully operate a commercial vehicle.'' Mr. Joens reported that he has driven straight trucks for 25 years, accumulating 250,000 miles, and tractor-trailer combinations for 25 years, accumulating 750,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Phillip V. King

Mr. King, 55, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2014, his ophthalmologist stated, ''He has normal color vision and he has sufficient vision to perform his driving tasks required for his commercial vehicle.'' Mr. King reported that he has driven straight trucks for 32 years, accumulating 384,000 miles. He holds an operator's license from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Keith C. Lendt

Mr. Lendt, 39, has had a macular scar in his right eye since 1994. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''The visual deficiency present is macular scarring in the right eye . . . In my opinion, Mr. Lendt can safety [*sic*] perform driving tasks required to operate a commercial motor vehicle.'' Mr. Lendt reported that he has driven straight trucks for 15 years, accumulating 375,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Daniel E. Manchester

Mr. Manchester, 46, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated that, in his opinion, Mr. Manchester has sufficient vision to operate a commercial motor vehicle. Mr. Manchester reported that he has driven straight trucks for 2 years, accumulating 20,000 miles, and tractor-trailer combinations for 19 years, accumulating 1.67 million miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 10 miles per hour.

Richard B. McMaster

Mr. McMaster, 67, has complete loss of vision in his right eye due to a traumatic incident in 1980. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''Based on today's findings, 09.19.2014, Mr. Richard McMaster displayed sufficient visual ability to operate a commercial vehicle.'' Mr. McMaster reported that he has driven tractor-trailer combinations for 25 years, accumulating 2.5 million miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph McTear Jr.

Mr. McTear, 55, has had a macular scar in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''Mr. McTear's visual deficiency is a long standing [*sic*] childhood injury, and I do not think that this trauma has an impact on his ability to drive a commercial vehicle.'' Mr. McTear reported that he has driven tractor-trailer combinations for 12 years, accumulating 312,000 miles. He holds a Class A CDL from

Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Martin Montañez

Mr. Montañez, 48, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''Patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Montañez reported that he has driven straight trucks for 3 years, accumulating 15,000 miles. He holds an operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lee A. Mosier

Mr. Mosier, 58, has had ischemic optic neuropathy in his left eye since 2010. The visual acuity in his right eye is 20/15, and in his left eye, 20/400. Following an examination in 2014, his optometrist stated, ''He developed Ischemic optic neuropathy in the left eye in October of 2010 . . . I feel Lee is very safe in driving a commercial vehicle.'' Mr. Mosier reported that he has driven straight trucks for 4 years, accumulating 96,000 miles, and tractor-trailer combinations for 30 years, accumulating 3.3 million miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows 1 crash, to which he did not contribute and for which he was not cited, and no convictions for moving violations in a CMV.

Timothy L. O'Neill

Mr. O'Neill, 56, has had refractive amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2014, his optometrist stated, ''In my medical opinion, patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. O'Neill reported that he has driven straight trucks for 25 years, accumulating 112,500 miles, and tractor-trailer combinations for 20 years, accumulating 250,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John W. Randels

Mr. Randels, 61, has had a prosthetic left eye since 1986. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2014, his optometrist stated, ''I believe that Mr. Randels' [*sic*] visual condition is stable and and [*sic*] sufficient to perform his driving tasks for commercial vehicle [*sic*].''

Mr. Randels reported that he has driven straight trucks for 35 years, accumulating 700,000 miles. He holds an operator's license from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Carl W. Russell

Mr. Russell, 60, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2014, his optometrist stated, ''I believe Mr. Russell has sufficient vision to operate a commercial vehicle but should utilize the appropriate outside rear view mirrors.'' Mr. Russell reported that he has driven tractor-trailer combinations for 20 years, accumulating three million miles. He holds an operator's license from Oklahoma. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit.

Valnei L. Santos

Mr. Santos, 65, has a scar in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2014, his ophthalmologist stated, ''My findings, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Santos reported that he has driven straight trucks for 33 years, accumulating 693,000 miles, and tractor-trailer combinations for 23 years, accumulating 92,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas L. Stanaway

Mr. Stanaway, 65, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2014, his ophthalmologist stated, ''In my medical opinion if he has had this condition for his entire life and as he says, has safely and effectively operated commercial vehicles in the past: I feel he displays sufficient vision to perform the driving tasks associated with operating a commercial vehicle.'' Mr. Stanaway reported that he has driven straight trucks for three months, accumulating 3,000 miles, and tractor-trailer combinations for 40 years, accumulating four million miles. He holds a Class CA CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Daniel R. Thompson

Mr. Thompson, 67, has had vision loss in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2014, his ophthalmologist stated, ''His left eye has finger counting vision . . . According to the patient's history, he has been driving a commercial vehicle without incident. I would assume that since nothing is changing, he can continue to do his present occupation.'' Mr. Thompson reported that he has driven straight trucks for 22 years, accumulating 132,000 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Luther W. Wieder, Jr.

Mr. Wieder, 55, has complete loss of vision in his right eye due to a traumatic incident in 2001. The visual acuity in his right eye is light perception, and in his left eye, 20/15. Following an examination in 2014, his ophthalmologist stated, ''In my medical opinion, the patient has sufficient vision to perform the driving tasks required to safely operate a commercial vehicle.'' Mr. Wieder reported that he has driven straight trucks for 32 years, accumulating 192,000 miles, and tractor-trailer combinations for 32 years, accumulating 96,000 miles. He holds a Class A CDL from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

III. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document

so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number FMCSA–2014–0298 in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert the docket number FMCSA–2014–0298 in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: November 17, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–27747 Filed 11–21–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0105]

Qualification of Drivers; Application for Exemptions; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces that 10 individuals have applied for a medical exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). In accordance with the statutory requirements concerning applications for exemptions, FMCSA requests public comments on these requests. The statute and implementing regulations concerning exemptions require that exemptions must provide an equivalent or greater level of safety than if they were not granted. If the Agency determines the exemptions would satisfy the statutory requirements and decides to grant theses requests after reviewing the public comments submitted in response to this notice, the exemptions would enable 10 individuals to operate CMVs in interstate commerce.

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

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0105 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Federal Motor Carrier Safety Administration has authority to grant exemptions from many of the Federal Motor Carrier Safety Regulations (FMCSRs) under 49 U.S.C. 31315 and 31136(e), as amended by Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, June 9, 1998, 112 Stat. 107, 401). FMCSA has published in 49 CFR part 381, subpart C final rules implementing the statutory changes in its exemption procedures made by section 4007, 69 FR 51589 (August 20, 2004).[1] Under the rules in part 381, subpart C, FMCSA must publish a notice of each exemption request in the **Federal Register**. The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted and any research reports, technical papers and other publications referenced in the application. The Agency must also provide an opportunity to submit public comment on the applications for exemption.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved without the exemption. The decision of the Agency must be published in the **Federal Register**. If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the

[1] This action adopted as final rules the interim final rules issued by FMCSA's predecessor in 1998 (63 FR 67600 (Dec. 8, 2008)), and adopted by FMCSA in 2001 [66 FR 49867 (Oct. 1, 2001)].

exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed.

The current provisions of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person

> First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11). This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

FMCSA also issues instructions for completing the medical examination report and includes advisory criteria on the report itself to provide guidance for medical examiners in applying the hearing standard. See 49 CFR 391.43(f). The current advisory criteria for the hearing standard include a reference to a report entitled ''Hearing Disorders and Commercial Motor Vehicle Drivers'' prepared for the Federal Highway Administration, FMCSA's predecessor, in 1993.[2]

FMCSA Requests Comments on the Exemption Applications

FMCSA requests comments from all interested parties on whether a driver who cannot meet the hearing standard should be permitted to operate a CMV in interstate commerce. Further, the Agency asks for comments on whether a driver who cannot meet the hearing standard should be limited to operating only certain types of vehicles in interstate commerce, for example, vehicles without air brakes. The statute and implementing regulations concerning exemptions require that the Agency request public comments on all applications for exemptions. The Agency is also required to make a determination that an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be *achieved absent such exemption before granting any such requests.*

[2] This report is available on the FMCSA Web site at *http://www.fmcsa.dot.gov/facts-research/research-technology/publications/medreport_archives.htm.*

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0105'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0105'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Information on Individual Applicants

Clayton L. Ashby

Mr. Ashby, 27, holds an operator's license in Virginia.

Joseph G. Cerna-Nieves

Mr. Cerna-Nieves, 23, holds an operator's license in Florida.

Steven C. Levine

Mr. Levine, 39, holds an operator's license in New York.

Donna Neri

Ms. Neri, 50, holds an operator's license in Arizona.

Brenda J. Palmigiano

Ms. Palmigiano, 55, holds a Class A commercial driver's license (CDL) in New York.

Lon Edward Smith

Mr. Smith, 79, holds an operator's license in Mississippi.

Mark Taylor

Mr. Taylor, 45, holds an operator's license in Arizona.

James Clark Tillis

Mr. Tillis, 52, holds an operator's license in Alabama.

Bruce N. Walker

Mr. Walker, 65, holds an operator's license in New York.

Tommy Mark Weldon

Mr. Weldon, 51, holds an operator's license in Georgia.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business December 24, 2014. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: November 17, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–27741 Filed 11–21–14; 8:45 am]

BILLING CODE 4910–EX–P?USGPO Galley End:?≤

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2014–0136 (Notice No. 14–13)]

Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on certain information collections pertaining to hazardous materials transportation for which PHMSA intends to request renewal from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before January 23, 2015.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2014–0136) by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- Fax: 1–202–493–2251.
- Mail: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulation Identification Number (RIN) for this notice. Internet users may access comments received by DOT at: *http://www.regulations.gov*. Note that comments received will be posted without change to: *http://www.regulations.gov* including any personal information provided.

Requests for a copy of an information collection should be directed to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish a notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collections:

Title: Testing, Inspection, and Marking Requirements for Cylinders.

OMB Control Number: 2137–0022.

Summary: Requirements in § 173.301 for qualification, maintenance, and use of cylinders require that cylinders be periodically inspected and retested to ensure continuing compliance with packaging standards. Information collection requirements address registration of retesters and marking of cylinders by retesters with their identification number and retest date following the completion of required tests. Records showing the results of inspections and retests must be kept by the cylinder owner or designated agent until expiration of the retest period or until the cylinder is re-inspected or retested, whichever occurs first. These requirements are intended to ensure that retesters have the qualifications to perform tests and to identify to cylinder fillers and users that cylinders are qualified for continuing use. Information collection requirements in § 173.303 require that fillers of acetylene cylinders keep, for at least 30 days, a daily record of the representative pressure to which cylinders are filled.

Affected Public: Fillers, owners, users and retesters of reusable cylinders.

Recordkeeping:

Number of Respondents: 139,352.

Total Annual Responses: 153,287.

Total Annual Burden Hours: 171,642.

Frequency of collection: On occasion.

Title: (Rail Carriers and Tank Car Tank Requirements) Requirements for Rail Tank Car Tanks—Transportation of Hazardous Materials by Rail.

OMB Control Number: 2137–0559.

Summary: This information collection consolidates and describes the information provisions in parts 172, 173, 174, 179, and 180 of the HMR on the transportation of hazardous materials by rail and the manufacture, qualification, maintenance, and use of tank cars. The types of information collected include:

(1) Approvals of the Association of American Railroads (AAR) Tank Car committee: An approval is required from the AAR Tank Car Committee for a tank car to be used for a commodity other than those specified in part 173 and on the certificate of construction. This information is used to ascertain whether a commodity is suitable for transportation in a tank car. AAR approval is also required for an application for approval of designs, materials and construction, conversion or alteration of tank car tanks constructed to a specification in part 179, or an application for construction of tank cars to any new specification. This information is used to ensure that the design, construction, or modification of a tank car or the construction of a tank car to a new specification is performed in accordance with the applicable requirements.

(2) Progress Reports: Each owner of a tank car that is required to be modified to meet certain requirements specified in § 173.31 must submit a progress report to the Federal Railroad Administration (FRA). This information is used by FRA to ensure that all affected tank cars are modified before the regulatory compliance date.

(3) FRA Approvals: An approval is required from FRA to transport a bulk packaging (such as a portable tank, IM portable tank, intermediate bulk container, cargo tank, or multi-unit tank car tank) containing a hazardous material in container-on-flat-car or trailer-on-flat-car service other than as authorized by § 174.63. FRA uses this information to ensure that the bulk package is properly secured using an adequate restraint system during transportation. An FRA approval is also required for the movement of any tank car that does not conform to the applicable requirements in the HMR. These latter movements are currently being reported under the information collection for special permit applications.

(4) Manufacturer Reports and Certificate of Construction: These documents are prepared by tank car manufacturers and used by owners, users, and FRA personnel to verify that

rail tank cars conform to the applicable specification.

(5) Quality Assurance Program: Facilities that build, repair, and ensure the structural integrity of tank cars are required to develop and implement a quality assurance program. This information is used by the facility and DOT compliance personnel to ensure that each tank car is constructed or repaired in accordance with the applicable requirements.

(6) Inspection Reports: A written report must be prepared and retained for each tank car that is inspected and tested in accordance with § 180.509 of the HMR. Rail carriers, users, and the FRA use this information to ensure that rail tank cars are properly maintained and are in safe condition for transporting hazardous materials.

Affected Public: Manufacturers, owners, and rail carriers of tank cars.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 266.

Total Annual Responses: 16,782.

Total Annual Burden Hours: 2,689.

Frequency of Collection: Annually.

Title: Testing Requirements for Non-bulk Packaging.

OMB Control Number: 2137–0572.

Summary: This information collection consolidates and describes the information provisions in parts 173 and 180 of the HMR on the testing requirements for non-bulk packagings. This OMB control number covers performance-oriented packaging standards and allows packaging manufacturers and shippers more flexibility in selecting more economical packagings for their products. This information collection also allows customizing the design of packagings to better suit the transportation environment that they will encounter and encourage technological innovations, decrease packaging costs, and significantly reduce the need for special permits.

Affected Public: Each non-bulk packaging manufacturer that tests packagings to ensure compliance with the HMR.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 5,000.

Total Annual Responses: 15,500.

Total Annual Burden Hours: 32,500.

Frequency of Collection: On occasion.

William S. Schoonover,

Deputy Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2014–27688 Filed 11–21–14; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35865]

The Baltimore and Ohio Chicago Terminal Railroad Company—Joint Use Exemption—Indiana Harbor Belt Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: By decision served November 19, 2014, the Board is granting an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323–25 for The Baltimore and Ohio Chicago Terminal Railroad Company (BOCT) and Indiana Harbor Belt Railroad Company (IHB) to modify a joint use agreement that would give BOCT dispatching responsibility over approximately 483 feet of track between Blue Island Junction Eastward Absolute Signal, milepost DIH 15.2, and the Westward Absolute Signal at CP Francisco (CP 154), milepost 15.3, near Blue Island Junction, Ill.

DATES: This exemption is effective on November 19, 2014. Petitions to reopen must be filed by December 9, 2014.

ADDRESSES: An original and 10 copies of all pleadings, referring to Docket No. FD 35865, 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 Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn, (202) 245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision served November 19, 2014, which is available on our Web site at *www.stb.dot.gov.*

Decided: November 18, 2014.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Raina S. White,

Clearance Clerk.

[FR Doc. 2014–27763 Filed 11–21–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Agency Information Collection Activities; Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions With Total Consolidated Assets of $10 Billion to $50 Billion Under the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on this continuing information collection, as required by the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information. An agency may not conduct or sponsor, and a 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 is soliciting comment on proposed revisions to the regulatory reporting templates and documentation for covered institutions with total consolidated assets of $10 billion to $50 billion.

DATES: Comments must be received by December 24, 2014.

ADDRESSES: 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: 1557–0311, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting

materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: You can request additional information from or a copy of the collection from Johnny Vilela or Mary H. Gottlieb, Clearance Officers, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, copies of the templates referenced in this notice can be found on the OCC's Web site under Tools and Forms (*http://www.occ.gov/tools-forms/forms/bank-operations/stress-test-reporting.html*).

SUPPLEMENTARY INFORMATION: The OCC is requesting comment on a revision to the following information collection:

Title: Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $10 Billion to $50 Billion under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

OMB Control No.: 1557–0311.

Description: Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] (Dodd-Frank Act) requires certain financial companies, including national banks and Federal savings associations, to conduct annual stress tests [2] and requires the primary financial regulatory agency [3] of those financial companies to issue regulations implementing the stress test requirements.[4] A national bank or Federal savings association is a ''covered institution,'' and therefore subject to the stress test requirements if its total consolidated assets exceed $10 billion. Under section 165(i)(2), a covered institution is required to submit to the Board of Governors of the Federal Reserve System (Board) and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency may require.[5] On October 9, 2012, the OCC published in the **Federal Register** a final rule implementing the section 165(i)(2) annual stress test requirements.[6] On October 22, 2013 the OCC published in the **Federal Register** a notice describing the reports and information required under section 165(i)(2) for covered institutions with average total consolidated assets between $10 to $50 billion.[7]

On October 11, 2013, the OCC published in the **Federal Register** revised risk- based and leverage capital requirements that implement the Basel III regulatory capital reforms and certain changes required by the Dodd-Frank Act (revised regulatory capital rule).[8] The revised regulatory capital rule introduces the new common equity tier 1 capital component and a new common equity tier 1 capital ratio, changes the definition of regulatory capital items, and changes the calculation of risk-weighted assets. All banking organizations must comply with the revised regulatory capital rule beginning on January 1, 2015.

On July 17, 2014 the OCC published in the **Federal Register** notice of its intention to revise the reporting templates for covered institutions with $10 to $50 billion in assets to reflect the changes to the revised regulatory capital rule.[9] The OCC received one comment in response to this notice.

In the notice the OCC proposed to add a common equity tier 1 capital data item to the Balance Sheet and a common equity tier 1 risk-based capital ratio data item to the Summary Schedule and Balance Sheet Schedules (baseline, adverse, and severely adverse scenarios) in order to reflect the requirements of the revised regulatory capital rule. These revisions would be effective for the 2015 stress test cycle (using September 2014 data with submission of results in March 2015).[10] In addition, the OCC proposed to clarify the accompanying instructions to emphasize that institutions should transition to the revised regulatory capital rule requirements in their company-run stress test projections in the quarter in which the requirements become effective. Specifically, institutions would be required to transition to the revised regulatory capital rule and begin including the common equity tier 1 capital data item and common equity tier 1 risk-based capital ratio data item in projected quarters two (1st quarter 2015) through nine (4th quarter 2016) for each scenario for the 2015 stress test cycle.

The OCC also proposed several clarifications to the reporting instructions including: Indicating that the Scenario Variables Schedule would be collected as a reporting form in Reporting Central (instead of as a file submitted in Adobe Acrobat PDF format) and clarifying how the supporting qualitative information should be organized.

The OCC has worked closely with the Board and the Federal Deposit Insurance Corporation to make the agencies' respective rules implementing the annual stress testing requirements under the Dodd-Frank Act consistent and comparable by requiring similar standards for scope of application, scenarios, data collection and reporting forms. The OCC also has worked to minimize any potential duplication of effort related to the annual stress test requirements.

The OCC received one comment letter from a modeling service provider on the proposed revisions to the reporting templates and instructions. The commenter questioned the introduction of the new regulatory capital, risk-weighted asset, and regulatory capital ratio items in the reporting templates, asserting that covered institutions with $10–$50 billion in assets will lack relevant data for the new capital items in advance of when these items are required to be reported in the Consolidated Report of Condition and Income (Call Report). However, the additional items in the reporting templates should not place undue burden on these institutions as they have already been given additional time to incorporate the revised capital framework into their company-run stress tests. These institutions were not required to report these items in the 2013–2014 stress tests. In addition, the reporting templates and instructions have been updated to reference the applicable Call Report items that should be reported over the planning horizon, including new items that were created to capture the revised capital framework. Accordingly, the OCC is adopting the new items as proposed.

The commenter also expressed concerns about the requirement that covered institutions publicly disclose a summary of the results of the stress tests. However, this requirement is contained in both the Dodd-Frank Act and the OCC's stress test regulation.[11] Moreover, the OCC believes that public disclosure of the summary of the results of the stress test using the new capital

[1] Public Law 111–203, 124 Stat. 1376, July 2010.

[2] 12 U.S.C. 5365(i)(2)(A).

[3] 12 U.S.C. 5301(12).

[4] 12 U.S.C. 5365(i)(2)(C).

[5] 12 U.S.C. 5365(i)(2)(B).

[6] 77 FR 61238 (October 9, 2012).

[7] 78 FR 62942.

[8] 78 FR 62018.

[9] 79 FR 41742.

[10] The OCC, the Board, and the Federal Deposit Insurance Corporation have proposed revisions to the schedule of the annual stress test. 79 FR 37231 (July 1, 2014). If the agencies adopt these revisions, the OCC expects to adjust its reporting instructions accordingly.

[11] 12 U.S.C. 5365(i)(2)(C)(iv); 12 CFR 46.8.

rules will be informative to the public and reflects an important mechanism of both the statutory and regulatory company-run stress test framework.

In response to a few technical comments, some minor changes will be made to the final reporting forms and instructions. These changes include clarified reporting instructions for the disallowed deferred tax asset and unrealized gains (losses) on AFS securities line items and updated descriptions of the total capital and total risk-based capital line items.

Type of Review: Revision to an existing collection.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 29.

Estimated Total Annual Burden: 13,601 hours.

The burden for each $10 to $50 billion covered institution that completes the revised results template is estimated to be 445 hours for a total of 12,905 hours. The revisions are estimated to add 5 hours of additional burden per respondent, increasing the burden from 440 hours to 445 hours. This burden includes 20 hours to input these data and 425 hours for work related to modeling efforts. The estimated revised burden for each $10 to $50 billion covered institution that completes the annual DFAST Scenarios Variables Template is estimated to be 24 hours for a total of 696 hours.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Dated: November 18, 2014.

Stuart Feldstein,

Director, Legislative and Regulatory Activities Division.

[FR Doc. 2014–27720 Filed 11–21–14; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Electronic Operations

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC 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 is soliciting comment concerning renewal of its information collection titled, ''Electronic Operations.'' The OCC is also giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before December 24, 2014.

ADDRESSES: 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: 1557–0301, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0301, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

The OCC is proposing to extend OMB approval of this collection for three years:

Title: Electronic Operations.

OMB Control No.: 1557–0301.

Frequency of Response: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 15.

Burden per Respondent: 2 hours.

Total Burden: 30 hours.

Description: Twelve CFR part 155 provides that Federal savings associations (FSAs) may use, or participate with others to use, electronic means or facilities to perform any function, or provide any product or service, as part of an authorized activity. Electronic means or facilities include, but are not limited to, automated teller machines, automated loan machines, personal computers, the Internet, the World Wide Web, telephones, and other similar electronic devices. The regulation requires each FSA to notify the OCC at least 30 days before establishing a transactional Web site. A transactional Web site is an Internet site that enables users to conduct financial transactions such as accessing an account, obtaining an account balance, transferring funds, processing bill payments, opening an account, applying for or obtaining a loan, or purchasing other authorized products or services. FSAs that present supervisory or compliance concerns may be subject to additional procedural requirements.

This information collection facilitates the OCC's ability to identify industry

technology trends and better understand emerging technologies. The information is collected on a transactional basis and is used to ensure that safety and soundness requirements are being met.

On July 28, 2014, OCC issued a notice for 60 days of comment concerning this collection. 79 FR 42823. One comment was received.

One commenter asked whether the collection of information is necessary for the proper performance of the OCC's functions, including whether the information has practical utility.

The commenter described the collection as an ''anachronism'' that ''no longer reflects the realities and risks of current times.'' The commenter further noted that the Internet has been widely used as a channel for offering and conducting banking services for many years and that the OCC likewise has many years of supervisory experience with ''transactional Web sites,'' which would seem to obviate the continued need for notice and collection of this information. Finally, the commenter stated that the information collection is not an effective way of understanding industry trends and emerging technologies, contending that FSAs as a group ''tend to be slow adopters of new technology'' and noting that national banks are not subject to a similar requirement.

The OCC appreciates the commenter's perspective. In response, the OCC will give careful consideration to the comment in connection with the OCC's national bank and FSA rule integration efforts, in particular whether a notice requirement is still necessary for transactional Web sites.

Comments continue to be solicited on:

(a) Whether the collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the 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; and

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: November 18, 2014.

Stuart E. Feldstein,

Legislative and Regulatory Activities Division.

[FR Doc. 2014–27686 Filed 11–21–14; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 928

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 928, Fuel Bond.

DATES: Written comments should be received on or before January 23, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Fuel Credit.

OMB Number: 1545–0725.

Form Number: 928.

Abstract: Under IRC section 4101(b) Secretary may require, as a condition of registration under 4101(a), that the applicant give a bond in an amount that the Secretary determines is appropriate. Applicant's that do not meet all the applicable registration tests for Form 637 registration must secure a federal bond, from an acceptable surety or reinsurer listed in Circular 570, prior to receiving a Form 637 registration under section 4101. Form 928 is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Reinstatement without change of a previously approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 2 hours, 34 minutes.

Estimated Total Annual Burden Hours: 1,280.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 13, 2014.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–27724 Filed 11–21–14; 8:45 am]

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Part II

Department of Transportation

Federal Highway Administration

23 CFR Parts 635, 710, and 810

Right-of-Way and Real Estate; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 635, 710, and 810

[Docket No. FHWA–2014–0026]

RIN 2125–AF62

Right-of-Way and Real Estate

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is proposing to amend its regulations governing the acquisition, management, and disposal of real property for transportation programs and projects receiving funds under title 23, United States Code. The revisions are prompted by enactment of the Moving Ahead for Progress in the 21st Century Act (MAP–21). Section 1302 of MAP–21 includes new early acquisition flexibilities that can be used by State departments of transportation (SDOT) and other grantees of title 23 Federal-aid highway program funds. This proposal is intended to develop regulations on the use of those new early acquisition flexibilities. The FHWA is also proposing to update the real estate regulations to reflect the agency's experience with the Federal-aid highway program since the last comprehensive rulemaking, which occurred more than a decade ago. The updates include clarifying the Federal-State partnership, streamlining processes to better meet current Federal-aid highway program needs, and eliminating duplicative and outdated regulatory language. This notice of proposed rulemaking provides interested parties with the opportunity to comment on proposed changes to the regulations.

DATES: Comments must be received by January 23, 2015. Late-filed comments will be considered to the extent practicable.

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.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.
- *Instructions:* You must include the agency name and docket number or the Regulatory Identification Number (RIN) for the rulemaking 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: Arnold Feldman, Office of Real Estate Services, (202) 366–2028, email address: *Arnold.Feldman@dot.gov;* or Robert Black, Office of the Chief Counsel (HCC), (202) 366–1359, email address: *Robert.Black@dot.gov;* Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 7:30 a.m.to 5:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *https://www.federalregister.gov.*

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I. Executive Summary

A. Purpose of the Regulatory Action

Many provisions in MAP–21 (Pub. L. 112–141, 126 Stat. 405) are designed to improve efficiency, effectiveness, and accountability in the development and delivery of Federal-aid transportation projects. This NPRM would implement section 1302 of MAP–21 by adding the new authorities for early acquisition of property to part 710, and clarifying the Federal-aid eligibility of a broad range of real property interests that constitute less than full fee ownership. This NPRM also proposes to streamline program requirements, clarify the Federal-State partnership, and carry out a comprehensive update of part 710. Corresponding revisions are proposed for related regulations in 23 CFR parts 635 and 810.

The FHWA proposes updating 23 CFR parts 635, 710, and 810 to help ensure consistency in interpretation of title 23 requirements, and to better align the language of the regulations with current program needs and best practices. This proposed rule would implement changes identified by the public in response to the DOT's initiative on Implementation of Executive Order 13563, Retrospective Review and Analysis of Existing Rules.

The regulations proposed in this NPRM cover a broad range of subjects. That breadth required FHWA to carefully consider which entities are affected by each new and revised provision. In general, the proposed regulations would apply to all grantees, their subgrantees, and other parties that carry out title 23 grant-funded programs and projects. However, some provisions in this NPRM would apply only to a subset of title 23 grantees. This typically occurs where a regulatory provision implements a part of title 23, United States Code, that applies only to the SDOTs.

As a result of all these factors, FHWA concluded there was not a single term that could be used through the proposed regulation to identify the parties subject to the various provisions. The agency decided to use specific terms of reference in the NPRM, defined in proposed section 710.105, to distinguish the regulatory provisions that are applicable to title 23 grantees generally (thus affecting all title 23 grantees and subgrantees, as well as any parties working on their behalf), from provisions applicable only to the State and or its SDOT. For example, when a provision in this NPRM uses only the term ''SDOT,'' that provision applies only to the SDOT as defined in section 710.105 (''the State highway department, transportation department, or other State transportation agency or commission to which title 23, United States Code, funds are apportioned''). By contrast, when this NPRM uses the term ''State'' or ''State agency,'' the provision in question applies more broadly to agencies, political subdivisions, and instrumentalities of a State, but does not apply to every grantee or subgrantee of title 23 funds. This NPRM proposes definitions for the terms ''grantee'' and ''subgrantee.'' Those terms are used when the proposed provision applies to all parties receiving title 23 grant funding directly (grantees) or indirectly (subgrantees). For example, if an SDOT passes title 23 funds through to a local public agency as part of a subgrant agreement under which the local public agency will perform part or all of the project work, this proposed rule would refer to the local public agency as a subgrantee.

The FHWA requests comments on how it can simplify and clarify the

scope and applicability of the regulatory requirements in this NPRM, including those suggesting alternative terminology or regulatory organization.

B. Summary of the Major Provisions of the Regulatory Action in Question

1. Conditional Right-of-Way (ROW) Certification

This NPRM proposes revising section 635.309(c)(3) to provide broader authority to proceed with construction contract bidding in situations where the grantee has not yet acquired all real property interests needed for the project. The proposed regulation would allow the use of a conditional ROW certification procedure when the grantee has acquired all but a few of the necessary properties and would like to proceed with construction bidding. Unless FHWA finds it would not be in the public interest to do so, the new procedure would permit advertisement of a project as long as assurances are in place to protect property owners' and tenants' rights. Currently, the regulation provides that use of a conditional ROW certification for bidding and construction is permitted only under very limited circumstances. The FHWA believes the current regulation is more restrictive than necessary with respect to contract bidding, and that allowing earlier contract bidding as a standard flexibility would better meet project delivery needs while still protecting owners and tenants. However, FHWA still believes that in most cases, proceeding with construction work should occur only when all necessary ROW has been secured. For that reason, proceeding with construction under a conditional ROW certification should be permitted only under exceptional circumstances. The proposed regulation clarifies this strict limitation.

The FHWA recognizes that expanding the use of conditional certifications could increase risks of compensation claims from contractors if completing acquisition or relocation activities for remaining parcels delays contract work. The proposed rule clarifies that Federal participation in the cost of such delay claims is subject to 23 CFR 635.124, and will be determined on a case-by-case basis, including consideration of whether the SDOT followed approved processes and procedures.

2. Federal-State Partnership and Compliance Responsibilities

This NPRM proposes a number of revisions to clarify the roles and responsibilities of SDOTs, their subgrantees, and those carrying out a Federal-aid project on behalf of the SDOT. The FHWA believes these clarifications will help avoid confusion among the parties involved in activities funded under title 23. The changes, such as those proposed in sections 710.103 (Applicability) and 710.201(a) (Program oversight), also will better reflect the importance FHWA places on the role of its grantees in assuring subgrantee and contractor compliance with Federal requirements. Similar clarifications of grantee and subgrantee obligations are made throughout the regulation.

This NPRM also proposes several revisions, including in sections 710.201(i), 710.403(a), and 710.409(a), to clarify the use of Stewardship/Oversight Agreements between FHWA and the SDOT. Those agreements describe the roles and responsibilities of FHWA and the State in carrying out the Federal-aid highway program. Stewardship and Oversight Agreements specify which FHWA approvals required under part 710 are assigned to the SDOT.

3. The ROW Manual

The use of FHWA-approved procedures, such as those in the SDOT ROW manual, is critical to the ability of title 23 grantees and subgrantees to meet their compliance and oversight responsibilities. As the number of projects carried out by entities other than the State increased in recent years, FHWA recognized a need to identify ways that entities other than the SDOTs could demonstrate their intention to use acceptable ROW procedures. In proposed section 710.201(d), this NPRM proposes three methods for establishing approved ROW procedures for entities other than SDOTs. As proposed, the methods would be to follow the approved SDOT ROW manual, submit a ROW manual for FHWA approval, or submit a Real Estate Acquisition Management Plan (RAMP) for FHWA approval. The FHWA believes that the proposed changes will achieve the desired stewardship and oversight outcomes while providing practical options the SDOT, its partners, and other grantees and subgrantees may utilize.

The NPRM also proposes to clarify how the approved ROW manual is used, and the topics it must cover. Among the proposed provisions is an explicit requirement that the approved ROW manual contain the procedures for determining when proposed alternative uses of ROW will not impact the safe operation of the facility (see proposed section 710.403(c)), a provision clarifying the applicability of 23 CFR part 771 environmental review requirements to disposals and agreements for the non-highway use of real property (see proposed section 710.403(d)), and a requirement that the ROW manual contain a section describing the criteria for evaluating requests for real property disposals at less than fair market value for social, environmental, or economic purposes (see proposed section 710.403(e)(1)). In each case, FHWA is responding to recurring experiences showing a need for more information in the regulations to help grantees understand the nature and scope of the requirements.

4. ROW Acquisition for Design-Build Projects

In 2002, FHWA added provisions in 23 CFR 710.311 to address ROW procedures applicable to design-build projects. (67 FR 75935, December 10, 2002). Since that time, States have used design-build contracting extensively and the experiences around the country have convinced FHWA that section 710.311 should be updated to simplify its requirements. The revisions proposed in this NPRM (proposed section 710.309) would eliminate many of the detailed requirements that address individual ROW activities. Under the proposal, a design-build contractor handling acquisitions directly would be required to certify that it will comply with the SDOT ROW manual or an approved RAMP. Most often, the design-build contractor would certify it will comply with the SDOT ROW manual. The FHWA believes this approach will provide the same protections as the current regulation because the approved ROW procedures, whether in an SDOT ROW manual or an approved RAMP, include the full range of applicable procedures and requirements.

This NPRM also proposes to simplify the regulatory provisions in existing section 710.311(d) on required measures when a design-build contractor starts construction before all acquisition and relocation activities have been completed. This NPRM would replace the itemized listing with a statement that contractor activities must be limited to those that do not have a material adverse impact on the quality of life of those in occupied properties that have been or will be acquired. The FHWA believes this change will help ensure that potential impacts not currently listed in regulation are addressed, and that the SDOT and contractor focus on outcomes rather than technical compliance issues.

5. Non-Highway Use and Disposal of Real Property Interests

Management of real property acquired for highway purposes is an important aspect of the real estate function. Title 23 requirements focus on protecting the Federal investment, both in terms of safe and efficient operation of the transportation facility, and from the perspective of the Federal financial investment. Part 710 presently reflects a regulatory structure developed decades ago, when FHWA and SDOTs held a strong view that the highway ROW should be protected against non-highway uses to the greatest extent possible. That vision has evolved toward providing greater flexibility in determining when an alternate use of ROW can be compatible with the transportation use. Accordingly, this NPRM proposes to update the regulations by acknowledging this change in policy, simplifying the categories of transactions, and clarifying the applicable requirements when a grantee allows a non-highway use of ROW or wants to dispose of an excess real property interest altogether because it is no longer needed for highway purposes. This update includes elimination of the concepts of air space and air rights agreements from the current regulation's definitions (section 710.105) and section 710.405. This NPRM also would eliminate the separate section on leasing now in section 710.407. Instead, the proposed regulation would rely on the concept of ROW use agreements to handle leases and other time-limited non-highway uses. The process of deciding whether to grant or approve a ROW use agreement would continue to include consideration of whether the proposed use will interfere with the transportation facility in any way. The FHWA intends that this evaluation process will embody the same considerations the current regulation calls for in its air space, air rights agreements, and leasing provisions.

This NPRM proposes corresponding changes to clarify that when a real property interest is not needed for the transportation facility now or in the foreseeable future, the grantee may determine its excess and dispose of it in whole or in part. The NPRM proposes to continue authorizing the use of the FHWA–SDOT Stewardship/Oversight Agreements to assign approval of some disposals to SDOTs, but this NPRM does not propose any change to the requirement that disposals of real property that are part of Interstate ROW be approved by FHWA. This NPRM proposes to add a definition of ''excess real property.'' The NPRM also proposes changes to the definition of ''disposal'' to clarify that a disposal involves the conveyance of permanent rights in excess real property, and must meet the requirements in proposed 23 CFR 710.403 that protect the title 23-funded facility. This NPRM also proposes revisions to section 710.409, which details the requirements for carrying out a disposal. The changes in section 710.409 primarily are proposed to align the section with the new approach described above and to provide additional clarity about existing requirements, such as compliance with 23 CFR part 771.

6. Early Acquisition

The term ''early acquisition'' describes real property acquisition activities carried out prior to completion of the review process required under the National Environmental Policy Act of 1969 (NEPA) for the project for which the property would be used. This NPRM would implement early acquisition provisions in section 1302 of MAP–21. Section 1302 broadens the ability of States to carry out early acquisition activities eligible for Federal-aid reimbursement or credit toward a State's share of project costs. This flexibility improves the State's ability to acquire or preserve real property for a transportation facility. This NPRM is proposing to revise and reorganize section 710.501, which presently covers early acquisitions, to address the changes arising from section 1302 and to generally clarify the early acquisition process pursuant to 23 U.S.C. 108 and 323.

The reorganized section will include an introductory paragraph describing the circumstances that support the use of early acquisition, and paragraphs covering each of the options for early acquisition: State-funded early acquisition without Federal credit or reimbursement, State-funded early acquisition eligible for future credit, State-funded early acquisition eligible for future reimbursement from title 23 apportioned funds, and federally funded early acquisition using title 23 apportioned funds.

This NPRM also addresses the applicability of NEPA and other environmental laws in the early acquisition context. As further detailed in the Section-by-Section discussion, the NPRM proposes to retain the distinction in the current regulation between early acquisitions in section 710.501, and hardship acquisition and protective buying in section 701.503, with respect to the treatment of properties subject to 23 U.S.C. 138 (commonly known as ''section 4(f)'' properties). Those properties would not be subject to early acquisition under 710.501, but could be acquired under the section 710.503 hardship acquisition and protective buying provisions if the necessary evaluations and determinations are completed.

In this NPRM, FHWA interprets the term ''State,'' as used in 23 U.S.C. 108, as including agencies, political subdivision, and instrumentalities of the State. Accordingly, this NPRM uses the term ''State agencies'' in the early acquisition section to identify those parties authorized by the statute to exercise early acquisition authorities.

7. Transportation Alternatives Program and Acquisitions by Conservation Organizations

The MAP–21 eliminated the Transportation Enhancements Program (formerly authorized under 23 U.S.C. 133(b)(8)) and enacted a new Transportation Alternatives Program (TAP), codified in 23 U.S.C. 213. This change necessitates a revision to 23 CFR 710.511, which currently is a section specific to the Transportation Enhancements Program. This NPRM proposes rewriting section 710.511 to make it consistent with TAP. A major change resulting from the MAP–21 elimination of the Transportation Enhancements Program is the termination of authority to exclude transactions by conservation organizations from compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91–646, 84 Stat. 1894; primarily codified in 42 U.S.C. 4601 et seq.) (Uniform Act). This exclusion was contained in section 315 of the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 588), and part 710 subsequently incorporated it at 710.511(b)(4). With the termination of the exclusion, acquisitions by conservation organizations for TAP projects will be subject to the Uniform Act, including the provisions for voluntary acquisitions in the 49 CFR part 24 implementing regulations. This NPRM reflects that change.

Another proposed change to section 710.511 involves adding to the regulation a provision embodying FHWA's long-standing policy on the treatment of real property interests acquired for Transportation Enhancements Program projects. Often those projects involve issues about the adequacy of the real property interest to be acquired because the projects envision lease agreements or other time-limited arrangements that do not ensure

the facility can remain in operation permanently. This situation, which FHWA anticipates will continue with TAP projects, raises a question about how to protect the Federal financial investment in the project. This NPRM proposes adding section 710.511(c), requiring a TAP property agreement through which FHWA and acquiring agency establish an agreed-upon methodology for determining any required repayment of Federal funds in the event the TAP-funded facility is compromised or eliminated.

8. Federal Land Transfers and Direct Federal Acquisitions

The proposed revisions to section 710.601 (Federal land transfers) are intended to clarify the process and to simplify the land transfer procedures that apply when land owned by a Federal agency is needed for a project. The changes proposed will incorporate a conforming amendment made in section 1104(c)(6) of MAP–21 (see proposed section 710.601(a)), which clarified that Federal land transfers are available for title 23-eligible highway projects that are not on a Federal highway system.

The NPRM also proposes clarifying revisions to section 710.603 (Direct Federal acquisition), which addresses direct Federal acquisition of property for title 23 highway projects. The changes in paragraph (a) are intended to clarify that the provisions are applicable to property needed for Interstate highway or Defense Access Road projects, and related application requirements are relocated to (a). The proposed new section 710.603(b), would cover the use of Federal direct acquisition authority for projects administered by the FHWA Office of Federal Lands Highways that are not covered by 710.603(a). The proposed regulation would better align the regulation to the existing practices and the needs of the programs carried out by FHWA's Federal Lands Highway Divisions under chapter 2 of title 23. The proposed language also clarifies that FHWA, when it carries out direct Federal acquisitions on behalf of a grantee or another Federal agency, does not acquire or retain any land management rights or responsibilities.

C. Costs and Benefits

The FHWA estimated the incremental costs associated with two new requirements proposed in this NPRM that represent a change to current practices for State DOTs and Metropolitan Planning Organizations (MPO). These costs will be primarily incurred by SDOTs. The FHWA derived the costs [1] of the two components by assessing the expected increase in level of effort from labor to update ROW manuals, and the increase in level of effort required to comply with new early acquisition requirements.

To estimate costs, FHWA first considered the costs associated with updating the SDOT ROW manual. The FHWA multiplied the level of effort, expressed in labor hours, with a corresponding loaded wage rate for the professional staff necessary to complete updates to the ROW manual. Following this approach the undiscounted incremental costs to comply with this rule are $890,000.[2] Approximately 80 percent of these costs represent one time costs to implement this rule.[3]

Similarly, to estimate costs associated with complying with the new early acquisition requirements, FHWA multiplied the level of effort, expressed in labor hours, with a corresponding loaded wage rate for the professional staff necessary to comply with those requirements and additional effort that may be associated with the new early acquisition flexibilities. Following this approach, the annual undiscounted incremental costs to comply with this rule are $950,000.[4] The FHWA does not believe that any of these costs represent one time costs to implement this rule.

The FHWA could not directly quantify the expected benefits due to data limitations and the amorphous and qualitative nature of the benefits from the proposed rule. The FHWA believes that significant new flexibilities in early acquisition will allow SDOTs to acquire real property interests earlier, ensuring parcel availability, ROW cost control and cost certainty, and expected reductions in project delay claims due to ROW not being available. The FHWA believes that the expected qualitative and quantitative benefits from the use of the early acquisition flexibilities alone will exceed the cost of implementing the rule. In addition, FHWA believes that significant benefits may accrue because this proposal clarifies and streamlines additional requirements including property management requirements, stewardship and oversight requirements, and Federal Land transfer requirements.

The FHWA invites comments on its cost estimates and discussion of benefits.

II. Background

The FHWA provides funds to States and other grantees under title 23 for reimbursement of costs incurred in acquiring the real property needed for highways and other transportation-related projects. The primary regulations dealing with real property interests, reimbursement, and management of ROW are in 23 CFR part 710. Additional regulations in 23 CFR parts 635 and 810 address ROW certification and use of ROW by a transit agency, respectively. On July 6, 2012, President Obama signed into law MAP–21. One of the primary purposes of this NPRM is to provide regulatory direction on the use of new flexibilities contained in section 1302 of MAP–21. This proposed rule would clarify and streamline program requirements. The proposed rule also would help accelerate project delivery and enhance the Federal-State partnership. Both of these objectives are consistent with MAP–21 goals, as articulated in section 1302 and other provisions.

This NRPM also proposes revisions to reduce duplication in the existing regulations and to clarify and update the real property regulations based on the FHWA's experience with administration of the current regulations. The FHWA proposals for changes to 23 CFR parts 635, 710, and 810 will better ensure consistency in interpretation and better align the language of the regulations with current program needs and best practices. In developing this NPRM, FHWA considered public input received during the Office of Management and Budget's recently completed Retrospective Regulatory Review. In August 2011, the DOT published its Final Plan for Implementation of Executive Order 13563, Retrospective Review and Analysis of Existing Rules. This Final Plan outlines the DOT efforts to review existing regulations, expand public participation in the regulatory process, and enhance oversight of regulatory development and review. As part of the development of the DOT Final Plan, the DOT held a public meeting in March 2011 on its preliminary plan and solicited public

[1] The FHWA used salary data from Indeed Salary Search (*www.indeed.com*) which represents an index of salary information from job postings over the past 12 months to estimate labor costs.

[2] This estimate assumes that it will take an additional 225 hours to complete necessary updates to a ROW manual, that a loaded rate of $76 per hour (Hourly rate $47.60 for a ROW manager; estimated loaded rate of 160% of hourly rate) for labor will be incurred and by estimating the costs to update 52 ROW manuals.

[3] After updating the ROW manual to incorporate this rulemakings changes, the States will resume their normal process of updating their manuals.

[4] The FHWA calculated this by estimating that there would be 240 Early Acquisition Projects per year which would require approximately 40 hours of time each to comply with requirements associated only with Early Acquisition Projects. The FHWA used a loaded rate $76 per hour (Hourly rate $47.60 and an estimated loaded rate of 160% of hourly rate) for labor will be incurred (based on the cost of a ROW manager's loaded hourly rate).

input on specific rules that should be reviewed. As a result of this outreach, FHWA received public comments on 13 topic areas.

In the August 2011 Final Implementation Plan, the DOT identified 23 CFR part 710 as an area for future study and possible regulatory action. The FHWA received comments covering use of Federal real property acquisition funds for early acquisition, addressing use of Federal financial support for corridor preservation acquisitions, and requesting new flexibilities in environmental review requirements and fiscal constraints as they pertain to federally funded early acquisition. As a result of the public comments on early acquisition of ROW, FHWA re-examined the regulations on early acquisition to identify beneficial changes. The FHWA believes that the new flexibilities provided in MAP–21 for federally funded early acquisition provide most of the flexibilities that the commenters sought.

The evolution of the Federal-aid highway program in recent years, including changes in the parties involved in carrying out the program and in funding eligibilities under title 23, produced a number of challenges in drafting the real estate regulations. Historically, the Federal-aid highway program has been a federally assisted State program administered through SDOTs. The SDOTs remain the primary grantees of Federal-aid highway funds, and the FHWA–SDOT structure is the principal mechanism for administration of the Federal-aid highway program. However, there are instances when other entities receive funding under title 23 and are grantees under Federal law. In addition, SDOTs frequently enter into subgrant agreements with cities, towns, and other governmental entities, collectively often referred to as ''local public agencies'' or ''local transportation agencies,'' under which those non-SDOT public agencies develop and construct facilities funded under title 23. This NPRM makes a number of changes to emphasize that the SDOT remains legally responsible to FHWA for compliance with title 23 requirements even when the SDOT delegates project activities to other public agencies. While the terms ''local public agencies'' and ''local transportation agencies'' are frequently used in SDOT and FHWA publications, FHWA proposes to continue to use the term ''State agency'' in part 710 to include these local entities, as the definition of ''State agency'' in section 710.105(b) has long included all public agencies.

In this proposed rule, FHWA continues the philosophy of relying on an approved ROW manual as one of the primary tools for implementing the Federal-State partnership and ensuring compliance by all grantees and subgrantees with applicable requirements. The SDOT ROW manual would continue to be the ROW manual most often used in the program, guiding the work of the SDOT and its subgrantees and contractors. However, this NPRM also would authorize non-SDOT entities to adopt or develop a ROW manual or a RAMP, and provides proposed procedures for those actions in proposed section 710.201(c). The approved ROW manual provides the detail needed to successfully carry out an acquisition program with consistency, and to ensure compliance with applicable statutes, regulations, and policies. The manual also serves to document a grantee's ROW procedures and practices for use by its ROW personnel, other public agencies, and individuals working with the grantee, and the FHWA.

III. Section-by-Section Discussion of the Proposals

The proposed revisions to 23 CFR parts 635, 710, and 810 are described below. The FHWA filed a redline version of parts 635, 710, and 810 in the docket to show all proposed changes to the regulatory text and facilitate public review and comment. In addition to these changes, FHWA proposes to make minor changes throughout the regulations to eliminate outdated references, such as the change from ''STD'' to ''SDOT,'' and clarify meaning without changing the intended scope or effect of the regulations. The FHWA proposes retaining the current order of the sections in part 710, which are ordered in the sequence agencies follow when developing and implementing a Federal-aid project. This will assist the public and grantees in locating regulations applicable to a specific point of interest.

PART 635—CONSTRUCTION AND MAINTENANCE

Subpart C—Physical Construction Authorization

Section 635.309 Authorization

Over the course of the last several years, FHWA has identified and deployed innovations and flexibilities that can accelerate project delivery. Most recently, FHWA has promoted a number of these opportunities through the ''Every Day Counts'' (EDC) initiative. Information on the flexibilities in ROW practices and procedures is available at *http://www.fhwa.dot.gov/everydaycounts/projects/toolkit/row.cfm.* One of the EDC flexibilities promoted was the use of a conditional ROW certification. This NPRM proposes more flexible procedures for the use of conditional ROW certifications as a basis for authorizing construction contract bidding to proceed, while retaining necessary protections for owners and occupants.

The FHWA's traditional approach to authorizing the advertising for construction bids and the beginning of construction has been to require that all necessary real property has been acquired for the entire project, with limited exceptions. This approach ensures that property owners' rights are protected, but FHWA's experience shows the current requirements in section 635.309(c)(3) are too stringent and can unnecessarily delay the advertisement for bids and consequently, the commencement of construction. The FHWA believes that when most properties for a project have been acquired, advertising for construction bids while the SDOT finalizes the acquisition of a small remaining number of needed real property interests is not detrimental to the goal of protecting property owners' rights. The FHWA review of current practice and project delivery needs, including discussions with SDOTs during EDC presentations around the United States, concluded that it is possible to protect the rights of owners and occupants without delaying advertising when only a few acquisitions remain incomplete. These rights can be protected on a parcel-by-parcel basis by including provisions in the conditional certification to ensure those who have not yet moved from properties needed for construction are protected against unnecessary inconvenience or any action that is coercive in nature.

Accordingly, FHWA proposes to revise section 635.309(c)(3) to provide broader authority for funding grantees to use a conditional ROW certification procedure in order to permit advertisement of a project provided that assurances are in place for taking adequate care and precautions to protect the rights of property owners and tenants. This rule proposes removing existing language that limits State requests for authorization for advertisement on this basis to very unusual circumstances and removing the statement that this exception must never become the rule. The use of the conditional certification will still be an exception to the requirement in

635.309(c)(1) that legal and physical possession must have been acquired for all necessary rights-of-way for the project, but this change will allow bidding to proceed unless FHWA finds it would not be in the public interest. The use of a conditional certification to support authorization for construction would continue to be limited. The NPRM proposes language clarifying that FHWA will not approve construction based on a conditional certification unless there are exceptional circumstances that make such action in the public interest. This proposed rule would require that SDOTs provide FHWA with an update on the status of any properties not available and a realistic date when such properties will be available prior to FHWA approval of a notice to proceed with construction.

While the proposed rule would provide broader flexibility, FHWA believes grantees will need to exercise caution in using this authority, given the risk it could create for delay claims from contractors during construction. The proposed rule identifies this risk and provides limitations on FHWA participation in such claims. The proposed rule clarifies that Federal participation in the cost of such delay claims is subject to 23 CFR 635.124, including consideration of whether the SDOT followed approved processes and procedures. The NPRM would also mitigate the risk of increased construction delay claims by requiring that advertisements for bids must specify whether all ROW has been obtained for the project.

This NPRM proposes, in 635.309(h), to replace an outdated reference to FHWA directives with a reference to the requirements of 49 CFR part 24, the Uniform Act implementing regulations. References to the FHWA Division Administrator in various parts of section 635.309 would be changed to simply ''FHWA.'' This is consistent with the usage in part 710 and better supports FHWA's efforts to adjust internal delegations of authorities when needed.

PART 710—RIGHT-OF-WAY AND REAL ESTATE

Subpart A—General

Section 710.103 Applicability

This rule proposes several changes to the current section 710.103, which provides information on when 23 CFR part 710 applies. The changes are proposed to clarify when these rules would apply. In recent years, FHWA has addressed a number of questions about the applicability of 23 CFR part 710 in instances where no Federal funds were used for acquisition of real property, where there was limited title 23 funding in planning or environmental portions of the project, and where the property was acquired in advance of a title 23-eligible project. The FHWA believes that the proposed clarifications will resolve these questions on the applicability of part 710.

The first clarification is that this rule applies whenever title 23 grant funds are expended, including when the funds are used to pay for activities carried out by contractors or others on behalf of a grantee or subgrantee. This NPRM also includes a terminology change when referring to title 23 funding. Previously, the regulations used the term ''apportioned funds'' to describe how funds were provided to SDOTs and local public agencies. The use of the term ''grant funds'' will allow for a more accurate description of how funds are provided without changing the underlying requirements or applicability.

The second change involves adding proposed language to clarify that grantees of funds under this part who allow others to use the funds are responsible for oversight of the use of the funds. This oversight is intended to ensure that applicable requirements and rules have been followed. This NPRM also proposes adding language to this section to alert readers to the distinctions inherent in the terminology used to refer to various parties affected by part 710.

Section 710.105 Definitions

This NPRM proposes a number of revisions to the definitions in section 710.105(b). The proposed rule includes several changes to update terms that are used throughout the proposed regulation, such as the reference to the SDOT (rather than the current ''STD''). In addition, FHWA proposes adding terms to clarify the regulation and to carry out changes enacted in MAP–21, which expanded the acquisition options for States. Several changes are being proposed to clarify the meaning and applicability of definitions in the current regulation. The FHWA believes that the proposed clarifications are necessary to respond to questions and comments from our partners in recent years.

For terms not specifically defined in proposed section 710.105 (Definitions), this NPRM proposes to replace 23 CFR part 1 with 23 U.S.C. 101(a) as the alternate source for definitions. The FHWA concluded that the list of definitions in the statute was more current and more complete than those in 23 CFR part 1.

This NPRM proposes a revision to the definition of ''access rights'' to substitute ''public way'' for ''street or highway.'' The purpose of this revision is to clarify that access rights to allow for ingress and egress include access to a public way and are not restricted to a street or highway.

The FHWA proposes to eliminate the definitions of ''air rights'' and ''air space,'' as part of an overall effort to update the approach to property management by consolidating and simplifying the categories of transactions involving real property acquired for a title 23-funded facility. The FHWA has received some questions in the past about when and how these definitions and the requirements are applied. The proposed rule would no longer use the term ''air space,'' and would instead use the term ''real property interests.'' The proposed rule replaces the term ''air rights'' with a new definition for ''ROW use agreement,'' which refers to agreements for the use of real property interests for non-highway uses. As explained further in the preamble summary of the definition of ''ROW use agreement,'' these agreements cover all land transfers in the ROW except permanent conveyances of real property interests. This new approach is discussed in more detail in the summaries for proposed changes to sections 710.405–409.

This rule proposes a clarification to the definition of ''damages,'' to clearly state that damages under this part apply to real property only. Because the current definition refers to remainder property, without explicitly limiting it to real property, the current definition may be misread to apply to either real or personal property.

This NPRM proposes clarifying the definition of ''disposal'' by adding language confirming that disposals involve the transfer of permanent rights in real property and are subject to the requirements in 23 CFR 710.403. This rule also proposes a revision to the definition to clarify that disclaiming or informally abandoning ROW or real property interests that were either purchased with title 23 funds or incorporated into a title 23-funded project is a form of real property disposal. As such, that disclaimer or abandonment is subject to the real property disposal regulations contained in this regulation. The FHWA has received questions in the past about how this definition applied where an action was proposed that was not a sale of real property, but would result in a conveyance or other permanent change in ownership or use of real property. The FHWA believes that the proposed

change eliminates any confusion that has arisen over when the regulations apply.

This rule proposes to revise the definition of ''donation'' to ensure that it is clearly understood property owners must be informed in writing of their rights and potential benefits under the Uniform Act prior to making a donation. The FHWA believes written notice has always been an inherent aspect of effective compliance with the Uniform Act, but the agency has concluded a specific statement would be useful to avoid any possible confusion. The FHWA believes that this requirement can be met by using informational tools, such as pamphlets currently available on the FWHA Web site,[5] that are currently used to provide property owners with information on the Uniform Act and the real estate acquisition procedures.

This NPRM proposes to update the definition of ''early acquisition'' to eliminate the existing reference to project authorization and to instead focus the definition on the relationship between the early acquisition and the completion of the environmental review for the transportation project for which the acquired real property interests would be used. This change also will make the definition conform to revisions under MAP–21, and ensure the definition will cover the full range of early acquisition options now available.

In addition, this NPRM proposes adding a new definition, ''Early Acquisition Project.'' As explained more fully in the description of changes to 23 CFR 710.501, section 1302 of MAP–21 provides new flexibilities for carrying out real property acquisitions in advance of a Federal environmental decision on a proposed transportation project. One of those flexibilities is to treat the early acquisition itself as a Federal-aid project, eligible for reimbursement from title 23 apportioned funds if applicable requirements are satisfied. The MAP–21 section 1302 amends 23 U.S.C. 108 to allow States to develop a project that consists solely of the early acquisition of real property (23 U.S.C. 108(d)). An Early Acquisition Project can consist of the acquisition of real property interests in a specific parcel, a portion of a transportation corridor, or an entire transportation corridor. This new authority for federally funded early acquisition, added to the authorities for early acquisition under pre-MAP–21 law, enhanced the need for terms in the regulation that would clearly distinguish projects for the early acquisition of real property under section 710.501 (an ''Early Acquisition Project'') from the proposed projects for which the early-acquired property would be used (a ''transportation project'').

This NPRM proposes to add a new definition, ''excess real property.'' The proposed definition defines excess real property interests as those not needed currently or in the foreseeable future for transportation purposes or other uses eligible under title 23. The FHWA believes that this new definition will help eliminate confusion that has existed about the appropriate use of disposal procedures, and about the differences between agreements for the alternate use of real property that may be needed in the future for transportation purposes (a ROW use agreement under this NPRM) and property that is no longer needed (excess real property under this NPRM).

The proposed rule would add new definitions for the terms ''Federal-aid project,'' ''federally assisted,'' ''grantee,'' and ''subgrantee.'' The FHWA concluded there is a need for each of these defined terms in order to clarify the meaning and applicability of certain parts of the regulation. ''Federal-aid'' and ''federally assisted'' distinguish between projects receiving funds under chapter one of title 23 and projects receiving funds from any part of title 23. The term ''grantee,'' as proposed in this NPRM, would mean the party that is the direct recipient of title 23 funds and is accountable to FHWA for the use of the funds and for compliance with applicable Federal requirements. This NPRM proposes to define ''subgrantee'' as ''a governmental agency or other legal entity that enters into an agreement with a grantee to carry out part or all of the activity funded by title 23 grant funds.''

This NPRM proposes a definition for ''mitigation property.'' This term is used in the proposed definition for real property, discussed below. The FHWA believes including a definition of ''mitigation property'' will avoid confusion in the future about the intended scope of the term when it appears in later sections of the regulation. This proposal also is consistent with the FHWA's proposal, as described later in this NPRM, to delete section 710.513 on environmental mitigation, and instead to insert references to environmental mitigation or mitigation property where relevant in the regulatory text.

This NPRM proposes to delete the definition of National Highway System (NHS) from this regulation. The FHWA believes that the definition of NHS in 23 U.S.C. 101(a) provides the needed definition.

This NPRM proposes to add a new definition for ''option.'' Section 1302 of MAP–21 in part redefines and expands the types of real property acquisitions that are eligible for Federal reimbursement. The MAP–21 changes all references in 23 U.S.C. 108 from ''real property'' to ''real property interests'' and defines real property interests to include a contractual right to acquire an interest in land. The new definition of ''option'' in the NPRM will clarify that the cost of acquiring an option and other types of real property interests is eligible for reimbursement under title 23.

This NPRM is proposing to add a definition of ''person'' to this regulation. This definition is taken directly from 49 CFR part 24. The addition of a definition of a ''person'' is proposed to clarify to whom this NPRM applies when persons are acting for an SDOT or other agency on a project or program receiving title 23 funds. The proposed definition also defines those entitled to protections under this part and the Uniform Act. The definition is consistent with the definition of the term in the implementing regulations for the Uniform Act at 49 CFR 24.2(a)(21).

This NPRM is proposing the addition of a definition for ''Real Estate Acquisition Management Plan (RAMP).'' A RAMP is a document describing the process a subgrantee (for example a local public agency receiving title 23 funds from an SDOT), non-SDOT grantee, or design-build contractor may use to carry out a title 23 grant program or project. A RAMP describes how such party will comply with title 23 requirements. A RAMP is used in lieu of developing a ROW manual or adopting the FHWA-approved SDOT ROW manual. The FHWA believes that use of a RAMP is appropriate for a subgrantee, non-SDOT grantee, or design-build contractor if that party infrequently carries out title 23 programs or projects, the program or project is non-controversial, and the project is not complex. A RAMP may only be used with the approval of FHWA or the SDOT, as discussed in section 710.201(d). The FHWA believes that a properly developed and approved RAMP can provide sufficient information and direction to assure that applicable title 23 and Uniform Act requirements are met.

This NPRM proposes to revise the definition of ''real property.'' Section 1302 of MAP–21 clarifies the types of

[5] *http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/acquisition/real_property.cfm.*

real property interests that can be acquired prior to completion of the NEPA review for a Federal-aid project by revising 23 U.S.C. 108 to replace the terms ''real property'' and ''right-of-way'' with ''real property interests.'' Prior to MAP–21, the statute used the terms ''right-of-way'' and ''real property'' when describing eligibility (in 23 U.S.C. 108(a)) and Federal-aid participation (in 23 U.S.C. 108(b) and (c)). Part 710 currently uses both terms in its various subparts. The FHWA proposes to modify the existing definition of ''real property'' to incorporate the term ''real property interests,'' as adopted in MAP–21, as an equivalent term. This NPRM uses the terms ''real property'' and ''real property interests'' interchangeably.

Under the definition of ''acquisition of a real property interest'' in 23 U.S.C. 108(d)(1), as enacted in MAP–21, real property interests include contractual rights to acquire an interest at a later date, and rights that restrict certain uses of the property for a specified period of time. Accordingly, this NPRM proposes adding such interests to the definition of ''real property.'' This will clarify that grantees may acquire limited, less-than-fee interests in property, including options, temporary development rights, and rights-of-first-refusal, that permit a grantee to ensure it can later purchase the real property needed for a project eligible for title 23 funding.

This NPRM is proposing to revise the definition of ''right-of-way'' to include the use of real property for mitigation for a transportation-related facility. The FHWA believes that this change will clarify that mitigation property is an eligible expense when it is a required part of an approved transportation project under title 23.

This NPRM proposes to add a definition for the term ''ROW manual.'' The FHWA believes it would be helpful to have the definition to support the changes proposed for section 710.201(d) that discuss ROW manuals and alternate procedures for non-SDOT parties.

This NPRM proposes a new definition, ''ROW use agreement.'' With this rulemaking, FHWA is proposing to use the term ''ROW use agreement'' to encompass any non-permanent transfer of real property interests in the highway ROW. This definition covers use agreements for the use or occupancy of real property interests in the ROW short of a permanent conveyance. For example, this definition would cover leases, licenses, or permits for the use of real property interests within a highway ROW. The proposed definition includes clarifying language stating that these agreements are for time-limited non-highway purposes and that the proposed use of the real property interests covered by the agreement must not interfere with the highway facility. The discussion for section 710.405 contains additional information on ROW use agreements and the changes relating to the use and disposal of real property proposed in this NPRM.

This NPRM proposes two changes to the definition of ''settlement.'' The FHWA proposes that the definition of ''legal settlement'' be modified to include agreements resulting from mediation and stipulated settlements approved by a court. The FHWA believes that this addition will clarify that agreements resulting from mediation and stipulated settlements are allowable under the current definition of legal settlement. The second revision is to change ''compensation'' to ''just compensation'' in the definition of a court settlement or award.

The NPRM proposes to change the abbreviation adopted for ''State transportation department'' from ''STD'' to ''SDOT.'' This will be consistent with the form of reference preferred by the State transportation departments. Corresponding changes are proposed throughout part 710, to revise ''STD'' to ''SDOT.''

This NPRM is proposing to add a definition of ''Stewardship/Oversight Agreement'' that will replace the current definition of ''oversight agreement.'' This change will eliminate inconsistency in the use of language in the regulation, will better define the intended meaning of the term, and better reflects current FHWA policy on the use of such agreements. The FHWA believes that this will clarify that any assignment of FHWA's Part 710 approvals or other responsibilities to the SDOT will be authorized by FHWA through provisions in the Stewardship/Oversight Agreement executed between FHWA and the SDOT. How such responsibilities will be carried out will be discussed in the SDOT ROW manual, but the authority for the SDOT to exercise the responsibilities derives from the Stewardship/Oversight Agreement.

This NPRM includes a proposal to add a new definition, ''temporary development restriction.'' The purpose of this addition is to clarify that purchasing the right to restrict an activity on real property is a type of real property interest as defined in MAP–21 section 1302. The FHWA believes that this type of acquisition will be a valuable early acquisition tool.

This NPRM is proposing to add a new definition, ''transportation project.'' The proposed definition, which uses the terms ''highway project,'' ''public transportation capital project,'' and ''multimodal project,'' will ensure that there is a clear distinction between the undertaking for the early acquisition of real property under section 710.501 (the ''Early Acquisition Project'') and the project for which the real property would be used (the ''transportation project'').

This NPRM proposes adding a statutory reference to the existing definition of ''Uniform Act.''

Subpart B—Program Administration

Section 710.201 Grantee and Subgrantee Responsibilities

This NPRM proposes revising the title of section 710.201, which is currently ''State responsibilities,'' to ''Grantee and subgrantee responsibilities,'' and substantially reorganizing and rewriting the section to clarify the roles and responsibilities of grantees and their subgrantees in carrying out real property-related activities under title 23. These changes would recognize the increasing instances in which FHWA works with title 23 grantees other than SDOTs. However, the changes do not alter the basic nature of the Federal-aid highway program under chapter 1, title 23. In that program, the SDOT is the primary grantee and retains its special role and accompanying obligations.

This NPRM proposes moving the discussion of program oversight from paragraph (b) to (a). The text in the new (a) would be revised, while the text in the newly-designated (b), relating to organizational requirements, would be unchanged except for updated references.

The proposed revisions in the new paragraph (a) on program oversight include an introductory sentence that describes how Federal-aid funds flow to the SDOT. A sentence is added to clarify that SDOTs are responsible for ensuring that activities by subgrantees and contractors on Federal-aid projects are carried out in compliance with State and Federal legal requirements. The proposed changes include the addition of a new sentence at the end of the paragraph clarifying that non-SDOT grantees of title 23 funds must comply with part 710 and are responsible for compliance by their subgrantees and contractors.

Program oversight is a critical part of the title 23 program. Over the last several years, non-SDOT grantees, local public agencies, and other subgrantees have increasingly carried out and delivered title 23 programs and projects. The FHWA believes that it is important

that this NPRM clarify grantee obligations for program compliance and oversight responsibility when subgrantees are performing project work, and to clarify the requirements and oversight relationship that subgrantees will be subject to when using or receiving title 23 funds or carrying out title 23-funded work. These clarifications do not create new requirements, but are intended to ensure that each grantee and subgrantee of title 23 funds understands the requirements and oversight roles attached to those funds.

This NPRM proposes several revisions to section 710.201(c). The proposed language requires grantees to have an approved ROW manual that is up to date. The manual must include a section on oversight of subgrantees and contractors. In the case of SDOTs, this includes provisions on oversight of local public agencies.

The proposed rule would require SDOTs to submit a revised ROW manual reflecting the provisions of the final rule to FHWA for review and approval not later than 2 years after publication of a final rule. The FHWA believes that the SDOT ROW manual is one of the primary tools of the Federal-State partnership. The approved SDOT ROW manual provides the detail needed to successfully carry out a ROW acquisition program and to ensure compliance with applicable statutes, regulations, and policies. The SDOT ROW manual also serves to document ROW processes and practices for use by State ROW personnel, local public agencies, affected individuals, and the FHWA.

Appropriate ROW procedures are equally critical to the performance of other parties working to deliver projects funded under title 23. For non-SDOT parties, proposed section 701.201(d) contains three options for establishing approved ROW procedures. The first option is submission of a written certification that the party will use and adopt the FHWA-approved SDOT ROW manual. The second option is for the party to submit its own ROW manual for review and approval. Third, the party may submit a RAMP for review and approval. The FHWA believes that the number of non-SDOT grantees will continue to increase, as will the SDOTs' use of local public agencies to develop projects. The FWHA believes that effective oversight and stewardship are crucial on all title 23 projects and programs. The FHWA believes that the proposed changes provide several methods to achieve the desired stewardship and oversight outcomes while providing practical, easily achievable options for grantees and their partners.

This NPRM proposes to relocate and revise the requirements of section 710.201(e) of the existing rule, which addresses adequacy of real property interests acquired for a project. The provision would become part of the acquisition provisions in proposed section 710.305. The FHWA believes this general provision more logically relates to acquisition than to the administrative provisions of section 710.201. This change is discussed in more detail in the analysis of section 710.305(b).

This NPRM proposes to redesignate existing section 710.201(f) (record keeping) as (e), and to clarify that the requirements apply to all acquiring agencies, as defined in 710.105. The NPRM also proposes revising the property management record keeping requirements to make them applicable to properties acquired with title 23 funds or incorporated into a title 23-funded program or project, regardless of whether such properties are managed by the SDOT. As previously noted, FHWA believes the role of non-SDOT parties in title 23 projects and programs will continue to evolve and grow. These proposed regulatory changes are designed to ensure that real property acquired with title 23 funding is effectively and accurately recorded, and that title 23 grantees carry out property management programs consistent with the requirements of this part.

This NPRM proposes to redesignate existing section 710.201(g) (procurement) as (f), and to clarify that the provision is applicable to non-SDOT grantees. The FHWA believes that it is necessary to ensure that other grantees of title 23 funds meet the same requirements that SDOTs currently meet. This revision will further safeguard that title 23 funds are used appropriately.

This NPRM proposes to redesignate existing section 710.201(h) (use of public land acquisition organizations or private consultants) as (g). The proposed rule also would change the reference from ''SDT'' to ''acquiring agency'' and add ''persons,'' as defined in this rule, as another party that an acquiring agency could use to carry out its acquisition authority. The FHWA believes that these revisions will provide additional flexibility to acquiring agencies and better reflect the range of resources agencies may use. This NPRM also proposes adding conservation organizations to the list of parties, to recognize what is likely to be a permanent role of such parties in projects such as those funded under TAP.

This NPRM proposes to redesignate existing section 710.201(i) (approval actions) as (h). The NPRM proposes to retitle the provision as ''Assignment of FHWA approval actions to an SDOT.'' The proposed rule also would delete the existing references to the Interstate and to refocus the discussion on FHWA's responsibilities and the responsibilities that FHWA may assign to an SDOT under a Stewardship/Oversight Agreement. The FHWA believes that these changes are needed to ensure that there is a clear understanding of the means by which SDOTs may assume performance of certain FHWA approval and other responsibilities under part 710, and to clarify the process that will be used to carry out the assumptions of responsibility under this part. These changes, together with the proposed clarifications to approval provisions such as those in subpart D (Real Property Management), will help resolve questions that have arisen since FHWA eliminated detailed real estate regulations through rulemakings spanning 1995 through 1999.[6] Those rulemakings resulted in FHWA adopting a system that permits SDOTs to assume responsibility for many of the required FHWA approvals required under earlier versions of the regulations governing real estate and ROW. The 1999 final rule, which in substance is the existing part 710, was designed to place primary responsibility for most Federal-aid project ROW approvals at the SDOT level. In practice, the regulation has proven insufficiently clear as to the needed approvals and related requirements. The changes proposed in this NPRM are intended to continue the practice of assigning the approvals to the SDOT, but to clarify the approvals that are needed.

This NPRM proposes to relocate and revise existing sections 710.201(j) (approval of just compensation) and 710.201(k) (description of the acquisition process). The sections would be moved to section 710.305, becoming sections 710.305(c) and 710.305(d), respectively. The FHWA proposed the relocation because it believes these sections more logically relate to execution of the acquisition process than to the program administration topics covered in section

[6] *See* 60 FR 56004 (November 6, 1995) (Advanced Notice of Proposed Rulemaking for Right-of-Way Program Administration); 61 FR 18246 (April 25, 1996) (Interim Final Rule for Right-of-Way Program Administration); 63 FR 71238 (December 24, 1998) (Notice of Proposed Rulemaking for Right-of-Way Program Administration); and 64 FR 71284 (Final Rule for Right-of-Way Program Administration).

710.201. These sections are discussed in more detail in the analysis of section 710.305.

Section 710.203 Funding and Reimbursement

This NPRM proposes several changes to the current section 710.203 provisions on funding and reimbursement. These changes are needed to conform to provisions in MAP–21 section 1302, to clarify some aspects of the existing regulation, and to simplify the regulatory text where the existing text no longer serves a necessary function. This NPRM proposes to revise section 710.203(a) (General conditions), by inserting a reference to title 23 funds and adding a specific reference to mitigation property to the regulation's description of property acquisition costs that may be eligible for funding participation. This is consistent with FHWA's proposal, as described later in this NPRM, to delete section 710.513 on environmental mitigation, and instead to insert references to environmental mitigation or mitigation property where relevant in the regulatory text. The FHWA believes that streamlining this regulation by deleting the longer discussion of mitigation properties in section 710.513, and incorporating simple references at appropriate points in the regulation, will improve the clarity of the regulation.

The proposed rule also would revise section 710.203(a)(2) by inserting a reference acknowledging that documents other than the traditional FHWA form for a ''project agreement'' may be used to embody the terms and conditions for title 23 funding. The FHWA concluded this revision would provide needed flexibility, especially in the case of a non-SDOT grantee.

This NPRM proposes revising section 710.203(a)(3), which describes acquisition activities that can occur prior to completion of a NEPA decision for a project subject to title 23. In part, these changes are proposed for consistency with the early acquisition provisions in 23 U.S.C. 108, as amended by section 1302 of MAP–21. Section 108 expressly permits certain acquisition activities prior to the completion of NEPA review for the overall project, and includes a provision on NEPA reviews for Early Acquisition Projects.

The revisions to section 710.203(a)(3) also are intended to clarify the extent to which property valuation activities can occur prior to the NEPA decision. The proposed changes will add preparation of appraisals and appraisal waiver valuations to the list of activities that can be performed prior to the NEPA decision on the project. The NPRM proposes to delete ''necessary for the completion of the environmental process'' from that first part of paragraph (a)(3) as an outdated provision in light of MAP–21 and other changes and clarifications in the requirements governing the timing of activities on title 23 projects. The NPRM proposes adding a reference to 23 CFR 646.204 after the term ''preliminary engineering,'' because section 646.204 now provides a definition of preliminary engineering. The FHWA believes the proposed changes in section 710.203(a)(3) language relating to valuation work is an important clarification that will encourage grantees to begin preparation of appraisal and appraisal waiver documents early in the project development process. In many cases, beginning appraisal work early can result in time and cost savings later in the project development process, and those savings can outweigh the risk that some appraisals may not be needed or may need some revision as a result of final NEPA review and project alignment selection.

This NPRM also proposes changes to section 710.203(a)(3), clarifying that negotiations must be deferred until after the NEPA decision, except in two cases: early acquisitions under section 710.501, and hardship or protective acquisitions under section 710.503. The FHWA has responded to a number of requests for clarification on the timing of personal contact and appraisal preparation. In some cases, SDOTs have interpreted the existing regulation to prohibit early appraisal preparation because it prohibits contacting property owners. Contact with potentially affected property owners is required in order to prepare an appraisal. The FWHA believes that the revision is necessary to clarify that contact with potentially affected property owners is permissible for the purposes of developing an appraisal of real property.

This NPRM is proposing some revision and clarification of sections 710.203(b) (Direct eligible costs) and 710.203(d) (Indirect costs). The FHWA believes that it is important to clarify what constitutes eligible direct costs in the context of real property acquisition activities. The NPRM proposal clarifies that eligible direct costs associated with acquiring real property include costs typically incurred in acquiring real property interests, such as costs to prepare valuations and documents necessary to acquire the property, cost of negotiations, cost associated with closing, and costs of finalizing the acquisition. These ROW acquisition costs must be adequately documented as required by 2 CFR part 225 Appendix A, Section (1). The FHWA also proposes to clarify that allowable indirect costs under an approved indirect cost allocation plan may be claimed consistent with 2 CFR part 225. The current regulation has been interpreted as allowing participation only in the cost of the real property. The FHWA has issued guidance in the form of questions and answers in the past that has restricted the eligibility of real property acquisition costs. The FHWA will revise that guidance to be consistent with the discussion in this NPRM and the final rule.

The NPRM proposes to make the costs for real property interests such as options and temporary development rights eligible direct costs in section 710.203(b)(1)(iii). However, FHWA also believes that grantees and subgrantees likely will need additional guidance on the valuation of less-than-fee real property interests, such as options and other contractual rights to acquire an interest in land, rights to control use or development, leases, licenses, and any other similar action to acquire or preserve ROWs for a transportation facility. The FHWA believes the fact-specific and detailed nature of such questions is best handled through best practices-style guidance. If a final rule is adopted, the FHWA intends to develop guidance addressing approaches to valuation of the types of property interests listed above after the publication of the final rule.

This NPRM proposes to revise section 710.203(b)(1)(iv) by adding language to include an acquiring agency's attorney's fees and to exclude other attorney's fees unless required by State law (including orders issued by courts of competent jurisdiction) or approved by FWHA. The FHWA believes that costs for outside counsel to represent the acquiring agency are a reasonable expense which can be incurred in the course of acquiring necessary real property.

This NPRM proposes to revise section 710.203(b)(1)(v) by using the term ''waiver valuation'' instead of ''appraisal waiver,'' by adding ''ROW'' to describe the manual referenced in the existing regulation and by inserting a reference to the RAMP alternative to a ROW manual. The FHWA believes that use of the term ''appraisal waiver'' is no longer accurate because the Uniform Act regulation at 49 CFR 24.2(a)(33) defines the term ''waiver valuation'' and notes that a waiver valuation is not an appraisal.

This NPRM proposes to revise section 710.203(b)(5) (Payroll-related expenses) to update the reference to the Federal

Office of Management and Budget (OMB) regulations. The OMB regulations have been codified at 2 CFR part 225 (formerly OMB Circular A–87). The proposed rule would add language recognizing the eligibility of a grantee's salary-related expenses when the grantee's employees work with an acquiring agency or a contractor on a particular project. Grantees must document such costs in accordance with 2 CFR part 225. This NPRM proposes to delete the last sentence in existing section 710.203(b)(5) because technical guidance, including oversight of subgrantee and contractor compliance or performance, is generally an overhead expense. Those types of expenses are reimbursable under the indirect costs section of the regulations.

This NPRM proposes to revise section 710.203(b)(6) (Property not incorporated into a project funded under title 23) by deleting the reference in paragraph (i) to the Transportation Enhancement Program and replacing it with a reference to the new TAP. Congress did not reauthorize the Transportation Enhancements Program in MAP–21, but instead included elements of that program in the newly enacted TAP, as described in MAP–21 Sections 1103 and 1122. Proposed changes related to TAP are discussed in more detail below in the summary of proposed changes to section 710.511.

This NPRM proposes to revise section 710.203(b)(6)(ii) by adding a reference to alternate access points. The FHWA believes that this addition will further clarify that construction or maintenance of a title 23 eligible project may create the need to provide access outside the ROW to maintain access to that property. This would be treated as an eligible project activity.

This NPRM proposes to revise section 710.203(d) (Indirect costs) to update the reference to OMB regulations which have been codified at 2 CFR part 225 (formerly OMB Circular A–87). The proposed rule also would revise the paragraph to clarify that an SDOT may approve an indirect cost plan for its subgrantee unless the subgrantee has a rate approved by a cognizant Federal agency.

Subpart C—Project Development

This NPRM proposes to modify subpart C on project development to streamline and clarify this subpart by eliminating redundant sections covering topics that are more appropriately addressed elsewhere in this regulation or are the subjects of other parts of title 23 CFR. The FHWA notes that these proposed revisions are not intended to substantively change the applicability or scope of the regulatory requirements pertaining to the project development process.

The FHWA proposes to delete existing sections 710.303 (planning) and 710.305 (environmental analysis). The FHWA believes that the general discussion currently included in these sections neither adds to nor improves upon the information on the planning and environmental analysis found in 23 CFR part 450 and 23 CFR part 771.

The FHWA proposes to renumber the sections in subpart C that follow section 710.305 in the existing regulation and revise all sections remaining in subpart C, as discussed below.

Section 710.301 General

This NPRM proposes to revise 710.301 by listing each of the key steps in the project development process in the last sentence of the paragraph. The FHWA believes that this description of the key steps in the project development process will give sufficient information to provide a general understanding of the overall process.

Section 710.303 Project Authorization and Agreements

The FHWA proposes to retitle this section, which appears as section 710.307 in the existing regulation, by changing the existing header ''Project Agreements'' to ''Project Authorization and Agreements.'' The change recognizes that project agreements no longer are the sole form of document used by FHWA to set forth the terms and conditions of funding and authorize project work.

The proposed rule also would revise the section by adding new references to proposed early acquisition provisions in 710.501(d) and 710.501(e). The result would be that section 710.303 would reflect the new early acquisition provisions in section 1302 of MAP–21. The NPRM proposes striking the last sentence of the existing provision, which contains transition language dating from a prior rulemaking. There should no longer be a need for the outdated transition provision.

The NPRM proposes substituting the phrase ''Federal funding under title 23'' for ''Federal-aid'' in the first sentence of the existing section. This change would make it clear that the provision applies to all title 23-funded grants.

Section 710.305 Acquisition

This section, which appears as section 710.309 in the existing regulation, would be revised to add a more complete description of the acquisition process. This NRPM proposes adding language to clarify that grantees are responsible for ensuring compliance with the oversight and other requirements in this section. The FHWA believes that program oversight is a critical part of the title 23 program and that it is more likely in the future that non-SDOT grantees and subgrantees will be active in delivering title 23-funded projects.

This NPRM proposes a new section 710.305(b), inserting the provisions relating to the required acquisition of adequate real property interests for a project. The long-standing agency interpretation of the provision, formerly in 710.201(e), is that the project owner must own or control adequate real property interests to support the project. This view has not changed, but MAP–21's revisions to 23 U.S.C. 108 have made it necessary to address how paragraph (b) applies in the context of Early Acquisition Projects under 23 U.S.C. 108(d) and 23 CFR 710.501. For example, States can now carry out reimbursement eligible early acquisitions by acquiring an option to purchase the real property at a later date, or by acquiring an interest that restricts certain activities on real property for a specific period of time.

To address this additional flexibility, the proposed revisions would clarify that the real property interests acquired must be adequate for the purpose of the project. Less-than-fee types of interests may be adequate when carrying out an Early Acquisition Project, as defined in proposed section 710.105. Before beginning the transportation project, as defined in this NPRM, the grantee would still need to acquire adequate real property interests necessary for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public.

Proposed section 710.305(c), relocated from existing section 710.201(j), addresses the approval of just compensation for acquired real property interests. The proposed rule would revise the heading to ''Establishment and offer of just compensation.'' The revised language would include the phrase ''believed to be just compensation'' rather than ''determined to be just compensation.'' This new language would more appropriately and correctly describe what it is that an acquiring agency approves. An acquiring agency's process, as set forth in its approved ROW manual, should lead it to a good faith offer that it believes represents just compensation. In some cases, when there is a disagreement about just compensation, a court ultimately establishes just

compensation after hearing all of the facts. The revised language in proposed section 710.305(c) would expressly require the process to be done in accordance with the Uniform Act regulation at 49 CFR 24.102(d), which requires establishment and offer of an amount believed to be just compensation. The FHWA believes that these changes will provide a correct, clear, and concise discussion of requirements which will ensure that agencies appropriately establish offers of just compensation.

Proposed section 710.305(d), relocated from existing section 710.201(k), addresses the description of the acquisition process that acquiring agencies must provide to persons affected by title 23-funded acquisitions. This NPRM proposes to revise the existing language to clarify that the requirements of 49 CFR 24.5 (manner of notices), 24.102(b) (notice to owner) and 24.203 (relocation notices) are applicable to transactions advanced under title 23. The FHWA believes that the proposed changes provide clear, understandable references to the Uniform Act provisions that define the processes used to acquire real property, and delineate the owner's rights, privileges, and obligations. These Uniform Act provisions are critical to the real property acquisition process. In particular, FHWA has noted that providing written descriptions of Uniform Act rights and benefits in languages other than English is necessary due to the variety of languages spoken by the owners and tenants that an acquiring agency may encounter during the acquisition of real property.

Section 710.307 Construction Advertising

This NPRM proposes to revise the newly redesignated section 710.307, which appears as section 710.311 in the current regulation, by updating references throughout to more accurately describe the parties affected by the section. The proposed rule also would update the description of the types of responsibilities that may be covered in the Stewardship/Oversight Agreement between FHWA and the SDOT. The changes will make the section consistent with MAP–21 revisions to 23 U.S.C. 106.

Section 710.309 Design-Build Projects

This newly redesignated section 710.309, which appears as section 710.313 in the current regulation, would be updated in several ways. Paragraph (a) would be modified to update terms. The proposed terms would more accurately identify the parties affected by the section and would be consistent with other revisions throughout part 710. Similarly, technical corrections would be made to references and language in paragraph (b).

This NPRM proposes to revise redesignated section 710.309(c) by deleting the first sentence, which presently discusses incorporation of ROW and clearance services into the design-build contract. The remainder of paragraph (c) would be revised to focus on options for ROW actions and approvals in the design-build setting. In all situations, the grantee is responsible for ensuring that construction activities do not have a material adverse impact on property owners whose property has not been acquired, whose relocation has not been completed, or who lawfully remain in the project area.

This NPRM proposes to revise the redesignated section 710.309(d), to streamline it and focus on the role of the grantee (normally, the SDOT) in ensuring design-build contractors comply with applicable requirements. The NPRM proposes removing the detailed descriptions of ROW procedures in the existing (d)(1)(i)–(ii). In place of those paragraphs, the NPRM proposes to insert a new 710.309(d)(1) that would require the contractor to certify it will comply with an FHWA-approved ROW manual or RAMP in accordance with the provisions on ROW manuals and alternatives in sections 710.201(c) and (d). The FWHA believes that the current regulation in large part duplicates detailed material contained in SDOT ROW manuals, and the agency thinks it is appropriate to redirect the focus of the regulation to the use of an FHWA-approved ROW manual or RAMP. Under the proposed rule, an approved ROW manual or RAMP will provide direction as to what is required of a design-build contractor for the project. The FHWA believes these changes provide additional clarity to this section and will put proper emphasis on the use of an approved ROW manual or RAMP.

This NPRM proposes to delete paragraph (d)(2) from the existing regulation, removing the discussion on acquisition and relocation plans and project tracking systems. This language is no longer necessary in light of the proposed revision of paragraph (d)(1) to require the design-builder to submit written certification that it will comply with the procedures in an approved ROW manual or RAMP.

This NPRM proposes to redesignate the succeeding paragraph in the new section 710.309 to reflect the deletion of existing paragraph (d)(2). The NPRM proposes to revise the new section 710.309(d)(2), concerning the establishment of hold off zones, by making the creation of hold off zones mandatory rather than permissive when the relocation of displaced persons has not been completed. The FHWA believes that it is critical that a design-build project use a process to address and enforce protections that ensure that displaced persons are not subject to unwanted or harmful impacts or effects of construction.

This proposed rule would eliminate the existing paragraphs (d)(4), (5), and (6), which address how to handle specific issues when relocations have not been completed. In place of those provisions, FHWA proposes to adopt a more general standard that focuses on the expected outcome when ongoing construction occurs in proximity to owners and tenants still in occupancy. The new language, which would appear in the redesignated 710.309(d)(3), would limit contractor's activities to those that the grantee determines do not have a material adverse impact on the quality of life of those occupying properties that have been or will be acquired for the project, but who have not yet relocated. The FHWA believes that the new language includes by implication the kinds of protections previously detailed in the existing regulation. The new language would also encompass other types of adverse impacts on such owners and tenants. These protections are the types of requirements that typically would be addressed in the approved ROW manual or RAMP, which design-build contractors now will have to follow. The FHWA believes project-specific aspects of these requirements are best addressed either in the project's contract documents, or as part of a project work plan.

This NPRM would redesignate the remaining paragraph (d)(7) in the existing regulation as section 710.309(d)(4), and would update the terms used in the paragraph.

This NPRM proposes to update the references in the redesignated section 710.309(e) to reflect the new section number for the regulatory language relating to construction advertising, section 710.307.

Subpart D—Real Property Management

This NPRM proposes to restructure Subpart D by eliminating and revising the sections of this part of the regulation that currently cover air space, air rights, leasing and disposal. The FWHA believes that this part can be updated, clarified, and streamlined by consolidating and reorganizing the

requirements applicable to the management of real property interests, including alternate uses and permanent disposition of ownership rights. This NPRM proposes to update the real property management regulations by simplifying the categories of transactions and clarifying the applicable requirements when a grantee wishes to allow an alternate use of ROW or dispose of a real property interest altogether because it is not needed for highway purposes. Because the project owner typically is the grantee or subgrantee, the term ''grantee'' is used throughout this subpart where provisions are applicable to owners of real property interests purchased with title 23 funds or incorporated into a facility funded under title 23.

Section 710.401 General

This NPRM proposes to revise 710.401 by eliminating the language about the change of access control and use of real property interests along the Interstate because that topic is addressed in sections 710.403 and 710.405. The proposed rule would add language to this section that clarifies that grantees have oversight responsibilities for compliance of subgrantees with real property management requirements. This includes situations where the ROW is owned by the subgrantee.

Section 710.403 Management

This NPRM proposes to revise 710.403 by inserting a new paragraph (a) before the existing paragraph (a) and redesignating the existing parts of this section accordingly. The new paragraph (a) would discuss the option for assignment to the SDOT of FHWA approval authorities through the use of the Stewardship/Oversight Agreement between FHWA and the SDOT. The FHWA believes that, in particular, disposal authority for actions off of the Interstate may be assigned to the SDOTs through the Stewardship/Oversight Agreement, provided that the assignments are written and that they specifically enumerate the approval authorities that are being assigned. Disposal and use of Interstate real property interests, and disposals at less than fair market value, will continue to require direct FHWA approval.

This NPRM proposes to revise the redesignated section 710.403(b) (currently section 710.403(a)) by replacing ''boundaries'' with the phrase ''approved ROW limits or other project limits.'' This change acknowledges the evolution of title 23-funded projects to include some projects that are not linear, land-based highways. The NPRM would add a more detailed description of the standards that must be satisfied in order to permit non-highway uses of real property. The proposed language is consistent with the requirements in 23 CFR 1.23. The FHWA believes the changes would clarify the considerations that a grantee must take into account when evaluating potential alternate uses.

This proposed rule would revise the redesignated section 710.403(c) (section 710.403(b) of the existing regulation) by adding language clarifying the reference to ''manual'' is to the approved ROW manual. The proposed rule also revises the regulatory text to clarify that the ROW manual or approved RAMP must have procedures for determining whether a real property interest is excess real property, which this NPRM proposes to define as a real property interest not needed currently or in the foreseeable future for transportation purposes or other uses eligible under title 23. Excess real property may be sold or otherwise permanently disposed of by the grantee. The new provision also would require the ROW manual to contain procedures for determining when a real property interest may be made available under a ROW use agreement for an alternate use that is consistent with the requirements described in proposed section 710.403(b). The NPRM would eliminate the explicit list of organizational units with which the grantee must coordinate when considering whether property is excess or can be made available for an alternate use. The FHWA believes grantees are best qualified to determine what type of internal coordination is appropriate.

This NPRM proposes to revise redesignated section 710.403(d) (currently section 710.403(c)) to update the language on environmental review of ROW use agreements and disposals and clarify the scope of the provision. The NPRM proposes eliminating the reference to FHWA approval. This change is made to better reflect FHWA's use of the Stewardship/Oversight Agreement to permit an SDOT to assume responsibility for certain ROW use agreement and disposal determinations. The new paragraph retains the requirement for environmental review of such transactions pursuant to 23 CFR part 771. The changes to this paragraph would not affect any assignment of environmental review responsibilities entered into by FHWA and the SDOTs.

This NPRM proposes to revise redesignated section 710.403(e) (currently section 710.403(d)) by adding language to clarify that the requirement to charge fair market value, except as provided in paragraph (e), applies to the use and disposal of all real property interests obtained with the assistance of title 23 funds. This revision is needed to eliminate confusion that has occasionally occurred in administration of the existing regulation. The NPRM proposes to delete language describing the principles guiding disposals. The principles and the requirements for fair market value and use of net proceeds are covered in detail in other parts of this and other sections in part 710, making this language redundant. The NPRM also proposes clarifying the language in the paragraph relating to FHWA approval of a disposal at less than fair market value, as further described below.

This NPRM proposes to revise newly numbered 710.403(e)(1) (currently 710.403(d)(1)) by rewording the language to clarify its intent and the long-standing FHWA interpretation of this exception to the fair market value requirement. The revised provision would state, in part, that the exception applies when it is in the overall public interest based on social, environmental, or economic benefits. The revision would use the word ''benefits'' in place of the current term ''purposes.'' The FHWA believes that the change in language from ''purposes'' to ''benefits'' more accurately describes how the public interest is determined and the type of effect that FHWA and the grantee reasonably must expect will result from this type of disposal in order to approve the less-than-fair-market-value transaction. The current regulation allows the SDOT or other grantee to use its ROW manual to describe the criteria for evaluating requests for less-than-fair-market-value disposals on social, environmental, or economic grounds. The NPRM proposes to change from the current permissive language to a requirement that the approved ROW manual contain such criteria. The FHWA believes that the criteria for determining whether adequate social, environmental, or economic benefits are present must be clearly and unambiguously detailed in the approved ROW manual in order to clearly document the specific positive benefits that the grantee and public will be receiving as a result of the proposed disposal.

The proposed rule would eliminate the current regulation's reference to 23 U.S.C. 142(f) in the existing section 710.403(d)(1). This change would be part of the creation of a paragraph in new section 710.403(e)(5) that consolidates the regulatory provisions in part 710 that address the issue of fair

market value when ROW will be used for publicly owned mass transit purposes. This proposed rule would use the regulatory text at 710.405(c) of the existing regulation for the new section 710.403(e)(5). The new regulation would change the numbering of the current sections 710.403(d)(2) through (4) to sections 710.403(e)(2) through (4), respectively.

The NPRM would redesignate existing section 710.403(d)(5) as 710.403(e)(6), and insert the word ''other'' into the text to clarify that the intent of the provision is to cover types of projects not otherwise listed in 710.403(e)(2) through (5). The proposed rule would modify the language in section 710.403(e)(6) to clarify that concession agreements affecting title 23-funded facilities are not exempt from fair market value requirements. The FWHA believes that this clean-up and reorganization will make it easier for grantees and other to understand and apply this part of the regulations.

This NPRM proposes to revise section 710.403(f) (currently section 710.403(e)) by clarifying that the Federal share of the net income from any alternate use or disposal of a real property interest obtained with title 23 funds must be used for title 23 eligible activities. This language implements 23 U.S.C. 156. The NPRM also proposes modifying the language at the end of paragraph (f) to more clearly state that the use of net income described in this part does not cause title 23 requirements to apply to such use. The FHWA believes that these clarifications are necessary to ensure grantees clearly understand the requirements of 23 U.S.C. 156 that are reflected in section 710.403(f).

This NPRM proposes to relocate the provision in the current regulation (now 710.403(f)) concerning the disposal of excess real property outside the ROW when no Federal funds were used to acquire it. The FHWA proposes to move the provision to a revised section 710.409 that consolidates the provisions of the regulation relating to disposal of excess property. This change is proposed for purposes of clarity and streamlining.

Section 710.405 ROW Use Agreements

This NPRM proposes to change the title of section 710.405 from ''Air rights on the Interstate'' to ''ROW use agreements.'' This change supports other proposed changes to the section, discussed below.

This NPRM would change the approach to property management by eliminating the current regulation's discussion of air space and air rights agreements in section 710.405. This NPRM also would eliminate the separate section on leasing in section 710.407. Instead, the proposed regulation would rely on the concept of ''ROW use agreements'' to handle leases and other time-limited non-highway uses both inside and outside of the approved ROW limits of all Federal-aid highways and transportation facilities, including Interstates. The process of deciding whether to grant a ROW use agreement would continue to include consideration of whether the proposed use will interfere with the transportation facility. The FHWA expects this evaluation process to embody the same considerations for protecting the transportation facility that the current regulation calls for in its air space, air rights agreements, and leasing provisions.

The new section 710.405 proposed in this NPRM would eliminate use of the term ''airspace,'' and instead use ''real property interests,'' which is a term this NPRM proposes to make synonymous with the term ''real property.'' As defined in section 710.105 of the current regulation, ''air space'' is the space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved ROW or project boundaries. Thus, ''air space'' is a subset of the entirety of the real property interests that make up full fee ownership of real property.

This NPRM also proposes to eliminate use of the term ''air rights.'' An ''air rights'' agreement under the existing section 710.405 is the method used to convey time-limited and/or permanent rights for an alternate use of air space. Under this NPRM, the regulation would use the term ''ROW use agreement'' when referring to a time-limited agreement to permit an alternate use of real property that is part of a title 23-funded facility or was acquired with title 23 funds. A conveyance of permanent rights would be handled as a disposal.

As discussed earlier in this NPRM, FHWA is proposing these changes because it believes the continued use of the terms ''air space'' and ''air rights'' is unnecessarily confusing. In current title 23 real estate practice, the terms ''air space'' and ''air rights'' rarely describe the true nature and scope of the alternate use rights being granted. In addition, FHWA believes it is no longer necessary to call out air space separately from the remaining parts of the facility, as the agreement for the use should specify in detail the parts of the facility affected by the alternate use. In the agency's experience, the existing regulatory scheme involving ''air space'' and ''air rights'' is often challenging to administer, and FHWA believes it will be more effective for the regulations to focus on distinguishing between a grant of time-limited rights (ROW use agreements) and a conveyance of permanent rights (disposal).

Accordingly, this NPRM proposes to rewrite section 710.405 to reflect proposed provisions on ROW use agreements. Language in the existing section that FHWA believes should apply to such agreements would be retained or updated. Proposed section 710.405(a) would contain a description of ROW use agreements and a number of general requirements applicable to those agreements. The proposed rule also would change section 710.405(a) by adopting a reference to highways, as defined in 23 U.S.C. 101(a), that received title 23 funds.

Existing section 710.405 governs FHWA approval of air rights on the Interstate system and contains a list of transactions excluded from the section. This NPRM proposes retaining those listed exclusions that would remain in effect under the proposed ROW use agreement provisions in 710.405. The exclusion for non-Interstate highways now in section 710.405(a)(2)(i) would be deleted, as it is no longer needed given the restructuring of this subpart. The deletion would not eliminate the authority to assign non-Interstate ROW use agreement approvals to SDOTs through the FHWA–SDOT Stewardship and Oversight Agreement. These changes in 710.405(a) are consistent with the NPRM's proposed simplified approach to management of alternate uses for all real property interests that are part of a Federal-aid facility or were acquired with Federal-aid funds.

The deletion of the exception for non-Interstate highways would result in redesignating the remaining exceptions in 710.405(a)(2). This NPRM proposes to revise the redesignated section 710.405(a)(2)(ii) (section 710.405(a)(2)(iii) in the current regulation) by adding references to additional parts of the title 23 regulation that apply to the relocation of railroads or utilities. The FHWA believes that adding the additional references to this section provides clarity and additional detail, and makes it easier to determine when this section of the regulation applies.

Section 710.405(b) is rewritten to reflect the applicability of the ROW use agreements to only time-limited rights, and to articulate a number of provisions such agreements must include. The requirements cover such topics as the term of the ROW use agreement, the design and location of the alternate use,

insurance to protect FHWA and the State, and compliance with nondiscrimination requirements. The FHWA considers this information as the minimum necessary to protect the Federal interest in facilities that would become subject to a ROW use agreement. The agency recognizes this type of detail was eliminated from FHWA real estate and ROW regulations in earlier rulemakings, previously referenced, based on the assumption the requirements would be embodied in other types of agency directives. However, FHWA has found the absence of this information from the regulations has made it more difficult for grantees and others to understand what is required.

Proposed sections 710.405(c) and (d) set forth language taken from the leasing provision in section 710.407 of the current regulation. Those provisions, from existing sections 710.407(b) and (c), respectively, prohibit the use of Federal funds if an alternate use requires a change in the transportation facility, and require alternate uses to conform to design standards and safety criteria. The FHWA believes it is logical to place these provisions with the other requirements affecting ROW use agreements, since such agreements include lease transactions.

This NPRM proposes addition of a new provision in section 710.405(e) that incorporates into the regulation the application requirements that FHWA and the SDOTs have been using for some time when a third party wishes to obtain use rights in a Federal-aid facility. The requirements include submission of the identity of the party responsible for developing and operating the alternate use, a description of the proposed use and why it would be in the public interest, and information demonstrating the design and location of the proposed use will meet the requirements in section 710.405. The FHWA considers this information as the minimum necessary to allow adequate review of proposed alternate uses. As previously discussed, the agency recognizes this type of detail was eliminated from FHWA real estate and ROW regulations in earlier rulemakings. However, FHWA has found the absence of this information from the regulations has made it more difficult for grantees and others to understand what is required.

Section 710.407 Reserved

As stated above, this NPRM proposes to delete existing section 710.407, on leasing, and reserve the section for future use. The rationale for the proposal is discussed in detail in the discussion of section 710.405.

Section 710.409 Disposal of Excess Real Property

This NPRM proposes changing the title of section 710.409 from ''Disposals'' to ''Disposal of excess real property.'' This change is part of the proposed update in approach to real property management. This NPRM proposes to clarify that when a real property interest is not needed for the transportation facility now or in the foreseeable future, the grantee may determine it is excess real property and dispose of it in whole or in part. As previously mentioned, this NPRM also proposes changes to the definition of ''disposal'' in section 710.105, to clarify a disposal involves the conveyance of permanent rights in excess real property, and that a disposal must meet the requirements in proposed 23 CFR 710.403(b). The proposed revisions to section 710.409 detail the requirements for carrying out a disposal. Much of the language in sections 710.409(a) through (d) is retained, although some changes are proposed to align the language with the new approach described above and to update the terminology and regulatory references.

This NPRM proposes to delete the last sentence of existing section 710.409(b), concerning SDOT use of a disposal listing to notify other Federal, State, and local agencies of a proposed disposal of excess real property. The FHWA believes the language is no longer necessary. The FWHA understands that SDOTs may decide to continue to use the disposal notification listing as a method of notifying State agencies of real property interests which the SDOT is considering disposing of and which may be of use to another State agency. The FHWA believes that SDOTs and other grantees may effectively use a number of other methods to meet the notification requirements of this paragraph.

This NPRM proposes to delete the last sentence in section 710.409(d) as duplicative of other parts of this regulation. The FHWA believes the requirements for disposals at less than fair market value are covered in the proposed section 710.403(e) and do not need to be restated in this paragraph.

As discussed earlier in this NPRM, this proposed rule would move the provisions in existing section 710.403(f), concerning disposal of excess real property outside the approved ROW limit or project boundary, to a new section 710.409(e). The FHWA believes it is more logical to place the provision in this specific section on disposals, than to have it in section 710.403, which covers a broad range of management topics. This NPRM does not propose to substantively change existing section 710.403(f). For similar reasons, this NPRM proposes to relocate the provision on relinquishments from section 710.403(g) in the existing regulation, to a new section 710.409(f).

This NPRM proposes adding a new section 710.409(g) to incorporate into the regulation the information required in order to approve a request for a disposal. This information largely mirrors the types of information that would be required to support a request for a ROW use agreement under proposed section 710.405(e). To avoid duplication, proposed section 710.409(g) would incorporate certain submission requirements by reference to provisions in 710.405(e)(1)–(9). The FHWA has found the absence of this information from the regulations has made it more difficult for grantees and others to understand what is required.

Subpart E—Property Acquisition Alternatives

Section 710.501 Early Acquisition

The MAP–21 provides new and revised methods for early acquisition of real property, with potential for either reimbursement or credits of real property acquisition costs. The FHWA is proposing to revise and reorganize this section of the regulation to add the new authorities and the accompanying requirements for early acquisition authorized in section 1302 of MAP–21 (codified in 23 U.S.C. 108), and to better describe the early acquisition process. The new organization includes an introductory paragraph describing the options for early acquisition, a paragraph for State-funded early acquisition without Federal credit or reimbursement, a paragraph for State-funded early acquisition eligible for future credit, a paragraph for State-funded early acquisition eligible for future reimbursement, and a paragraph for federally funded early acquisition.

The authorities for early acquisition in 23 U.S.C. 108 are granted to ''States.'' The FHWA acknowledges this limiting language. However, FHWA also considered how the States have administered the Federal-aid highway program over the years. The States have used their SDOTs as the primary title 23 grantee, but the SDOTs have worked through subgrantees such as local public agencies to deliver title 23-funded projects. Based on this history, FHWA concluded the use of the term ''State'' in section 108 was intended to be read broadly, to include political

subdivisions and instrumentalities of the State. Proposed section 710.501 uses the term ''State agency'' to make it clear the early acquisition authorities apply not only to SDOTs, but also to other State and local governmental agencies.

The NPRM proposes to retain the distinction in the current regulation between early acquisitions in section 710.501, and hardship acquisition and protective buying provisions in section 701.503, with respect to the treatment of properties subject to 23 U.S.C. 138 (commonly known as ''section 4(f)'' properties). A section 4(f) property is publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance. Early acquisition provisions have not allowed early acquisition of section 4(f) properties. By contrast, such properties may be acquired under hardship acquisition or protective buying provisions in 710.503 if the necessary reviews and determinations have been completed under 23 U.S.C. 138 and 16 U.S.C. 470(f) (commonly known as ''section 106'' and relating to historic properties). The FHWA believes this distinction is still appropriate because early acquisitions often occur before sufficient information about the transportation project is available to support the necessary evaluations and decisions. Hardship and protective purchases typically occur when the proposed transportation project for which the property would be needed is well into NEPA and other required environmental reviews, and substantially more information is available about the location, design, alternatives, and other factors that could affect the evaluations and decisions.

This proposed rule would revise existing section 710.501(a) by changing the title to ''General,'' describing the various early acquisition alternatives available, and adding language to affirm that all early acquisition carried out under this section must conform to the requirements for real property acquisition for a title 23-funded project or program. The FHWA believes that it is necessary to add the language concerning the requirement that property acquired under this section conform to title 23 acquisition rules in order to avoid any confusion about whether the authorities in section 108 create exceptions to those requirements. If a grantee is acquiring property for a title 23-eligible project, then that property must be acquired in conformance with title 23 requirements in order to preserve eligibility for title 23 funding. In most cases, the requirements to preserve eligibility for funding are already being met by SDOTs and others when they acquire properties under the current provisions.

This NPRM proposes to add a new section 710.501(b), State-funded early acquisition without Federal credit or reimbursement. Paragraph (b) clarifies long-standing acquisition requirements that a State agency must meet in order to maintain future project eligibility under title 23 if the State agency carries out early acquisitions without seeking credit or reimbursement for the costs from title 23 funds. The SDOTs increasingly choose to use their limited title 23 funds on other phases or parts of a project or program, and often do not seek credit or reimbursement for their early acquisition costs. In fact, those acquisitions can affect the eligibility of the entire project, making it important to ensure the SDOTs and other State agencies are aware of applicable requirements. If a State agency wants a project to be eligible for title 23 funds in any phase, title 23 acquisition requirements, including compliance with the Uniform Act, must be met. The FHWA believes that States already understand this point, but that it is important to remove any potential for confusion by expressly including the requirements and conditions in section 710.501(b) so that States can effectively ensure that a project remains eligible for Federal aid when carrying out State-funded early acquisitions.

As a result of the new section 710.501(b), this NPRM proposes to redesignate existing sections 710.501(b) and 710.501(c) as sections 710.501(c), and 710.501(d), respectively.

This NPRM proposes to revise the redesignated section 710.501(c) to better describe the credit option for State-funded early acquisition. This section describes the requirements that must be met in order to maintain eligibility to use real property costs as a credit toward the State's share on a project or program receiving funds from the Highway Trust Fund. The NPRM proposes changing the wording in the first sentence from ''prior to executing a project agreement with the FHWA'' to ''prior to completion of the environmental review process for the transportation project.'' The FHWA believes this will be clearer and will better conform to the intent of 23 U.S.C. 108, as amended by MAP–21. The NPRM does not propose any substantive changes to the list of conditions that must be met, although some minor updates in language are proposed. For clarity, this NPRM proposes adding cross-references in 710.501(c) to related provisions in 710.505(b) (Credit for donations) and 710.507 (State and local contributions).

This NPRM also proposes to revise the redesignated section 710.501(d) to better describe the option for State-funded early acquisition eligible for future reimbursement from apportioned title 23 funds. This section incorporates requirements that State agencies must meet when carrying out early acquisition of real property interests and the State agency wishes to request reimbursement from title 23 apportioned funds for the acquisition costs after the NEPA review for the entire project is complete. The NPRM substantially revises the existing regulation (now 710.501(c)) to conform to 23 U.S.C. 108(c), as amended by MAP–21. Under the NPRM, the detailed requirements of 23 U.S.C. 108(c)(3), as well as the requirements of section 710.203(b) (relating to direct eligible costs), would be included by reference rather than described in a detailed list. The FHWA believes this is the best method to ensure that State agencies understand the requirements that must be met in order to successfully request reimbursement for acquisition costs under this authority.

This NPRM proposes to add a new 710.501(e) to provide the requirements for using the new authority in 23 U.S.C. 108(d) for federally funded early acquisition of real property (an ''Early Acquisition Project''). Section 108(d), added by MAP–21 section 1302, gives States the ability to develop federally assisted projects or programs comprised solely of the early acquisition of real property interests that will be used for a proposed transportation project that has not yet completed the environmental review process. Section 108(d) requires the State agency to certify to the existence of eight conditions prior to FHWA authorization of title 23 apportioned funds to carry out early real property acquisition. This NPRM proposes a section 710.501(e)(2) that follows the language in 23 U.S.C. 108(d)(3). This section would require the State agency to submit a certification stating each of the required conditions has been or will be satisfied.

The FHWA would decide whether to concur with a certification based on the content of the certification and FHWA's knowledge of the project. The FHWA would request additional information to complete its evaluation of the certification, if needed. The FHWA does not believe it is practical to try to capture in regulation every scenario for complying with the requirements in 23 U.S.C. 108(d)(3)(B) and proposed 710.501(e)(2). If implementation of these

provisions raises new questions, future guidance may be needed to answer specific questions that arise about the certification requirements and the FHWA concurrence determination processes. With the exception of the two areas discussed below, NEPA and condemnation, FHWA expects to wait until it has more experience administering the certification process before it considers issuing implementing guidance.

The FHWA understands there are existing questions about how FHWA will evaluate the certifications relating to NEPA. The State agency must certify the proposed federally funded Early Acquisition Project will not cause any significant adverse environmental effects (23 U.S.C. 108(d)(3)(B)(ii)), will not limit the choice of reasonable alternatives or influence the decision on the overall project (section 108(d)(3)(B)(iii)), and does not prevent an impartial decision as to whether to accept an alternative being considered for the overall project (section 108(d)(3)(B)(iv)). This NPRM provides information on some of the considerations FHWA believes may be relevant to a decision whether to concur in the certification, but this discussion is not intended to be exhaustive or to limit future FHWA actions.

As part of its determination whether to concur with the environmental aspects of a State agency certification under proposed 710.501(e), FHWA may consider a number of factors such as:

(1) Whether the Early Acquisition Project may cause negative or reduced public/agency confidence in the environmental review process for the proposed transportation project;

(2) Potential impacts of financial and time commitments for the Early Acquisition Project(s) on the proposed transportation project's costs and schedule if an alternative ultimately is selected that will not require or use the properties acquired early; and

(3) Possible effects of the Early Acquisition Project on the alternatives evaluation and selection process for the proposed transportation project, such as:

(a) How the investment in Early Acquisition Project(s) affects the presentation of the alternatives in the proposed transportation project's environmental documents;

(b) How the Early Acquisition Project(s) might affect early coordination with the public and participating agencies, and collaboration with participating agencies on the range of alternatives for the proposed transportation project and impact methodologies for alternatives analysis;

(c) Whether the Early Acquisition Project(s) can reasonably be expected to cause lead agency decisionmakers to disproportionately support one alternative, while giving insufficient weight to information supporting other alternatives.

Another certification requirement that may raise interpretive questions is the provision that federally funded early acquisition must be accomplished without the use, or threat of use, of eminent domain (23 U.S.C. 108(d)(3)(B)(vii) and proposed section 710.501(e)(2)(viii)). It is important to note that several States follow a process under which they use eminent domain to clear or quiet title to a property. The FHWA believes that after the property owner and the agency have reached a binding agreement on the purchase/sale of the real property for a project or program using the new federally funded early acquisition authority, States may use condemnation to clear or quiet title on the affected parcel without violating the statutory provision on condemnation.

Consistent with 23 U.S.C. 108(d)(4) and NEPA, this NPRM proposes adding section 710.501(e)(4), concerning the environmental review process for an Early Acquisition Project funded under title 23. The NEPA evaluation should include consideration of both the impacts of the particular acquisition under review, and the impacts of other Early Acquisition Projects that will be carried out in connection with the same proposed transportation project. The FHWA's expectation is that, where multiple Early Acquisition Projects are carried out, the environmental reviews for all Early Acquisition Projects will meet NEPA requirements for evaluating cumulative impacts of both past, present, and reasonably foreseeable future Early Acquisition Projects. Information on the direct, indirect, and cumulative impacts of the early acquisition will be relevant to determining the NEPA class of action for the Early Acquisition Project, the acceptability of the impacts, and whether an Early Acquisition Project will cause significant adverse environmental effects under 710.501(e)(2)(iii). Consistent with 23 U.S.C. 108(d), under the proposed rule the NEPA review of an Early Acquisition Project would not include consideration of the direct, indirect, or cumulative impacts of the proposed transportation project for which the property is being purchased. The purpose of the new authority in 23 U.S.C. 108(d) is to allow an Early Acquisition Project to proceed even though NEPA is not complete for the proposed transportation project. Requiring NEPA evaluation of the impacts of the proposed transportation project before proceeding with the Early Acquisition Project would render the new authority in section 108(d) meaningless.

This new acquisition authority is premised on a ''buy and hold'' concept, in which the acquisition activity results only in a change in ownership of the real property interest, but otherwise typically maintains the pre-acquisition uses and conditions. The State agency, as part of the environmental review of the federally assisted Early Acquisition Project, must include an appropriate analysis of the impacts of the acquisition, including relocation, and any interim activity planned for the real property interests until the property is used for the proposed transportation project (such as property maintenance to maintain the existing condition of the property, or demolition for public safety reasons). This analysis will be used to determine whether the Early Acquisition Project's impacts are acceptable. The FHWA believes this approach is consistent with the limitation in 23 U.S.C. 108(d)(6), enacted under MAP–21. That provision does not allow federally assisted early acquired properties to be developed in anticipation of the proposed transportation project until the NEPA review process for the proposed transportation project is concluded. To facilitate understanding of the scope of this statutory language, this NPRM proposes a new section 710.501(f) that describes the types of development activities FHWA considers prohibited by the statute. This new section provides direction on what ''developed in anticipation of a project'' means. The proposed regulatory description of prohibited activities includes demolition, site preparation, clearing and grubbing, and construction that may have an adverse environmental impact or cause a change in the use or character of the real property. The FHWA believes that there may be very limited instances in which development activities may be appropriate. Accordingly, this NPRM proposes specific instances when it may be appropriate for FHWA to approve limited development activity based on public health or safety considerations.

The NPRM also proposes adding language in 710.501(e)(4) stating that an Early Acquisition Project must comply with all applicable environmental laws. The MAP–21 changes to 23 U.S.C. 108 affect the NEPA review process, but do not alter or amend other environmental laws.

This NPRM proposes adding a new 710.501(g), reflecting the reimbursement provisions in 23 U.S.C. 108(d)(7), as added by MAP–21 section 1302. This new paragraph requires that when Federal-aid reimbursement has been

made for early acquired real property, the real property must be incorporated into a project eligible for surface transportation funds within the 20-year time period allowed by 23 U.S.C. 108(a)(2). If the State agency does not meet this requirement, FHWA will offset the amount reimbursed against funds apportioned to the State.

Early acquisition provisions in both section 108(c) and (d) of title 23, as amended by MAP–21 section 1302, contain provisions designed to ensure early acquisitions fully satisfy Uniform Act requirements. Section 108(d)(3)(B)(viii) expressly states that the early acquisition may not reduce Uniform Act benefits or assistance to a displaced person. Consistent with that mandate, FHWA interprets the early acquisition provisions as subject to Uniform Act requirements in 49 CFR part 24, and concludes that early acquisitions are not voluntary transactions within the meaning of 49 CFR 24.101. This NPRM proposes to add a new section, 710.501(h), addressing the timing of relocation assistance eligibility in the context of early acquisitions under section 710.501. The proposed section 710.501(h) provides that persons are eligible for relocation assistance when there is a binding written agreement between the acquiring agency and the property owner for the early acquisition of the real property interests. This would include tenants on properties acquired as an early acquisition, who would be eligible for relocation assistance when there is a binding written agreement between the acquiring agency and the property owner for the acquisition of any interests in the real property. The proposed section excludes situations, such as the use of an option agreement, that do not create an immediate commitment by the State agency to acquire and do not require an owner or tenant to relocate. In those cases, relocation eligibility does not occur until the State agency legally commits itself to acquiring the real property interest(s).

Section 710.503 Protective Buying and Hardship Acquisition

This NPRM proposes updating references in section 710.503 and changing the term ''SDOT'' to ''grantee'' in several places. The NPRM also proposes revising section 710.503(d), relating to environmental decisions for proposed acquisitions under the protective buying and hardship acquisition provisions in 710.503, by adding new language clarifying that acquisitions under this section are subject to environmental review under part 771. This is a clarification of existing regulations. Often, such acquisitions meet the requirements for a categorical exclusion under 23 CFR 771.117(d)(12).

Section 710.505 Real Property Donations

This NPRM proposes to revise 710.505(a), relating to the donation of real property for a title 23 project, by adding a requirement that the mandatory notification to the real property owner must be in writing. The FHWA believes that this type of documentation will help ensure that the property owners are fully and fairly informed, and will ensure the acquiring agency has the documentation necessary to support title 23 eligibility. The description of the required contents of the notice has been updated by revising the language describing valuation methods that can be used by an acquiring agency to develop an estimate of just compensation. This NPRM also changes the description of the notice requirements to include notice of financial and non-financial assistance available under applicable State law, as well as assistance available under the Uniform Act, to make this paragraph consistent with the cost eligibility provisions in section 710.203(b)(2)(ii). This NPRM proposes adding references in section 710.505(b) to the underlying statutory provision on donations.

Section 710.507 State and Local Contributions

This NPRM proposes to revise section 710.507 to clarify that the requirements of 23 U.S.C. 323 must be met in cases involving State and local contributions. The proposed rule would reflect the 2005 repeal of 23 U.S.C. 323(e), which was a special provision for contributions by local governments. The provisions governing credit for real property interests contributed to a project are now the same for State and local governments. This NPRM would implement this change by consolidating the provisions on local governments into 710.507(a) and (b).

The NPRM proposes to modify existing section 710.507 by deleting paragraph (b), which contained an effective date related to a prior rulemaking, and redesignating paragraphs (c) through (e), accordingly. The FHWA believes that because nearly 15 years have passed since publication of this rule, the existing paragraph (b) is no longer relevant. However, if SDOTs are still carrying out projects or programs under agreements executed before June 9, 1998, the rules governing credits at the time of the project agreement for those projects would continue to apply. The NPRM also proposes to update references to other regulations in this part to conform to other proposed revisions to this regulation.

Section 710.509 Functional Replacement of Real Property in Public Ownership

In addition to updating terms throughout the section, this NPRM proposes to modify section 710.509(b)(4), which governs the notices that must be provided when the acquiring agency considers the functional replacement of a publicly owned real property in lieu of paying fair market value for the property. The revision would add a requirement that notification to the owner agency of its right to receive just compensation must be in writing. This type of documentation will help ensure that the property owners are fully and fairly informed, and that the acquiring agency has the documentation necessary to support title 23 eligibility.

Section 710.511 Transportation Alternatives Program

Congress did not reauthorize the Transportation Enhancements Program in MAP–21, but instead included elements of that program in the newly enacted TAP as described in MAP–21 Sections 1103 and 1122 (codified at 23 U.S.C. 133(b)(11) and 213). This NPRM proposes to replace all references to transportation enhancements in the existing regulation with references to TAP and to rewrite this section to conform to TAP provisions. Any projects authorized under the former Transportation Enhancement Program will continue to be subject to the existing requirements.

This NPRM proposes to revise and reorganize section 710.511(b). The requirements for Uniform Act compliance and applicability that are in sections 710.511(b)(1) and (2) of the existing regulation are consolidated and incorporated into proposed section 710.511(b)(1). This NPRM proposes to delete the exemption for acquisitions by conservation organizations that is contained in existing section 710.511(b)(2). This exclusion was contained in section 315 of the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 588), and subsequently incorporated into part 710 at 710.511(b)(4). The reason for the proposed deletion is that this exemption from the Uniform Act requirements was eliminated when MAP–21 was enacted. Under MAP–21 amendments to 23

U.S.C. 213(e), TAP projects are subject to Federal-aid highway requirements under title 23, with a limited exception for recreational trails projects. The Uniform Act provisions for voluntary acquisitions in the 49 CFR part 24 implementing regulations will continue to apply to such transactions.

This NPRM proposes to modify section 710.511(c) by updating the description of the applicability of the Subpart D Real Property Management rules to TAP properties, by requiring the use of a TAP property agreement between the grantee and FWHA that specifies the expected useful life of the project and establishes a pro rata repayment if the acquired property in whole or part is used for another purpose. This requirement is needed to ensure TAP projects comply with the long-standing FHWA interpretation that this type of project, which often involves the use of leases and other time-limited property rights, must guarantee a project life of sufficient length to support the use of title 23 funds; and that if the project terminates early, title 23 funds that were approved for use for the stated project purpose are recovered.

Subpart F—Federal Assistance Programs

Section 710.601 Federal Land Transfers

This NPRM proposes to revise section 710.601(a) to incorporate a conforming amendment in section 1104(c)(6) of MAP–21, which clarified that Federal land transfers are available for eligible highway projects that are not on a Federal highway system. This NPRM propose to revise section 710.601(b) to refer to the acquisition of ''real property'' rather than ''lands or interests in lands'' for consistency with the rest of part 710. This terminology change does not change the type of interests that can be acquired. The FHWA also proposes language in paragraph (b) on the eligibility for the use of authorities under 23 U.S.C. 107(d) and 317, which permit FHWA to transfer real property from the United States to non-Federal owners. The change is to recognize that the two statutes have slightly different eligible entities, although both statutes make SDOTs eligible.

In section 710.601(e), the qualifier ''For projects not on the Interstate System'' is proposed to be added to the second sentence, before the limitation that the land-management agency shall have a period of 4 months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. Under section 107(d) of title 23, transfers of Federal property for the Interstate System are not subject to the designation of conditions or certification by the land-management agency. Finally, a new section 710.601(f) is proposed to clarify that FHWA can participate in costs incurred by the grantee and associated with Federal land transfers when the transferring Federal land-management agency is required to assess such costs as a condition of transfer. Current paragraphs (f) through (h) would be redesignated (g) through (i), and language would be added to clarify the process for carrying out a transfer of Federal lands. The NPRM proposes the addition of language in redesignated section 710.601(i), relating to property no longer needed for the title 23 project, to recognize the authority for alternate agreements when other Federal law does not permit a reversion of the property back to the United States or the original land-management agency.

Section 710.603 Direct Federal Acquisition

This rule proposes to revise and reorganize paragraphs (a)–(c) to clarify when FHWA may make a direct Federal acquisition from non-Federal owners, and to clarify the slight differences in the processes to be followed for projects for the Interstate System and Defense Access Road projects, and other types of projects carried out by the FHWA Office of Federal Lands Highways. Proposed 710.603(a) would cover direct Federal acquisitions for Interstate System and for Defense Access Road projects. Proposed 710.603(b) would address other types of Federal acquisition of real property from non-Federal owners.

The MAP–21 made several changes to the names of programs funded under chapter 2 of title 23 and this NPRM proposes to eliminate the list of program names in existing section 710.603(a). Language is proposed in new paragraphs (b) and (h) clarifying that FHWA may not accept jurisdiction for any property acquired, even temporarily. This addition is made to address questions that have arisen in in connection with such transfers. The FHWA carries out these transactions solely as a means of placing the property needed for a project into the ownership of the State or the applicant agency. There is no intention for FHWA to accept or retain land management authority, and the agency does not have the administrative means to manage or oversee such properties.

In reorganizing section 710.603, FHWA considered eliminating the Federal acquisition provisions contained in proposed 710.603(b), which apply to projects other than Interstate Highways and Defense Access Roads. The FHWA asks for comments on whether the provision is needed, given that it is seldom used and the underlying statutory authority for Federal condemnation actions would remain available in appropriate situations.

Subpart G—Concession Agreements

This NPRM proposes to change the ''State transportation department'' reference in 710.703(f) to ''SDOT,'' for consistency with the proposed reference changes throughout part 710.

PART 810—MASS TRANSIT AND SPECIAL USE HIGHWAY PROJECTS

Subpart A—General

Section 810.212 Use Without Charge

This NPRM proposes to revise section 810.212 by striking the word ''shall'' in the regulation and replacing it with ''may'' to eliminate an inconsistency between existing section 810.212 and other parts of applicable law. This will address a recurring question in recent years, which has been whether an SDOT is required to provide land needed for transit projects or programs without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements as is currently stated in section 810.212. Section 142(f) of title 23 U.S.C., states that a State shall be authorized to provide the land needed with or without charge. The existing regulation at 23 CFR 710.405(c) contains language that is consistent with the statute. This NPRM proposes to revise the language in section 810.212 to make it consistent with the statute and the part 710 regulation. Each State will continue to determine when State law, regulation, or policy allows or prohibits a conveyance without charge to a publicly owned mass transit authority for public transit purposes. This change will not in any way prohibit a State from providing land needed for transit projects or programs with no charge.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be

considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period and after DOT has had the opportunity to review the comments submitted.

The FHWA filed a redline version of parts 635, 710, and 810 in the docket to show all changes to the regulation text and facilitate public review and comment.

Executive Orders 12866 and 13563 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

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). The FHWA has determined preliminarily that this action would not be a significant regulatory action under section 3(f) of Executive Order 12866 and would not be significant within the meaning of DOT's regulatory policies and procedures (44 FR 11032). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It is anticipated that the economic impact of this rulemaking would be minimal. The changes that this rule proposes are requirements mandated by MAP–21 which add new authorities for early acquisition of property to part 710, and clarify the Federal-aid eligibility of a broad range of real property interests that constitute less than full fee ownership. This NPRM also proposes to streamline program requirements, clarify the Federal-State partnership, and carry out a comprehensive update of part 710. Corresponding revisions are proposed for related regulations in 23 CFR parts 635 and 810 to help ensure consistency in interpretation of title 23 requirements, and to better align the language of the regulations with current program needs and best practices. This proposed rule would implement changes identified by the public in response to the DOT's initiative on Implementation of Executive Order 13563, Retrospective Review and Analysis of Existing Rules. The FHWA believes that the proposed streamlining and updating in this NPRM will result in a reduction of Federal requirements and will afford the States new flexibilities to more efficiently acquire real property.

The FHWA has had an ongoing dialog with stakeholders and has developed the proposed rule in a manner that balances stake holders concerns and practical implementation issues to allow SDOTs to utilize the new flexibilities while minimizing their effects on existing requirements and procedures. The FHWA believes that this rule will be non-controversial due to the scope and nature of the proposed additions and changes to the regulation.

The FHWA estimated the incremental costs associated with two new requirements proposed in this NPRM that represent a change to current practices for SDOTs and MPOs. These costs will be primarily incurred by SDOTs. The FHWA derived the costs [7] of the two components by assessing the expected increase in level of effort from labor to update ROW manuals, and the increase in level of effort required to comply with new early acquisition requirements.

To estimate costs, FHWA first considered the costs associated with updating the SDOT ROW manual. The FHWA multiplied the level of effort, expressed in labor hours, with a corresponding loaded wage rate for the professional staff necessary to complete updates to the ROW manual. Following this approach the undiscounted incremental costs to comply with this rule are $890,000.[8] These costs represent one time costs to implement this rule.[9]

Similarly, to estimate costs associated with complying with the new early acquisition requirements, FHWA multiplied the level of effort, expressed in labor hours, with a corresponding loaded wage rate for the professional staff necessary to comply with those requirements and use the new early acquisition flexibilities. Following this approach, the annual undiscounted incremental costs to comply with this rule are $950,000.[10]

The FHWA could not directly quantify the expected benefits due to data limitations and the amorphous and qualitative nature of the benefits from the proposed rule. The FHWA believes that significant new flexibilities in early acquisition will allow SDOTs to acquire real property interests earlier, ensuring parcel availability, ROW cost control and cost certainty, and fewer project delay claims due to ROW not being available. The FHWA believes that the expected qualitative and quantitative benefits from the use of the early acquisition flexibilities alone will exceed the cost of implementing the rule. In addition, the FHWA believes that significant benefits may accrue because this proposal clarifies and streamlines additional requirements including property management requirements, stewardship and oversight requirements, and Federal land transfer requirements. The FHWA invites comments on its cost estimates and discussion of benefits.

These proposed changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this proposed rule on small entities and anticipates that this action would not have a significant economic impact on a substantial number of small entities which includes SDOTs, Local Public Agencies, and other State governmental agencies.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule will not result in the

[7] The FHWA used salary data from Indeed Salary Search (*www.indeed.com*) which represents an index of salary information from job postings over the past 12 months to estimate labor costs.

[8] This estimate assumes that it will take approximately 225 hours to complete necessary updates to a ROW manual, that a loaded rate of $76 per hour (Hourly rate $47.60 for a ROW manager; estimated loaded rate of 160% of hourly rate) for labor will be incurred and by estimating the costs to update 52 ROW manuals.

[9] After updating the ROW manual to incorporate this rulemakings changes, the states will resume their normal process of updating their manuals.

[10] The FHWA calculated this by estimating that there would be 260 Early Acquisition Projects per year which would require approximately 40 hours of time each to comply with requirements associated only with Early Acquisition Projects. The FHWA used a loaded rate $76 per hour (Hourly rate $47.60 and an estimated loaded rate of 160% of hourly rate) for labor will be incurred (based on the cost of a ROW manager's loaded hourly rate).

expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $148.1 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, FHWA would evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector. Additionally, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FHWA has preliminarily determined that this proposed action would not warrant the preparation of a federalism assessment. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect any State's ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175 and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this action under Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.* The FHWA has determined that the proposed action is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the OMB for collections of information they conduct, sponsor, or require through regulations. The PRA applies to Federal agencies' collections of information imposed on 10 or more persons. ''Persons'' include a State, territorial, tribal, or local government, or branch thereof, or their political subdivisions.

This action contains amendments to the existing information collection requirements previously approved under OMB Control Number 2125–0586. As required by the PRA, the FHWA has submitted these proposed information collection amendments to OMB for its review. This proposal rule requires additional information in the SDOT ROW manual. The FHWA estimates that the additional requirements will increase the total burden hours by 11,700, or an average of 225 hours per grantee.

The FHWA invites interested parties to send comments regarding any aspect of this information collection, including: (1) Whether the collection of information is necessary; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 12898 (Environmental Justice)

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,* and DOT Order 5610.2(a) (the DOT Order), 91 FR 27534 (May 10, 2012) (available online at *www.fhwa.dot.gov/enviornment/environmental_justice/ej_at_dot/order_56102a/index.cfm*), require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations in the United States. The DOT Order requires DOT agencies to address compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. In addition, FHWA has issued additional documents relating to administration of Executive Order 12898 and the DOT Order. On June 14, 2012, FHWA issued an update to its EJ order, FHWA Order 6640.23A, *FHWA Actions to Address Environmental Justice in Minority Populations and Low Income Populations* (the FHWA Order) (available online at *www.fhwa.dot.gov/legsregs/directives/orders/664023a.htm*).

The FHWA has evaluated this proposed rule under the Executive Order, the DOT Order, and the FHWA Order. The FHWA has determined that the proposed regulations, if finalized, would not cause disproportionately high and adverse human health and environmental effects on minority or low income populations. The proposed regulations, if finalized, would establish procedures and requirements for grantees and others when acquiring, managing, and disposing of real property interests. The EJ principles, in the context of acquisition, management, and disposition of real property, should be considered during the planning and environmental review processes for the particular proposal. The FHWA will consider EJ when it makes a future funding or other approval decision on a project-level basis.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks.* The FHWA certifies that this proposed action would not concern an

environmental risk to health or safety that might disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA does not anticipate that this proposed action would effect a taking of private property or otherwise have taking implications under Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.*

National Environmental Policy Act

Agencies are required to adopt implementing procedures for NEPA that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). The proposed action is the adoption of regulations that provide the policies, procedures, and requirements for acquisition, management, and disposal of real property interests for Federal and federally assisted projects carried out under title 23, U.S.C. The proposed action has no potential for environmental impacts until the regulations, if adopted, are applied at the project level. The FHWA would have an obligation to evaluate the potential environmental impacts of such a future project-level action if the action constitutes a major Federal action under NEPA.

This proposed action qualifies for categorical exclusions under 23 CFR 771.117(c)(20) (promulgation of rules, regulations, and directives) and 771.117(c)(1) (activities that do not lead directly to construction). The FHWA has evaluated whether the proposed action would involve unusual circumstances or extraordinary circumstances and has determined that this proposed action would not involve such circumstances. As a result, FHWA finds that this proposed rulemaking would not result in significant impacts on the human environment.

Regulation Identification Number

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 635

Construction and maintenance, Grant programs-transportation, Highways and roads, Reporting and recordkeeping requirements.

23 CFR Part 710

Grant programs-transportation, Highways and roads, Real property acquisition, Reporting and recordkeeping requirements, Rights-of-way.

23 CFR Part 810

Grant programs-transportation, Highways and roads, Mass transportation, Rights-of-way.

Issued on: November 6, 2014.

Gregory G. Nadeau,

Acting Administrator, Federal Highway Administration.

In consideration of the foregoing, FHWA proposes to amend title 23, Code of Federal Regulations, parts 635, 710, and 810 as follows:

Title 23—Highways

PART 635—CONSTRUCTION AND MAINTENANCE

■ 1. The authority citation for part 635 continues to read as follows:

Authority: Sec. 1525 of Pub. L. 112–141, Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.;* Sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

■ 2. § 635.309 is revised to read as follows:

§ 635.309 Authorization.

Authorization to advertise the physical construction for bids or to proceed with force account construction thereof shall normally be issued as soon as, but not until, all of the following conditions have been met:

(a) The plans, specifications, and estimates (PS&E) have been approved.

(b) A statement is received from the State, either separately or combined with the information required by § 635.309(c), that either all right-of-way (ROW) clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems or the like, there shall be appropriate notification provided in the bid proposals identifying the ROW clearance, utility, and railroad work which is to be underway concurrently with the highway construction.

(c) Except as otherwise provided for design-build projects in § 710.309 of this chapter and paragraph (p) of this section, a statement is received from the State certifying that all individuals and families have been relocated to decent, safe, and sanitary housing or that the State has made available to relocatees adequate replacement housing in accordance with the provisions of the 49 CFR part 24 and that one of the following has application:

(1) All necessary ROWs, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the ROW but all occupants have vacated the lands and improvements and the State has physical possession and the right to remove, salvage, or demolish these improvements and enter on all land.

(2) Although all necessary ROWs have not been fully acquired, the right to occupy and to use all ROWs required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the State has physical possession and right to remove, salvage, or demolish these improvements.

(3) The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204. Under these circumstances, the State may request the FHWA to authorize actions based on a conditional certification as provided in this paragraph (c)(3).

(i) The State may request approval for the advertisement for bids based on a conditional certification. The Federal Highway Administration (FHWA) will approve the request unless it finds that it will not be in the public interest to proceed with the bidding before acquisition activities are complete.

(ii) The State may request approval for physical construction under a contract or through force account work based on a conditional certification. The FHWA will approve the request only if FHWA finds there are exceptional

circumstances that make it in the public interest to proceed with construction before acquisition activities are complete.

(iii) Whenever a conditional certification is used, the State shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the ROW are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

(iv) When the State requests authorization under a conditional certification to advertise for bids or to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefor, including identification of each such parcel, will be set forth in the State's request along with a realistic date when physical occupancy and use is anticipated as well as substantiation that such date is realistic. Appropriate notification must be provided in the request for bids, identifying all locations where right of occupancy and use has not been obtained. Prior to the State issuing a notice to proceed with construction to the contractor, the State shall provide an updated notification to FHWA identifying all locations where right of occupancy and use has not been obtained along with a realistic date when physical occupancy and use is anticipated.

(v) Participation of title 23 of the United States Code funds in construction delay claims resulting from unavailable parcels shall be determined in accordance with § 635.124. The FHWA will determine the extent of title 23 participation in costs related to construction delay claims resulting from unavailable parcels where FHWA determines the State did not follow approved processes and procedures.

(d) The State transportation department (SDOT), in accordance with 23 CFR 771.111(h), has submitted public hearing transcripts, certifications and reports pursuant to 23 U.S.C. 128.

(e) An affirmative finding of cost effectiveness or that an emergency exists has been made as required by 23 U.S.C. 112, when construction by some method other than contract based on competitive bidding is contemplated.

(f) Minimum wage rates determined by the Department of Labor in accordance with the provisions of 23 U.S.C. 113, are in effect and will not expire before the end of the period within which it can reasonably be expected that the contract will be awarded.

(g) A statement has been received that ROW has been acquired or will be acquired in accordance with 49 CFR part 24 and part 710 of this chapter, or that acquisition of ROW is not required.

(h) A statement has been received that the steps relative to relocation advisory assistance and payments as required by 49 CFR part 24 have been taken, or that they are not required.

(i) The FHWA has determined that appropriate measures have been included in the PS&E in keeping with approved guidelines, for minimizing possible soil erosion and water pollution as a result of highway construction operations.

(j) The FHWA has determined that requirements of 23 CFR part 771 have been fulfilled and appropriate measures have been included in the PS&E to ensure that conditions and commitments made in the development of the project to mitigate environmental harm will be met.

(k) Where utility facilities are to use and occupy the right-of-way, the State has demonstrated to the satisfaction of the FHWA that the provisions of 23 CFR 645.119(b) have been fulfilled.

(l) The FHWA has verified the fact that adequate replacement housing is in place and has been made available to all affected persons.

(m) Where applicable, area wide agency review has been accomplished as required by 42 U.S.C. 3334 and 4231 through 4233.

(n) The FHWA has determined that the PS&E provide for the erection of only those information signs and traffic control devices that conform to the standards developed by the Secretary of Transportation or mandates of Federal law and do not include promotional or other informational signs regarding such matters as identification of public officials, contractors, organizational affiliations, and related logos and symbols.

(o) The FHWA has determined that, where applicable, provisions are included in the PS&E that require the erection of funding source signs, for the life of the construction project, in accordance with section 154 of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

(p) In the case of a design-build project, the following certification requirements apply:

(1) The FHWA's project authorization for final design and physical construction will not be issued until the following conditions have been met:

(i) All projects must conform with the statewide and metropolitan transportation planning requirements (23 CFR part 450).

(ii) All projects in air quality nonattainment and maintenance areas must meet all transportation conformity requirements (40 CFR parts 51 and 93).

(iii) The NEPA review process has been concluded. (*See* 23 CFR 636.109).

(iv) The Request for Proposals document has been approved.

(v) A statement is received from the SDOT that either all ROW, utility, and railroad work has been completed or that all necessary arrangements will be made for the completion of ROW, utility, and railroad work.

(vi) If the SDOT elects to include ROW, utility, and/or railroad services as part of the design-builder's scope of work, then the Request for Proposals document must include:

(A) A statement concerning scope and current status of the required services or, in the case of right-of-way work, a certification in accordance with § 710.309(d)(1) of this chapter; and

(B) A statement which requires compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, 23 CFR part 710, and the acquisition processes and procedures are in the FHWA-approved ROW manual.

(2) During a conformity lapse, an Early Acquisition Project carried out in accordance with § 710.501 of this chapter or a design-build project (including ROW acquisition activities) may continue if, prior to the conformity lapse, the National Environmental Policy Act (NEPA) process was completed and the project has not changed significantly in design scope, FHWA authorized the early acquisition or design-build project, and the project met transportation conformity requirements (40 CFR parts 51 and 93).

(3) Changes to the design-build project concept and scope may require a modification of the transportation plan and transportation improvement program. The project sponsor must comply with the metropolitan and statewide transportation planning requirements in 23 CFR part 450 and the transportation conformity requirements (40 CFR parts 51 and 93) in air quality nonattainment and maintenance areas, and provide appropriate approval notification to the design-builder for such changes.

PART 710—RIGHT-OF-WAY AND REAL ESTATE

■ 3. The authority citation for part 710 is revised to read as follows:

Authority: Secs.1302 and 1321, Pub. L. 112–141, 126 Stat. 405. Sec. 1307, Pub. L. 105–178, 112 Stat. 107; 23 U.S.C. 101(a), 107,

108, 111, 114, 133, 142(f), 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d *et seq.,* 4633, 4651–4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

■ 4. Revise subparts A through F to read as follows:

Subpart A—General

Sec.
710.101 Purpose.
710.103 Applicability.
710.105 Definitions.

Subpart B—Program Administration

710.201 Grantee and subgrantee responsibilities.
710.203 Title 23 funding and reimbursement.

Subpart C—Project Development

710.301 General.
710.303 Project authorization and agreements.
710.305 Acquisition.
710.307 Construction advertising.
710.309 Design-build projects.

Subpart D—Real Property Management

710.401 General.
710.403 Management.
710.405 ROW use agreements.
710.407 [Reserved]
710.409 Disposal of excess real property.

Subpart E—Property Acquisition Alternatives

710.501 Early acquisition.
710.503 Protective buying and hardship acquisition.
710.505 Real property donations.
710.507 State and local contributions.
710.509 Functional replacement of real property in public ownership.
710.511 Transportation Alternatives Program.

Subpart F—Federal Assistance Program

710.601 Federal land transfers.
710.603 Direct Federal acquisition.

Subpart A—General

§ 710.101 Purpose.

The primary purpose of the requirements in this part is to ensure the prudent use of Federal funds under title 23, United States Code, in the acquisition, management, and disposal of real property. In addition to the requirements of this part, other real property related provisions apply and are found at 49 CFR part 24.

§ 710.103 Applicability.

(a) This part applies whenever title 23, United States Code, grant funding is used, including when grant funds are expended or participate in project costs incurred by the State or other title 23 grantee. This part applies to programs and projects administered by the Federal Highway Administration (FHWA) and, unless otherwise stated in this part, to all property purchased with title 23 grant funds or incorporated into a project carried out with grant funding provided under title 23, except property for which the title is vested in the United States upon project completion. Grantees are accountable to FHWA for complying with, and are responsible for ensuring their subgrantees, contractors, and other project partners comply with applicable Federal laws, including this part.

(b) The parties responsible for ROW and real estate activities, and for compliance with applicable Federal requirements, can vary by the nature of the responsibility or the underlying activity. Throughout this part, the FHWA identifies the parties subject to a particular provision through the use of terms of reference defined as set forth in § 710.105. It is important to refer to those definitions, such as ''State Department of Transportation (SDOT),'' ''grantee,'' ''subgrantee,'' ''State agency'' and ''acquiring agency,'' when applying the provisions in this part.

(c) Where title 23 of the United States Code funds are transferred to other Federal agencies to administer, those agencies' ROW and real estate procedures may be utilized. Additional guidance is available electronically at the FHWA Real Estate Services Web site: *http://www.fhwa.dot.gov/realestate/index.htm.*

§ 710.105 Definitions.

(a) Terms defined in 23 U.S.C. 101(a) and 49 CFR part 24 have the same meaning where used in this part, except as modified in this section.

(b) The following terms where used in this part have the following meaning:

Access rights means the right of ingress to and egress from a property to a public way.

Acquiring agency means a State agency, other entity, or person acquiring real property for title 23, United States Code, purposes. When an acquiring agency acquires real property interests that will be incorporated into a project eligible for title 23 grant funds, the acquiring agency must comply with Federal real estate and ROW requirements applicable to the grant.

Acquisition means activities to obtain an interest in, and possession of, real property.

Damages means the loss in the value attributable to remainder property due to the severance or consequential damages, as limited by State law, that arise when only part of an owner's real property is acquired.

Disposal means the transfer by sale or other conveyance of permanent rights in excess real property, when the real property interest is not currently or in the foreseeable future needed for highway ROW or other uses eligible for funding under title 23 of the United States Code. A disposal must meet the requirements contained in § 710.403(b). The term ''disposal'' includes actions by a grantee, or its subgrantees, in the nature of relinquishment, abandonment, vacation, discontinuance, and disclaimer of real property or any rights therein.

Donation means the voluntary transfer of privately owned real property, by a property owner who has been informed in writing by the acquiring agency of rights and benefits available to owners under the Uniform Act and this section, for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

Early acquisition means acquisition of real property interests by an acquiring agency prior to completion of the environmental review process for a proposed transportation project, as provided under § 710.501 and 23 U.S.C. 108.

Early Acquisition Project means a project for the acquisition of real property interests prior to the completion of the environmental review process for the transportation project into which the acquired property will be incorporated, as authorized under 23 U.S.C. 108 and implemented under § 710.501. It may consist of the acquisition of real property interests in a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.

Easement means an interest in real property that conveys a right to use or control a portion of an owner's property or a portion of an owner's rights in the property either temporarily or permanently.

Excess real property means a real property interest not needed currently or in the foreseeable future for transportation purposes or other uses eligible for funding under title 23, United States Code.

Federal-aid project means a project funded in whole or in part under, or requiring an FHWA approval pursuant to provisions in, chapter 1 of title 23, United States Code.

Federally assisted means a project or program that receives grant funds under title 23, United States Code.

Grantee means the party that is the direct recipient of title 23 of the United States Code funds and is accountable to FHWA for the use of the funds and for compliance with applicable Federal requirements.

Mitigation property means real property interests acquired to mitigate

for impacts of a project eligible for funding under title 23 of the United States Code.

Option means the purchase of a right to acquire real property within an agreed-to period of time for an agreed-to amount of compensation or through an agreed-to method by which compensation will be calculated.

Person means any individual, family, partnership, corporation, or association.

Real Estate Acquisition Management Plan (RAMP) means a written document that details how a non-State department of transportation grantee, subgrantee, or design-build contractor will administer the title 23 United States Code ROW and real estate requirements for its project or program of projects. The document must be approved by the SDOT, or by the funding agency in the case of a non-SDOT grantee, before any acquisition work may begin. It must lay out in detail how the acquisition and relocation assistance programs will be accomplished and any anticipated issues that may arise during the process. If relocations are reasonably expected as part of the title 23 project or program, the Real Estate Acquisition Management Plan (RAMP) must address relocation assistance and related procedures.

Real property or *real property interest* means any interest in land and any improvements thereto, including fee and less-than-fee interests such as: temporary and permanent easements, air or access rights, access control, options, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve ROW for a transportation facility. As used in this part, the terms ''real property'' and ''real property interest'' are synonymous unless otherwise specified.

Relinquishment means the conveyance of a portion of a highway ROW or facility by a grantee under title 23, United States Code, or its subgrantee, to another government agency for continued transportation use. (See 23 CFR part 620, subpart B.)

Right-of-way (ROW) means real property and rights therein obtained for the construction, operation, maintenance, or mitigation of a transportation or related facility funded under title 23, United States Code.

ROW manual means an operations manual that establishes a grantee's acquisition, valuation, relocation, and property management and disposal requirements and procedures, and has been approved in accordance with § 710.201(c).

ROW use agreement means real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23). These rights may be granted only for a specified period of time because the real property interest may be needed in the future for highway purposes or other purposes eligible for funding under title 23 of the United States Code.

Settlement means the result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following:

(i) An *administrative settlement* is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.

(ii) A *legal settlement* is a settlement reached by an authorized legal representative after filing a condemnation proceeding, including agreements resulting from mediation and stipulated settlements approved by the court in which the condemnation action had been filed.

(iii) A *court settlement* or *court award* is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of just compensation for a taking under the laws of eminent domain.

State agency means: a department, agency, or instrumentality of a State or of a political subdivision of a State; any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States; or any person who has the authority to acquire property by eminent domain, for public purposes, under State law.

State department of transportation (SDOT) means the State highway department, transportation department, or other State transportation agency or commission to which title 23, United States Code, funds are apportioned.

Stewardship/Oversight Agreement means the written agreement between the SDOT and FHWA that defines the respective roles and responsibilities of FHWA and the State for carrying out certain project review, approval, and oversight responsibilities under title 23, including those activities specified by 23 U.S.C. 106(c)(3).

Subgrantee means a government agency or legal entity that enters into an agreement with a grantee to carry out part or all of the activity funded by title 23 of the United States Code grant funds. A subgrantee is accountable to the grantee for the use of the funds and for compliance with applicable Federal requirements.

Temporary development restriction means the purchase of a right to temporarily control or restrict development or redevelopment of real property. This right is for an agreed to time period, defines specifically what is restricted or controlled, and is for an agreed to amount of compensation.

Transportation project means any highway project, public transportation capital project, multimodal project, or other project that requires the approval of the Secretary. As used in this part, the term ''transportation project'' does not include an Early Acquisition Project as defined in this section.

Uneconomic remnant means a remainder property which the acquiring agency has determined has little or no utility or value to the owner.

Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91–646, 84 Stat. 1894; primarily codified in 42 U.S.C. 4601 *et seq.*), and the implementing regulations at 49 CFR part 24.

Subpart B—Program Administration

§ 710.201 Grantee and subgrantee responsibilities.

(a) *Program oversight.* States administer the Federal-aid highway program, funded under chapter 1 of title 23, United States Code, through their SDOTs. The SDOT shall have overall responsibility for the acquisition, management, and disposal of real property interests on its Federal-aid projects, including when those projects are carried out by the SDOT's subgrantees or contractors. This responsibility shall include ensuring compliance with the requirements of this part and other Federal laws, including regulations. Non-SDOT grantees of funds under title 23 must comply with the requirements under this part, except as otherwise expressly provided in this part, and are responsible for assuring compliance by their subgrantees and contractors with the requirements of this part and other Federal laws, including regulations.

(b) *Organization.* Each grantee and subgrantee, including any other acquiring agency acting on behalf of a

grantee or subgrantee, shall be adequately staffed, equipped, and organized to discharge its real property related responsibilities.

(c) *ROW manual.* (1) Every grantee must ensure that its title 23-funded projects are carried out using an FHWA-approved and up-to-date ROW manual or RAMP that is consistent with applicable Federal requirements, including the Uniform Act and this part. Each SDOT that receives funding under title 23, United States Code, shall maintain an approved and up-to-date ROW manual describing its ROW organization, policies, and procedures. Non-SDOT grantees may use one of the procedures in paragraph (d) of this section to meet the requirements in this paragraph. The ROW manual shall describe functions and procedures for all phases of the ROW program, including appraisal and appraisal review, waiver valuation, negotiation and eminent domain, property management, relocation assistance, administrative settlements and oversight of its subgrantees and contractors. The ROW manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The ROW manual shall be in sufficient detail and depth to guide the grantee, its employees, and others involved in acquiring, managing, and disposing of real property interests. Grantees, subgrantees, and their contractors must comply with current FHWA requirements whether or not the requirements are included in the FHWA-approved ROW manual.

(2) The SDOT's ROW manual must be developed and updated, as a minimum, to meet the following schedule:

(i) The SDOTs shall prepare and submit for approval by FHWA an up-to-date ROW Manual by no later than 2 years after the publication of this rule.

(ii) Every 5 years thereafter, the chief administrative officer of the SDOT shall certify to the FHWA that the current SDOT ROW manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation, including this part.

(iii) The SDOT shall update its ROW manual periodically to reflect changes in operations and submit the updated materials for approval by the FHWA.

(d) *ROW manual alternatives.* Non-SDOT grantees, and all subgrantees, design-build contractors, and other acquiring agencies carrying out a project funded by a grant under title 23, United States Code, must demonstrate that they will use FHWA-approved ROW procedures for acquisition and other real estate activities, and that they have the ability to comply with current FHWA requirements, including this part. This can be done through any of the three procedures outlined in paragraphs (d)(1) through (3) of this section. Subgrantees, design-build contractors, and other acquiring agencies carrying out a project for an SDOT submit the required certification and information to the SDOT, and the SDOT will review and make a determination on behalf of FHWA. Non-SDOT grantees submit the required certification and information directly to FHWA. Non-SDOT grantees are responsible for submitting to FHWA the required certification and information for any subgrantee, contractor, and other acquiring agency carrying out a project for the non-SDOT grantee.

(1) Certification in writing that the acquiring agency will adopt and use the FHWA-approved SDOT ROW manual;

(2) Submission of the acquiring agency's own ROW manual for review and determination whether it complies with Federal and State requirements, together with a certification that once the reviewing agency approves the manual, the acquiring agency will use the approved ROW manual; or

(3) Submission of a RAMP setting forth the procedures the acquiring agency or design-build contractor intends to follow for a specified project or group of projects, along with a certification that if the reviewing agency approves the RAMP, the acquiring agency or design-build contractor will follow the approved RAMP for the specified program or project(s).

(e) *Recordkeeping.* The acquiring agency shall maintain adequate records of its acquisition and property management activities.

(1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from the later of either:

(i) The date the SDOT or other grantee receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property; or

(ii) The date of reimbursement for early acquisitions or credit toward the State share of a project is approved based on early acquisition activities under § 710.501.

(2) Property management records shall include inventories of real property interests considered excess to project or program needs, as well as all authorized ROW use agreements for real property acquired with title 23 of the United States Code funds or incorporated into a program or project that received title 23 funding.

(f) *Procurement.* Contracting for all activities required in support of an SDOT's or other grantee's ROW projects or programs through the use of private consultants and other services shall conform to 49 CFR 18.36, except to the extent that the procurement is required to adhere to requirements under 23 U.S.C. 112(b)(2) and 23 CFR part 172 for engineering and design related consultant services.

(g) *Use of other public land acquisition organizations, conservation organizations, or private consultants.* The grantee may enter into written agreements with other State, county, municipal, or local public land acquisition organizations, conservation organizations, private consultants, or other persons to carry out its authorities under this part. Such organizations, firms, or persons must comply with the grantee's ROW manual or RAMP as approved in accordance with paragraphs (c) or (d) of this section. The grantee shall monitor any such real property interest acquisition activities to ensure compliance with State and Federal law, and is responsible for informing such persons of all such requirements and for imposing sanctions in cases of material non-compliance.

(h) *Assignment of FHWA approval actions to an SDOT.* The SDOT and FHWA will agree in their Stewardship/Oversight Agreement on the scope of property-related oversight and approvals under this part that will be performed directly by FHWA and those that FHWA will assign to the SDOT. This assignment provision does not apply to other grantees of title 23 of the United States Code funds. The content of the most recent Stewardship/Oversight Agreement shall be reflected in the FHWA-approved SDOT ROW manual. The agreement, and thus the SDOT ROW manual, will indicate which Federal-aid projects require submission of materials for FHWA review and approval. The FHWA retains responsibility for any action not expressly assigned to the SDOT in the Stewardship/Oversight Agreement.

§ 710.203 Title 23 of the United States Code funding and reimbursement.

(a) *General conditions.* Except as otherwise provided in § 710.501 for early acquisition, a State agency only may acquire real property, including mitigation property, with title 23 of the United States Code grant funds if the following conditions are satisfied:

(1) The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP);

(2) The grantee has executed a project agreement or other agreement recognized under title 23 of the United States Code reflecting the Federal funding terms and conditions for the project;

(3) Preliminary acquisition activities, including a title search, appraisal, appraisal review and waiver valuation preparation and preliminary property map preparation can be advanced under preliminary engineering, as defined in 23 CFR 646.204, prior to completion of NEPA (42 U.S.C. 4321 *et seq.*) review, while other work involving contact with affected property owners for purposes of negotiation must normally be deferred until after NEPA approval, except as provided in § 710.501, early acquisition; and in § 710.503 for protective buying and hardship acquisition; and

(4) Costs have been incurred in conformance with State and Federal requirements.

(b) *Direct eligible costs.* Federal funds may only participate in direct costs that are identified specifically as an authorized acquisition activity such as the costs of acquiring the real property incorporated into the final project and the associated direct costs of acquisition, except in the case of a State that has an approved indirect cost allocation plan as stated in § 710.203(d) or specifically provided by statute. Participation is provided for:

(1) *Real property acquisition.* Usual costs and disbursements associated with real property acquisition as required under the laws of the State, including the following:

(i) The cost of contracting for private acquisition services or the cost associated with the use of local public agencies;

(ii) Ordinary and reasonable costs of acquisition activities, such as, appraisal, waiver valuation development, appraisal review, cost estimates, relocation planning, ROW plan preparation, title work, and similar necessary ROW related work;

(iii) The compensation paid for the real property interest and costs normally associated with completing the purchase, such as document fees and document stamps. The costs of acquiring options and other contractual rights to acquire an interest in land, rights to control use or development, leases, ROWs, and any other similar action to acquire or preserve rights-of way for a transportation facility are eligible costs when FHWA determines such costs are actual, reasonable and necessary costs. Costs under this paragraph do not include salary and related expenses for an acquiring agency's employees (see payroll-related expenses in paragraph (b)(5) of this section);

(iv) The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process. This includes reasonable acquiring agency attorney's fees, but excludes attorney's fees for other parties except where required by State law (including an order of a court of competent jurisdiction) or approved by FHWA; and

(v) The cost of minimum payments and waiver valuation amounts included in the approved ROW manual or approved RAMP.

(2) *Relocation assistance and payments.* Usual costs and disbursements associated with the following:

(i) Relocation assistance and payments required under 49 CFR part 24; and

(ii) Relocation assistance and payments provided under the laws of the State that may exceed the requirements of 49 CFR part 24, except for relocation assistance and payments provided to aliens not lawfully present in the United States.

(3) *Damages.* The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under State law.

(4) *Property management.* The net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.

(5) *Payroll-related expenses.* Salary and related expenses (compensation for personal services) of employees of an acquiring agency for work on a project funded by a title 23 of the United States Code grant are eligible costs in accordance with 2 CFR part 225 (formerly OMB Circular A–87), as are salary and related expenses of a grantee's employees for work with an acquiring agency or a contractor to ensure compliance with Federal requirements on a title 23 project if the work is dedicated to a specific project and documented in accordance with 2 CFR part 225.

(6) *Property not incorporated into a project funded under title 23, United States Code.* The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:

(i) *General.* Costs for construction material sites, property acquisitions to a logical boundary, eligible Transportation Alternatives Program (TAP) projects, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing; and

(ii) *Easements and alternate access not incorporated into the ROW.* The cost of acquiring easements and alternate access points necessary for highway construction and maintenance outside the approved ROW limits for permanent or temporary use.

(7) *Uneconomic remnants.* The cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.

(8) *Access rights.* Payment for full or partial control of access on an existing road or highway (i.e., one not on a new location), based on elements compensable under applicable State law. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.

(9) *Utility and railroad property.* (i) The cost to replace operating real property owned by a displaced utility or railroad and conveyed to an acquiring agency for a project, as provided in 23 CFR part 140, subpart I, Reimbursement for Railroad Work, 23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR part 646, subpart B, Railroad-Highway Projects; and

(ii) Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately owned property.

(c) *Withholding payment.* The FHWA may withhold payment under the conditions described in 23 CFR 1.36 for failure to comply with Federal law or regulation, State law, or under circumstances of waste, fraud, and abuse.

(d) *Indirect costs.* Indirect costs may be claimed under the provisions of 2 CFR part 225 (formerly OMB Circular A–87). Indirect costs may be included on billings after the indirect cost allocation plan has been prepared in accordance with 2 CFR part 225 and approved by FHWA, other cognizant Federal agency, or, in the case of an SDOT subgrantee without a rate approved by a cognizant Federal agency, by the SDOT. Indirect costs for an SDOT may include costs of providing program-level guidance, consultation, and

oversight to other acquiring agencies and contractors where ROW activities on title 23-funded projects are performed by non-SDOT personnel.

Subpart C—Project Development

§ 710.301 General.

The project development process typically follows a sequence of actions and approvals in order to qualify for funding. The key steps in this process typically are planning, environmental review, project agreement/authorization, acquisition, construction advertising, and construction.

§ 710.303 Project authorization and agreements.

As a condition of Federal funding under title 23 of the United States Code, the grantee shall obtain FHWA authorization in writing or electronically before proceeding with any real property acquisition using title 23 funds, including early acquisitions under § 710.501(e) and hardship acquisition and protective buying under § 710.503. For projects funded under chapter 1, title 23, United States Code, the grantee must prepare a project agreement in accordance with 23 CFR part 630, subpart A. Authorizations and agreements shall be based on an acceptable estimate for the cost of acquisition.

§ 710.305 Acquisition.

(a) *General.* The process of acquiring real property includes appraisal, appraisal review, waiver valuations, establishing estimates of just compensation, negotiations, relocation assistance, administrative and legal settlements, and court settlements and condemnations. Grantees must ensure all acquisition and related relocation assistance activities are performed in accordance with 49 CFR part 24 and this part. If a grantee does not directly own the real property interests used for a title 23 of the United States Code project, the grantee must have an enforceable subgrant agreement or other agreement with the owner of the ROW that permits the grantee to enforce applicable Federal requirements affecting the real property interests, including real property management requirements under subpart D of this part.

(b) *Adequacy of real property interest.* The real property interests acquired for any project funded under title 23 of the United States Code must be adequate to fulfill the purpose of the project. Except in the case of an Early Acquisition Project, this means adequate for the construction, operation, and maintenance of the resulting facility, and for the protection of both the facility and the traveling public.

(c) *Establishment and offer of just compensation.* The amount believed to be just compensation shall be approved by a responsible official of the acquiring agency. This shall be done in accordance with 49 CFR 24.102(d).

(d) *Description of acquisition process.* The acquiring agency shall provide persons affected by projects or acquisitions advanced under title 23 of the United States Code with a written description of its real property acquisition process under State law and this part, and of the owner's rights, privileges, and obligations. The description shall be written in clear, non-technical language and, where appropriate, be available in a language other than English in accordance with 49 CFR 24.5, 24.102(b), and 24.203.

§ 710.307 Construction advertising.

(a) The grantee must manage real property acquired for a project until it is required for construction. Except for properties acquired under the early acquisition provisions of § 710.501(e), clearance of improvements can be scheduled during the acquisition phase of the project using sale/removal agreements, separate demolition contracts, or be included as a work item in the construction contract. The grantee shall develop ROW availability statements and certifications related to project acquisitions as described in 23 CFR 635.309.

(b) The FHWA–SDOT Stewardship/Oversight Agreement will specify SDOT responsibility for the review and approval of the ROW availability statements and certifications in accordance with applicable law. Generally, for non-National Highway System projects, the SDOT has full responsibility for determining that right-of-way is available for construction. For non-SDOT grantees, FHWA will be responsible for the review and approval.

710.309 Design-build projects.

(a) In the case of a design-build project, ROW must be acquired and cleared in accordance with the Uniform Act and the FHWA-approved ROW manual or RAMP, as provided in §§ 710.201(c) and (d). The grantee shall submit a ROW certification in accordance with 23 CFR 635.309(p) when requesting FHWA's authorization. The grantee shall ensure that ROW is available prior to the start of physical construction on individual properties.

(b) The decision to advance a ROW segment to the construction stage shall not impair the safety or in any way be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent segments of project ROW.

(c) The grantee may choose not to allow construction to commence until all property is acquired and relocations have been completed; or, the grantee may permit the construction to be phased or segmented to allow ROW activities to be completed on individual properties or a group of properties, with ROW certifications done in a manner satisfactory to the grantee for each phase or segment.

(d) If the grantee elects to include ROW services within the design-builder's scope of work for the design-build contract, the following provisions must be addressed in the request for proposals document:

(1) The design-builder must submit written certification in its proposal that it will comply with the process and procedures in the FHWA-approved ROW manual or RAMP as provided in §§ 710.201(c) and (d).

(2) When relocation of displaced persons from their dwellings has not been completed, the grantee or design-builder shall establish a hold off zone around all occupied properties to ensure compliance with ROW procedures prior to starting construction activities in affected areas. The limits of this zone should be established by the grantee prior to the design-builder entering onto the property. There should be no construction-related activity within the hold off zone until the property is vacated. The design-builder must have written notification of vacancy from the grantee prior to entering the hold off zone.

(3) Contractors activities must be limited to those that the grantee determines do not have a material adverse impact on the quality of life of those in occupied properties that have been or will be acquired.

(4) The grantee will provide a ROW project manager who will serve as the first point of contact for all ROW issues.

(e) If the grantee elects to perform all ROW services relating to the design-build contract, the provisions in § 710.307 will apply. The grantee will notify potential offerors of the status of all ROW issues in the request for proposal document.

Subpart D—Real Property Management

§ 710.401 General.

This subpart describes the grantee's responsibilities to control the use of real property acquired for a project in which Federal funds participated in any phase of the project. The grantee shall specify in its approved ROW manual or RAMP,

the procedures for the maintenance, ROW use agreements, and disposal of real property interests acquired with title 23 of the United States Code funds. The grantee shall assure that subgrantees, including local agencies, follow Federal requirements and approved ROW procedures as provided in § 710.201(c) and (d).

§ 710.403 Management.

(a) As provided in § 710.201(h), FHWA and SDOT may use their Stewardship/Oversight Agreement to enter into a written agreement establishing which approvals the SDOT may make on behalf of FHWA, provided FHWA may not assign to the SDOT the decision whether to allow any ROW use agreements or any disposal on or within the approved ROW limits of the Interstate, including any change in access control. The assignment agreement provisions in § 710.201(h) and this paragraph (a) do not apply to non-SDOT grantees.

(b) The grantee must ensure that all real property interests within the approved ROW limits or other project limits of a facility that has been funded under title 23 of the United States Code are devoted exclusively to the purposes of that facility and the facility is preserved free of all other public or private alternative uses, unless such non-highway alternative uses are permitted by Federal law (including regulations) or the FHWA. An alternative use, whether temporary under § 710.405 or permanent as provided in § 710.409, must be in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use must not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23).

(c) Grantees shall specify procedures in their approved ROW manual or RAMP for determining when a real property interest is excess real property and may be disposed of in accordance with this part, or is a real property interest that may be made available for an alternate use under a ROW use agreement. These procedures must provide for coordination among relevant State organizational units that may be interested in the proposed use or disposal of the real property. Grantees also shall specify procedures in their ROW manual or RAMP for determining when a real property interest is excess and when a real property interest may be made available under a ROW use agreement for an alternative use that satisfies the requirements described in paragraph (b) of this section.

(d) Disposal actions and ROW use agreements, including leasing actions, are subject to 23 CFR part 771.

(e) Current fair market value must be charged for the use or disposal of all real property interests if those real property interests were obtained with title 23, United States Code, funding except as provided in paragraphs (e)(1) through (6) of this section. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions. Exceptions to the requirement for charging fair market value must be submitted to FHWA in writing and may be approved by FHWA in the following situations:

(1) When the grantee shows that an exception is in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use. The grantee's ROW manual or RAMP must include criteria for evaluating disposals at less than fair market value, and a method for ensuring the public will receive the benefit used to justify the less than fair market value disposal.

(2) Use by public utilities in accordance with 23 CFR part 645.

(3) Use by railroads in accordance with 23 CFR part 646.

(4) Use for bikeways and pedestrian walkways in accordance with 23 CFR part 652.

(5) *Uses under 23 U.S.C. 142(f), Public Transportation.* Lands and ROWs of a highway constructed using Federal-aid highway funds may be made available without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements.

(6) Use for other transportation projects eligible for assistance under title 23 of the United States Code, provided that a concession agreement, as defined in § 710.703, shall not constitute a transportation project exempt from fair market value requirements.

(f) The Federal share of net income from the use or disposal of real property interests obtained with title 23 of the United States Code funds shall be used by the grantee for activities eligible for funding under title 23. Where project income derived from the use or disposal of real property interests is used for subsequent title 23-eligible projects, the funds are not considered Federal financial assistance and use of the income does not cause title 23 requirements to apply.

§ 710.405 ROW use agreements.

(a) A ROW use agreement for the non-highway use of real property interests may be executed with a public entity or private party in accordance with § 710.403 and this section. Any non-highway alternative use of real property interests requires approval by FHWA, including a determination by FHWA that such occupancy, use, or reservation is in the public interest; is consistent with the continued use, operations, maintenance, and safety of the facility; and such use does not impair the highway or interfere with the free and safe flow of traffic as described in § 710.403(b). Where the SDOT controls the real property interest, the FHWA may assign its determination and approval responsibilities to the SDOT in their Stewardship/Oversight Agreement.

(1) This section applies to highways as defined in 23 U.S.C. 101(a) that received title 23, United States Code, financial assistance in any way.

(2) This section does not apply to the following:

(i) Uses by railroads and public utilities which cross or otherwise occupy Federal-aid highway ROW and that are governed by other sections of this title;

(ii) Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR part 140, subparts E and H, 23 CFR part 645, or 23 CFR part 646, subpart B; and

(iii) Bikeways and pedestrian walkways as covered in 23 CFR part 652.

(b) Subject to the requirements in this subpart, ROW use agreements for a time-limited occupancy or use of real property interests may be approved if the grantee has acquired sufficient legal right, title, and interest in the ROW of a federally assisted highway to permit the non-highway use. A ROW use agreement must contain provisions that address the following items:

(1) Ensure the safety and integrity of the federally assisted facility;

(2) Define the term of the agreement;

(3) Identify the design and location of the non-highway use;

(4) Establish terms for revocation of the ROW use agreement and removal of improvements at no cost to the FHWA;

(5) Provide for adequate insurance to hold the grantee and the FHWA harmless;

(6) Require compliance with nondiscrimination requirements;

(7) Require grantee and FHWA approval, and SDOT approval if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for any significant revision in the design,

construction, or operation of the non-highway use; and

(8) Grant access to the non-highway use by the grantee and FHWA, and the SDOT if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for inspection, maintenance, and for activities needed for reconstruction of the highway facility.

Note to paragraph (b). Additional terms and conditions appropriate for inclusion in ROW use agreements are described in FHWA guidance at *http://www.fhwa.dot.gov/real_estate/practitioners/right-of-way/corridor_management/airspace_guidelines.cfm.*

(c) Where a proposed use requires changes in the existing highway, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the grantee and FHWA.

(d) Proposed uses of real property interests shall conform to the current design standards and safety criteria of FHWA for the functional classification of the highway facility in which the property is located.

(e) An individual, company, organization, or public agency desiring to use real property interests shall submit a written request to the grantee, together with an application supporting the proposal. If FHWA is the approving authority, the grantee shall forward the request, application, the SDOT's recommendation if the proposal affects a Federal-aid highway, and the proposed ROW use agreement, together with its recommendation and any necessary supplemental information, to FHWA. The submission shall affirmatively provide for adherence to all requirements contained in this subpart and must include the following information:

(1) Identification of the party responsible for developing and operating the proposed use;

(2) A general statement of the proposed use;

(3) A description of why the proposed use would be in the public interest;

(4) Information demonstrating the proposed use would not impair the highway or interfere with the free and safe flow of traffic;

(5) The proposed design for the use of the space, including any facilities to be constructed;

(6) Maps, plans, or sketches to adequately demonstrate the relationship of the proposed project to the highway facility;

(7) Provision for vertical and horizontal access for maintenance purposes;

(8) A description of other general provisions such as the term of use, insurance requirements, design limitations, safety mandates, accessibility, and maintenance as outlined further in this section; and

(9) An adequately detailed three-dimensional presentation of the space to be used and the facility to be constructed. Maps and plans may not be required if the available real property interest is to be used for leisure activities (such as walking or biking), beautification, parking of motor vehicles, public mass transit facilities, and similar uses. In such cases, an acceptable metes and bounds description of the surface area, and appropriate plans or cross sections clearly defining the vertical use limits, may be furnished in lieu of a three-dimensional description, at the grantee's discretion.

§ 710.407 [Reserved]

§ 710.409 Disposal of excess real property.

(a) Excess real property outside or within the approved right of way limits or other project limits may be sold or conveyed to a public entity or to a private party in accordance with § 710.403 and this section. Approval by FHWA is required for disposal of excess real property unless otherwise provided in this section or in the FHWA–SDOT Stewardship/Oversight Agreement.

(b) Federal, State, and local agencies shall be afforded the opportunity to acquire excess real property considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by State law. When this potential exists, the grantee shall notify the appropriate agencies of its intentions to dispose of the real property interests determined to be excess.

(c) The grantee may decide to retain excess real property to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.

(d) Where the transfer of excess real property to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by FHWA under § 710.403(e), the deed shall provide for reversion of the property for failure to continue public ownership and use. Where property is sold at fair market value, no reversion clause is required.

(e) No FHWA approval is required for disposal of excess real property located outside of the approved ROW limits or other project limits if Federal funds did not participate in the acquisition cost of the real property.

(f) Highway facilities in which Federal funds participated in either the ROW or construction may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR part 620, subpart B.

(g) A request for approval of a disposal must demonstrate compliance with the requirements of § 710.403 and this section, and must address the items in §§ 710.405(b)(1), (3), (5), (6), (7), and (8), and 710.405(c) and (d). An individual, company, organization, or public agency requesting a grantee to approve of a disposal of excess real property within the approved ROW limits or other project limits, or to approve of a disposal of excess real property outside the ROW limits that was acquired with title 23 of the United States Code funding, shall submit a written request to the grantee, together with an application supporting the proposal. If the FHWA is the approving authority, the grantee shall forward the request, the SDOT recommendation if the proposal affects a Federal-aid highway, the application, and proposed terms and conditions, together with its recommendation and any necessary supplemental information, to FHWA. The submission shall affirmatively provide for adherence to all requirements contained in this section and must include the information specified in § 710.405(e)(1) through (9).

Subpart E—Property Acquisition Alternatives

§ 710.501 Early acquisition.

(a) *General.* A State agency may initiate acquisition of real property interests for a proposed transportation project at any time it has the legal authority to do so. The State agency may undertake Early Acquisition Projects before the completion of the environmental review process for the proposed transportation project for corridor preservation, access management, or other purposes. Subject to the requirements in this section, State agencies may fund Early Acquisition Project costs entirely with State funds with no title 23 of the United States Code participation; use State funds initially but seek title 23 credit or reimbursement when the acquired property is incorporated into a transportation project eligible for Federal surface transportation program funds; or use the normal Federal-aid project agreement and reimbursement process to fund an Early Acquisition Project pursuant to paragraph (e) of this section. The early acquisition of a real property interest under this section

shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally assisted transportation projects.

(b) *State-funded early acquisition without Federal credit or reimbursement.* A State agency may carry out early acquisition entirely at its expense and later incorporate the acquired real property into a transportation project or program for which the State agency receives Federal financial assistance or other Federal approval under title 23 of the United States Code for other transportation project activities. In order to maintain eligibility for future Federal assistance on the project, early acquisition activities funded entirely without Federal participation must comply with the requirements of §§ 710.501(c)(1) through (5).

(c) *State-funded early acquisition eligible for future credit.* Subject to §§ 710.203(b) (direct eligible costs), 710.505(b), and 710.507 (State and local contributions), Early Acquisition Project costs incurred by a State agency at its own expense prior to completion of the environmental review process for a proposed transportation project are eligible for use as a credit toward the non-Federal share of the total project costs if the project receives surface transportation program funds, and if the following conditions are met:

(1) The property was lawfully obtained by the State agency;

(2) The property was not land described in 23 U.S.C. 138;

(3) The property was acquired, and any relocations were carried out, in accordance with the provisions of the Uniform Act and regulations in 49 CFR part 24;

(4) The State agency complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4);

(5) The State agency determined, and FHWA concurred, the early acquisition did not influence the environmental review process for the proposed transportation project, including:

(i) The decision on need to construct the proposed transportation project;

(ii) The consideration of any alternatives for the proposed transportation project required by applicable law; and

(iii) The selection of the design or location for the proposed transportation project; and

(6) The property will be incorporated into the project for which surface transportation program funds are received and to which the credit will be applied.

(d) *State-funded early acquisition eligible for future reimbursement.* Early Acquisition Project costs incurred by a State agency prior to completion of the environmental review process for the transportation project are eligible for reimbursement from title 23 of the United States Code funds apportioned to the State once the real property interests are incorporated into a project eligible for surface transportation program funds if the State agency demonstrates, and FHWA concurs, that the terms and conditions specified in 23 U.S.C. 108(c)(3), the requirements of § 710.501(c)(1)–(5), and the requirements of § 710.203(b) (direct eligible costs) have been met.

(e) *Federally funded early acquisition.* The FHWA may authorize the use of funds apportioned to a State under title 23 of the United States Code for an Early Acquisition Project if the State agency certifies, and FHWA concurs, that all of the following conditions have been met:

(1) The State has authority to acquire the real property interest under State law; and

(2) The acquisition of the real property interest—

(i) Is for a transportation project or program eligible for funding under title 23 of the United States Code;

(ii) Does not involve land described in 23 U.S.C. 138;

(iii) Will not cause any significant adverse environmental impacts either as a result of the Early Acquisition Project or from cumulative effects of multiple Early Acquisition Projects carried out under this section in connection with a proposed transportation project;

(iv) Will not limit the choice of reasonable alternatives for a proposed transportation project or otherwise influence the decision of FHWA on any approval required for a proposed transportation project;

(v) Will not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for a proposed transportation project;

(vi) Is consistent with the State transportation planning process under 23 U.S.C. 135;

(vii) Complies with other applicable Federal laws (including regulations);

(viii) Will be acquired through negotiation, without the threat of, or use of, condemnation; and

(ix) Will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Act and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(3) The Early Acquisition Project is included as a project in an applicable transportation improvement program under 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304.

(4) The environmental review process for the Early Acquisition Project is complete and FHWA has approved the Early Acquisition Project. Pursuant to 23 U.S.C. 108(d)(4)(B), the Early Acquisition Project is deemed to have independent utility for purposes of the environmental review process under NEPA. When the Early Acquisition Project may result in a change to the use or character of the real property interest prior to the completion of the environmental review process for the proposed transportation project, the NEPA evaluation for the Early Acquisition Project must consider whether the change has the potential to cause a significant environmental impact as defined in 40 CFR 1508.27, including a significant adverse impact within the meaning of paragraph (e)(2)(iii) of this section. The Early Acquisition Project must comply with all applicable environmental laws.

(f) *Prohibited Activities.* Except as provided in this paragraph, real property interests acquired under paragraph (e) of this section and pursuant to 23 U.S.C. 108(d) cannot be developed in anticipation of a transportation project until all required environmental reviews for the transportation project have been completed. For the purpose of this paragraph (f), ''development in anticipation of a transportation project'' means any activity related to demolition, site preparation, or construction that is not necessary to protect public health or safety. With prior FHWA approval, a State agency may carry out limited activities necessary for securing real property interests acquired as part of an Early Acquisition Project, such as limited clearing and demolition activity, if the activities are necessary to protect the public health or safety and are considered during the environmental review of the Early Acquisition Project.

(g) *Reimbursement.* If Federal-aid reimbursement is made for real property interests acquired early under this section and the real property interests are not subsequently incorporated into a project eligible for surface transportation funds within the time allowed by 23 U.S.C. 108 (a)(2), FHWA must offset the amount reimbursed against funds apportioned to the State.

(h) *Relocation Assistance Eligibility.* In the case of an Early Acquisition Project, a person is considered to be displaced when required to move from

the real property as a direct result of a binding written agreement for the purchase of the real property interest(s) between the acquiring agency and the property owner. Options to purchase and similar agreements used for Early Acquisition Projects that give the acquiring agency a right to prevent new development or to decide in the future whether to acquire the real property interest(s), but do not create an immediate commitment by the acquiring agency to acquire and do not require an owner or tenant to relocate, do not create relocation eligibility until the acquiring agency legally commits itself to acquiring the real property interest(s).

§ 710.503 Protective buying and hardship acquisition.

(a) *General conditions.* Prior to final environmental approval of a project, the grantee may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

(1) The project is included in the currently approved STIP;

(2) The grantee has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;

(3) A determination has been completed for any property interest subject to the provisions of 23 U.S.C. 138; and

(4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).

(b) *Protective buying.* The grantee must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

(c) *Hardship acquisitions.* The grantee must accept and concur in an owner's request for a hardship acquisition based on a property owner's written submission that—

(1) Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to other property owners; and

(2) Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

(d) *Environmental decisions.* Acquisition of property under this section is subject to environmental review under part 771 of this chapter. Acquisitions under this section shall not influence the environmental review of a transportation project which would use the property, including decisions about the need to construct the transportation project or the selection of an alternative.

§ 710.505 Real property donations.

(a) *Donations of property being acquired.* A non-governmental owner whose real property is required for a title 23 of the United States Code project may donate the property. Donations may be made at any time during the development of a project. Prior to accepting the property, the owner must be informed in writing by the acquiring agency of his/her right to receive just compensation for the property, the right to an appraisal or waiver valuation of the real property, and of all other applicable financial and non-financial assistance provided under 49 CFR part 24 and applicable State law. All donations of property received prior to the approval of the NEPA document for the project must meet the requirements specified in 23 U.S.C. 323(d).

(b) *Credit for donations.* Donations of real property may be credited to the State's matching share of the project in accordance with 23 U.S.C. 323. As required by 23 U.S.C. 323(b)(2), credit to the State's matching share for donated property shall be based on fair market value established on the earlier of the following: either the date on which the donation becomes effective, or the date on which equitable title to the property vests in the State. The fair market value shall not include increases or decreases in value caused by the project. The grantee shall ensure sufficient documentation is developed to indicate compliance with paragraph (a) of this section and with the provisions of 23 U.S.C. 323, and to support the amount of credit applied. The total credit cannot exceed the State's pro-rata share under the project agreement to which it is applied.

(c) *Donations and conveyances in exchange for construction features or services.* A property owner may donate property in exchange for construction features or services. The value of the donation is limited to the fair market value of property donated less the cost of the construction features or services. If the value of the donated property exceeds the cost of the construction features or services, the difference may be eligible for a credit to the State's share of project costs.

§ 710.507 State and local contributions.

(a) *Credit for State and local government contributions.* If the requirements of 23 U.S.C. 323 are met, real property owned by State and local governments that is incorporated within a project receiving financial assistance from the Highway Trust Fund can be used as a credit toward the State's matching share of total project cost. A credit cannot exceed the State's matching share required by the project agreement. The grantee must ensure there is documentation supporting all credits, including the following:

(1) A certification that the State or local government acquisition satisfied the conditions in § 710.501(c)(1) through (6); and

(2) Justification of the value of credit applied. Acquisition costs incurred by the State or local government to acquire title can be used as justification for the value of the real property.

(b) *Exemptions.* Credits are not available for real property acquired with any form of Federal financial assistance except as provided in 23 U.S.C. 120(j), or for real property already incorporated into existing ROW and used for transportation purposes.

(c) *Contributions without credit.* Property may be presented for project use with the understanding that no credit for its use is sought. In such case, the grantee shall assure that the acquisition satisfied the conditions in § 710.501(c)(1) through (6).

§ 710.509 Functional replacement of real property in public ownership.

(a) *General.* When publicly owned real property, including land and/or facilities, is to be acquired for a project receiving grant funds under title 23 of the United States Code, in lieu of paying the fair market value for the real property, the acquiring agency may provide compensation by functionally replacing the publicly owned real property with another facility that will provide equivalent utility.

(b) *Federal participation.* Federal-aid funds may participate in functional replacement costs only if the following conditions are met:

(1) Functional replacement is permitted under State law and the acquiring agency elects to provide it;

(2) The property in question is in public ownership and use;

(3) The replacement facility will be in public ownership and will continue the public use function of the acquired facility;

(4) The acquiring agency has informed, in writing, the public entity

owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement;

(5) The FHWA concurs in the acquiring agency determination that functional replacement is in the public interest; and

(6) The real property is not owned by a utility or railroad.

(c) *Federal land transfers.* Use of this section for functional replacement of real property in Federal ownership shall be in accordance with Federal land transfer provisions in subpart F of this part.

(d) *Limits upon participation.* Federal-aid participation in the costs of functional replacement is limited to costs that are actually incurred in the replacement of the acquired land and/or facility and are—

(1) Costs for facilities that do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and

(2) Costs for land to provide a site for the replacement facility.

(e) *Procedures.* When a grantee determines that payments providing for functional replacement of public facilities are allowable under State law, the grantee will incorporate within its approved ROW manual, or approved RAMP, full procedures covering review and oversight that will be applied to such cases.

§ 710.511 Transportation Alternatives Program.

(a) *General.* 23 U.S.C. 133(b) (11) and 213 authorize the expenditure of surface transportation funds for TAP projects. The TAP projects that involve the acquisition, management, and disposition of real property, and the relocation of families, individuals, and businesses, are governed by the general requirements of the Federal-aid program found in titles 23 and 49 of the CFR, except as specified in paragraph (b)(2) of this section.

(b) *Requirements.* (1) Acquisition and relocation activities for TAP projects are subject to the Uniform Act.

(2) When a person or agency acquires real property for a project receiving title 23 of the United States Code grant funds on behalf of an acquiring agency with eminent domain authority, the requirements of the Uniform Act apply as if the acquiring agency had acquired the property itself.

(3) When, subsequent to Federal approval of property acquisition, a person or agency acquires real property for a project receiving title 23 of the United States Code grant funds, and there will be no use or recourse to the power of eminent domain, the limited requirements of 49 CFR 24.101(b)(2) apply.

(c) *Property management and disposal of property acquired for TAP projects.* Subpart D of this part applies to the management and disposal of real property interests acquired with TAP funds, including alternate uses authorized under ROW use agreements. A TAP project involving acquisition of any real property interest must have a TAP property agreement between FHWA and the grantee that identifies the expected useful life of the TAP project and establishes a pro rata formula for repayment of TAP funding by the grantee if—

(1) The acquired real property interest is used in whole or in part for purposes other than the TAP project purposes for which it was acquired; or

(2) The actual TAP project life is less than the expected useful life specified in the TAP property agreement.

Subpart F—Federal Assistance Program

§ 710.601 Federal land transfers.

(a) The provisions of this subpart apply to any project constructed on a Federal-aid highway or under Chapter 2 of title 23, of the United States Code. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal funding under Chapters 1 and 2 of title 23, of the United States Code, and to highway-related transfers that are requested by a State in conjunction with a military base closure under the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510, 104 Stat. 1808, as amended).

(b) Under certain conditions, real property interests owned by the United States may be transferred to a non-Federal owner for use for highway purposes. Sections 107(d) and 317 of title 23, United States Code, establish the circumstances under which such transfers may occur, and the parties eligible to receive such transfers.

(c) An eligible party may file an application with FHWA, or can make application directly to the Federal land management agency if the Federal land management agency has its own authority for granting interests in land.

(d) Applications under this section shall include the following information:

(1) The purpose for which the lands are to be used;

(2) The estate or interest in the land required for the project;

(3) The Federal project number or other appropriate references;

(4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;

(5) A map showing the survey of the lands to be acquired;

(6) A legal description of the lands desired; and

(7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, *et seq.*) and any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.

(e) If the FHWA concurs in the need for the transfer, the Federal land management agency will be notified and a right-of-entry requested. For projects not on the Interstate System, the Federal land management agency shall have a period of 4 months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the reply period at the timely request of the Federal land management agency for good cause.

(f) The FHWA may participate in the payment of fair market value or the functional replacement of impacted facilities under § 710.509 and the reimbursement of the ordinary and reasonable direct costs of the Federal land management agency for the transfer when reimbursement is required by the Federal land management agency's governing laws as a condition of the transfer.

(g) Deeds for conveyance of real property interests owned by the United States shall be prepared by the eligible party and must be certified as being legally sufficient by an attorney licensed within the State where the real property is located. Such deeds shall contain the clauses required by FHWA and 49 CFR 21.7(a)(2). After the eligible party prepares the deed, it will submit the proposed deed with the certification to FHWA for review and execution.

(h) Following execution by FHWA, the eligible party shall record the deed in the appropriate land record office and so advise FHWA and the affected Federal land management agency.

(i) When the need for the interest acquired under this subpart no longer exists, the party that received the real

property must restore the land to the condition which existed prior to the transfer, or to a condition that is acceptable to the Federal land management agency to which such property would revert, and must give notice to FHWA and to the affected Federal land management agency that such interest will immediately revert to the control of the Federal land management agency from which it was appropriated or to its assigns. Where authorized by Federal law, the Federal land management agency and such party may enter into a separate agreement to release the reversion clause and make alternative arrangements for the sale, restoration, or other disposition of the lands no longer needed.

§ 710.603 Direct Federal acquisition.

(a) The provisions of this paragraph (a) may be applied to any real property that is not owned by the United States and is needed in connection with a project for the construction, reconstruction, or improvement of any section of the Interstate System or for a Defense Access Road project under 23 U.S.C. 210, if the SDOT is unable to acquire the required ROW or is unable to obtain possession with sufficient promptness. If the landowner tenders a right-of-entry or other right of possession document required by State law any time before FHWA makes a determination that the SDOT is unable to acquire the ROW with sufficient promptness, the SDOT is legally obligated to accept such tender and FHWA may not proceed with Federal acquisition. To enable FHWA to make the necessary findings and to proceed with the acquisition of the ROW, the SDOT's written application for Federal acquisition must include the following:

(1) Justification for the Federal acquisition of the lands or interests in lands;

(2) The date FHWA authorized the SDOT to commence ROW acquisition, the date of the project agreement, and a statement that the agreement contains the provisions required by 23 U.S.C. 111;

(3) The necessity for acquisition of the particular lands under request;

(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;

(5) The SDOT's intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;

(6) A statement on compliance with the provisions of parts 771 and 774 of this chapter, as applicable;

(7) Adequate legal descriptions, plats, appraisals, and title data;

(8) An outline of the negotiations that have been conducted with landowners;

(9) An agreement that the SDOT will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire, ROW; and

(10) A statement that assures compliance with the applicable provisions of the Uniform Act. (42 U.S.C. 4601, *et seq.*)

(b) Except as provided in paragraph (a) of this section, direct Federal acquisitions from non-Federal owners for projects administered by the FHWA Office of Federal Lands Highway may be carried out in accordance with applicable Federal condemnation laws. The FHWA will proceed with such a direct Federal acquisition only when the public agency responsible for the road is unable to obtain the ROW necessary for the project. The public agency must make a written request to FHWA for the acquisition and, if the public agency is a Federal agency, the request shall include a commitment that any real property obtained will be under that agency's sole jurisdiction and control and FHWA will have no jurisdiction or control over the real property as a result of the acquisition. The FHWA may require the applicant to provide any information FHWA needs to make the required determinations or to carry out the acquisition.

(c) If the applicant for direct Federal acquisition obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (ex parte) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.

(d) When the United States obtains a court order granting possession of the real property, FHWA shall authorize the applicant for direct Federal acquisition to immediately take over supervision of the property. The authorization shall include, but need not be limited to, the following:

(1) The right to take possession of unoccupied properties;

(2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;

(3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;

(4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;

(5) The right to clear improvements and other obstructions;

(6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;

(7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the applicant for direct Federal acquisition, as in the case of ROW acquired by an SDOT for Federal-aid projects; and

(8) Instructions that the authority granted to the applicant for direct Federal acquisition is not intended to preclude the U.S. Attorney from taking action, before the applicant has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

(e) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that FHWA cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.

(f) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

(g) The lands or interests in lands, acquired under this section, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the SDOT, or said subdivision to:

(1) Maintain control of access where applicable;

(2) Accept title thereto;

(3) Maintain the project constructed thereon;

(4) Abide by any conditions which may set forth in the deed; and

(5) Notify the FHWA at the appropriate time that all the conditions have been performed.

(h) The deed from the United States to the State, or to the appropriate political subdivision thereof, or in the case of a Federal applicant for a direct Federal acquisition any document designating jurisdiction, shall include the conditions required by 49 CFR part 21 and shall not include any grant of jurisdiction to FHWA. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

■ 3. Revise § 710.703(f) to read as follows:

§ 710.703 Definitions.

* * * * *

(f) *Highway agency* in this subpart means any SDOT or other public authority with jurisdiction over a federally funded highway.

PART 810—MASS TRANSIT AND SPECIAL USE HIGHWAY PROJECTS

■ 4. The authority citation for part 810 continues to read as follows:

Authority: 23 U.S.C. 137, 142, 149 and 315; sec. 4 of Pub. L. 97–134, 95 Stat. 1699; secs. 118, 120, and 163 of Pub. L. 97–424, 96 Stat. 2097; 49 CFR 1.48(b) and 1.51(f).

■ 5. Revise § 810.212 to read as follows:

§ 810.212 Use without charge.

The use and occupancy of the lands made available by the State to the publicly owned transit authority may be without charge. Costs incidental to making the lands available for mass transit shall be borne by the publicly owned mass transit authority.

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Part III

Department of Education

Applications for New Awards; Performance Partnership Pilots; Notice

DEPARTMENT OF EDUCATION

Applications for New Awards; Performance Partnership Pilots

AGENCY: Office of Career, Technical, and Adult Education, Department of Education

ACTION: Notice.

Overview Information:

Performance Partnership Pilots.

Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.420A.

DATES:

Applications Available: November 24, 2014.

Deadline for Notice of Intent to Apply: January 8, 2015.

Note: Submission of a notice of intent to apply is optional.

Deadline for Transmittal of Applications: March 4, 2015.

Deadline for Intergovernmental Review: May 4, 2015.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Performance Partnership Pilots (P3) program, authorized by the Consolidated Appropriations Act, 2014, Division H, Section 526 (the Act), will enable up to ten pilot sites to test innovative, outcome-focused strategies to achieve significant improvements in educational, employment, and other key outcomes [1] for disconnected youth [2] using new flexibility to blend [3] existing Federal funds and to seek waivers [4] of associated program requirements. P3 pilots will receive start-up grants to support ongoing planning, streamlined governance, strengthened data infrastructure, improved coordination, and related activities to help pilots improve outcomes for disconnected youth.

Successful pilots will use cost-effective strategies to increase the success of disconnected youth in achieving educational, employment, well-being, and other key outcomes. Through a combination of careful implementation of evidence-based and promising practices, effective administrative structures, alignment of outcomes and performance measures, and more efficient and integrated data systems, P3 may produce better outcomes per dollar by focusing resources on what works, rather than on compliance with multiple Federal program requirements that may not best support outcomes.

Background:

The Act authorizes the Departments of Education (ED), Labor (DOL), and Health and Human Services (HHS), the Corporation for National and Community Service (CNCS) and/or the Institute of Museum and Library Services (IMLS) (collectively, the Agencies), to enter into a total of up to ten Performance Partnership Agreements (performance agreements) with State, local, or tribal governments [5] to provide additional flexibility in using certain of the Agencies' FY 2014 discretionary funds,[6] including competitive and certain formula grant funds, across multiple Federal programs. Entities that seek to participate in these pilots will have to commit to achieving significant improvements in outcomes for disconnected youth in exchange for this new flexibility. Section 526(a)(2) of the Act states that '' '[t]o improve outcomes for disconnected youth' means to increase the rate at which individuals between the ages of 14 and 24 (who are low-income and either homeless, in foster care, involved in the juvenile justice system, unemployed, or not enrolled in or at risk of dropping out of an educational institution) achieve success in meeting educational, employment, or other key goals.''

Government and community partners have invested considerable attention and resources to meet the needs of disconnected youth. However, practitioners, youth advocates, and others on the front lines of service delivery have observed that there are significant programmatic and administrative obstacles to achieving meaningful improvements in education, employment, health, and well-being for these young people. These challenges include: Limited evidence and knowledge of what works to improve outcomes for disconnected youth; poor coordination and alignment across the multiple systems that serve youth; policies that make it hard to target the neediest youth and help them overcome gaps in services; fragmented data systems that inhibit the flow of information to improve results; and administrative requirements that impede holistic approaches to serving this population. Many of these challenges can be addressed by improving coordination among programs and targeting resources to those approaches that achieve the best results for youth. More information on these challenges, approaches to address challenges, and the consultation that the Agencies have conducted with stakeholders on these issues can be found in the P3 Consultation Paper, ''Changing the Odds for Disconnected Youth: Initial Design Considerations for Performance Partnership Pilots'' (available at *www.findyouthinfo.gov/docs/P3_Consultation_Paper_508.pdf*).

Performance Partnership Pilots will test the hypothesis that additional flexibility for States, localities, and tribes, in the form of blending funds and obtaining waivers of certain programmatic requirements, can help overcome some of the significant hurdles that States, localities, and tribes may face in providing intensive, comprehensive, and sustained service pathways [7] and improving outcomes for disconnected youth. For example, P3 may help address the ''wrong pockets'' problem, where programs that see improved outcomes or other benefits due to an intervention are unable to provide funds to support that intervention based on program restrictions. P3 funds may also help to

[1] Outcomes are the intended results of a program, or intervention. They are what you expect your project to achieve. An outcome can be at the participant level (for example, changes in employment retention or earnings of disconnected youth) or at the system level (for example, improved efficiency in program operations or administration).

[2] The Act defines ''disconnected youth'' as individuals between the ages of 14 and 24 who are low-income, and either homeless, in foster care, involved in the juvenile justice system, unemployed, or not enrolled in, or at risk of dropping out of, an educational institution.

[3] Blending funds is a funding and resource allocation strategy that uses multiple existing funding streams to support a single initiative or strategy. Blended funding merges two or more funding streams, or portions of multiple funding streams, to produce greater efficiency and/or effectiveness. Funds from each individual stream lose their award-specific identity, and the blended funds together become subject to a single set of reporting and other requirements, consistent with the underlying purposes of the programs for which the funds were appropriated.

[4] A waiver provides flexibility around statutory, regulatory, or administrative requirements to enable a State, locality, or tribe to organize its programs and systems or provide services in ways that best meet the needs of its target populations. Under P3, waivers provide flexibility in exchange for a grantee's commitment to improve programmatic outcomes consistent with underlying statutory authorities and purposes.

[5] A tribal government must represent a State- or Federally-recognized tribe to be eligible.

[6] Discretionary funds are funds that Congress appropriates on an annual basis, rather than through a standing authorization. They exclude ''entitlement'' (or mandatory) programs such as Social Security, Medicare, Medicaid, most Foster Care IV–E programs, and Temporary Assistance to Needy Families (TANF). Discretionary programs administered by the Agencies support a broad set of public services, including education, job training, health and mental health, and other low-income assistance programs.

[7] A service pathway is a series of connected service interventions that aim to change behavior and increase knowledge or skills.

build additional evidence that an intervention is successful or to strengthen a foundation of data capacity and performance management. If this hypothesis proves true, providing necessary and targeted flexibility to remove or overcome these hurdles will help to achieve significant benefits for disconnected youth, the communities that serve them, and the agencies and partners that are involved.

Partnerships are critical to pilots' ability to provide innovative and effective service-delivery and systems-change strategies that meet the education, employment, and other needs of disconnected youth. We encourage applicants to build on strong, existing partnerships that have experience in working together to improve outcomes for disconnected youth. Partnerships will vary depending on the nature and focus of individual projects, but may cut across: State, local, and tribal levels of government; education, employment, and other agencies or programs operating within the same level of government; and governmental, non-profit, and other private-sector organizations.

As partnerships work to improve outcomes, meaningful measures and indicators that draw on reliable data will be critical to understanding how well pilots attain their goals. As a result, it is important to make sure that pilots track outcome measures and interim indicators [8] that will accurately capture their performance and success and that the pilots have the capacity to collect, access, and analyze these data as Federal, State, and local laws allow.

For purely illustrative purposes, examples of potential pilots include:

- A State, local or tribal government and its partners could build an integrated enrollment and case-management system that would be used by numerous youth-serving systems (juvenile justice, child welfare, mental health, workforce and vocational rehabilitation systems) in order to better target appropriate services to youth who are served by multiple systems.
- A State, local, or tribal government and its partners could develop and test a coordinated approach to serving youth who are involved in multiple systems that creates joint performance goals, integrates services for vulnerable youth and their families, and aligns conflicting eligibility requirements that currently result in service gaps.
- A State, local, or tribal government and its partners might implement systems change by establishing cross-sector collaboration at the local level to break down municipal agency ''silos.'' This pilot could create integrated teams that represent multiple agencies and service systems to comprehensively address the needs of individual clients and establish new mechanisms for sharing and tracking data across multiple systems that serve disconnected youth in accordance with Federal, State, and local laws. Systems change can include strong partnerships with local philanthropic organizations and non-profit service providers.
- A State, local, or tribal government could create a more integrated and effective job-driven training and service-delivery system that enhances key elements of programs, such as employer engagement, leveraging of public and private resources, data-informed decision making, work-based training opportunities, career pathways, outcomes measurement and program improvement, and the elimination of barriers to employment to ensure that disconnected youth are equipped with the skills that employers need and are connected to employers with good job opportunities. A job-driven training program that uses the flexibilities offered by P3 might combine Workforce Investment Act youth formula program funding for job training and adult education funds for literacy and numeracy training (and, if Congress continues P3 authority in FY 2015, Workforce Innovation and Opportunity Act youth formula program and adult education funding), and other program funds to eliminate employment barriers.

P3 is one of multiple Federal approaches to advance innovation and program delivery to address critical social challenges through community-driven, evidence-based strategies. Complementary approaches, which are laid out in the P3 Consultation Paper, include:

- Promise Zones, which ensure that Federal programs and resources are focused intensely on hard-hit communities;
- Job-Driven Training, which drives improvements in workforce development and job training programs, emphasizing effective approaches that lead to education and credentials needed for in-demand jobs, and providing workers with pathways to good careers and incomes;
- Federal innovation funds—including the Social Innovation Fund, the Workforce Innovation Fund, and the education-focused Investing in Innovation Fund—which support projects that use and build evidence about how to effectively improve skills of at-risk youth that will enable them to succeed in the workforce; and
- Pay for Success initiatives launched by the Department of Justice, DOL, and CNCS, which are fostering outcome-focused partnerships among Federal and State governments, local communities, private-sector investors, service providers, and research organizations to implement cost-effective services that improve outcomes for disconnected youth while generating savings for taxpayers.

Key Features of Successful P3 Proposals

P3 will support a youth-centric approach to service pathways by enabling pilot sites to define the key outcomes that youth in the target population should achieve and to coordinate services so they can achieve those outcomes. Pilots will: (1) Identify the pilot's target population through a needs assessment; (2) use data and evaluations to determine the most effective strategies for serving the target population; (3) propose appropriate funding streams to blend in order to support the strategies; (4) identify the flexibility, both Federal and non-Federal, they need in order to implement the strategies; and finally (5) enter into a performance agreement with a lead Federal agency (designated by the Office of Management and Budget (OMB)) and pilot partners (including any and all State, local, and tribal entities that would be involved in implementation of the pilot) that specifies pilot goals, outcome measures and interim indicators, accountability and oversight mechanisms, and responsibilities of the entities involved.

(1) *Identify the pilot's target population through a needs assessment.*

Federal consultation with stakeholders has underscored that unclear, varied, or conflicting eligibility criteria for programs that serve youth have posed a barrier to providing comprehensive, effective services for disconnected youth. The broad statutory definition of ''disconnected youth'' provided in section 526(a)(2) of the Act, combined with the Agencies' expanded authority to allow pilots to blend funds and obtain other waivers of program requirements, is meant to address this barrier by providing applicants with flexibility to define a specific sub-population of disconnected youth that the pilot will serve. This target population must be identified through a data-driven needs assessment, which is discussed further in the *Application Requirements* section of this notice.

(2) *Use data and evaluations to determine the most effective strategies for serving the target population.*

[8] An interim indicator is a marker of achievement that demonstrates progress toward an outcome.

The Agencies are seeking to ensure that pilots create a foundation for broader change and continuous improvement in serving disconnected youth. P3 will therefore support pilots that include, to the greatest extent possible, evidence-based and evidence–informed [9] interventions and practices.

In many cases, broader change and continuous improvement rely on both specific service-delivery models and also larger systems, such as policy and administrative frameworks. The Agencies are interested in pilots that draw on the best available evidence about how to improve outcomes for disconnected youth, both generally as well as for applicants' specific target populations, through both service delivery and systems change.

(3) *Propose appropriate funding streams to blend in order to support the strategies.*

P3 allows States, localities, and tribes to blend certain FY 2014 discretionary funds from the Agencies in order to implement outcome-focused strategies for serving disconnected youth. When funds are blended, individual funding streams, or portions of the funding streams, are merged under a single set of reporting and other requirements, losing their award-specific identity. The unified requirements for blended funds may differ from the various requirements that are associated with each of the original, individual funding streams, but must be consistent with the purposes of the programs under which the funds were appropriated. In addition, when activities are supported by blended funding streams, the associated costs do not need to be allocated or tracked back to the original, separate programs.

Programs from which funds may be blended in pilots are limited to those that target disconnected youth, or that are designed to prevent youth from disconnecting from school or work by providing education, training, employment, and other related social services. More information about programs that applicants may want to consider in their proposals is provided in Appendix B.

Where funding streams from certain Federal programs are not eligible or suitable for blending under P3, pilots may also consider how to braid [10] them, or align them in other ways that promote more effective and efficient outcomes while maintaining the separate identity of each funding stream. Pilots may involve both blended and braided funds.

In general, the pilots are intended to facilitate flexible use of existing funding streams that were made available under the Act. However, in order to provide incentives to participate in P3 and facilitate the initial implementation of performance agreements that will likely require additional coordination and collaboration among a range of State, local, and tribal agencies, the Agencies are awarding FY 2014 start-up funding in this competition. These start-up grants will be in the range of $400,000–$700,000 per grantee.

(4) *Identify the flexibilities, both Federal and non-Federal, pilots need in order to implement the strategies.*

P3 authority enables heads of the Agencies to approve significant flexibilities, including both the authority to permit blending of funds and the authority to grant waivers of program requirements associated with these funds. In addition to any existing waiver authority that the Agencies have, they also may waive any statutory, regulatory, or administrative requirements that they are otherwise not authorized to waive, as long as the waiver is in keeping with important safeguards (see sections 526(d) and (f) of the Act). Specifically, the waivers must be consistent with the statutory purposes of the relevant Federal programs necessary to achieve the pilot's outcomes, and no broader in scope than necessary to achieve those outcomes. Requirements related to nondiscrimination, wage and labor standards, and the allocation of funds to State and sub-State levels cannot be waived. Agency heads also must determine that the Agency's participation and the use of proposed program funds: (1) Will not result in denying or restricting individual eligibility for services funded by those programs; and (2) will not adversely affect vulnerable populations that are the recipients of those services.

The flexibility, including waivers, permitted under the Act will allow pilot sites to tailor requirements, such as the allowable activities, eligibility criteria and reporting requirements for Federal funds, so that they support the goals and objectives of the pilot and maximize its capacity to improve outcomes for youth.

Successful applicants will be responsible for identifying and securing flexibilities that they need at the State, local, or tribal level in order to implement their pilots.

(5) *Enter into a performance agreement with a lead Federal agency (designated by OMB) and pilot partners.*

The Act requires that each selected pilot be governed by a performance agreement between a lead Federal agency and the respective representatives of all of the State, local, or tribal governments participating in the agreement (see program requirement (d)). Performance agreements will identify, among other things, the Federal funds and programs involved in the pilot, the population to be served and the outcome(s) to be achieved by the pilot, and the cost-effective Federal oversight procedures that will be used for the purpose of maintaining the necessary level of accountability for funds. OMB has designated ED as the lead agency for purposes of administering P3 start-up grants. OMB may also designate an additional lead Federal agency for each pilot on the basis of the programs included and/or the outcomes sought in the pilot.

Priorities: The Agencies are establishing these priorities for the FY 2014 grant competition and any subsequent year for which P3 awards are made from the list of unfunded applicants from this competition. We are establishing absolute priorities 1 through 3 and competitive preference priorities 1 and 2 in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1). Competitive preference priority 3 is from the notice of final priority—Promise Zones, published in the **Federal Register** on March 27, 2014 (79 FR 17035).

Absolute Priorities: For FY 2014 and any subsequent year for which we make awards from the list of unfunded

[9] Evidence-based interventions are approaches to prevention or treatment that are validated by documented scientific evidence from experimental, quasi-experimental or correlational studies and that show positive effects on the primary targeted outcomes (for experimental and quasi-experimental studies) or favorable associations (for correlational studies). The best evidence to support an applicant's proposed reform(s) and target population will be based on one or more studies using a randomized controlled trial. The next best evidence will be studies using a quasi-experimental (matched comparison) group. Definitions for these types of studies can be found in 34 CFR 77.1(c). Correlational analysis may also be used as evidence to support an applicant's proposed reforms. Interventions and practices are considered evidence-informed if they bring together the best available research, professional expertise, and input from youth and families to identify and deliver services that have promise to achieve positive outcomes for youth, families, and communities. Applicants proposing reforms on which there are not yet evaluations (such as innovations that have not been formally tested or tested only on a small scale) must document how evidence or practice knowledge informed the proposed pilot design.

[10] Braiding funding is a funding and resource allocation strategy in which entities use existing funding streams to support unified initiatives in as flexible and integrated a manner as possible while still tracking and maintaining separate accountability for each funding stream. One or more entities may coordinate several funding sources, but each individual funding stream maintains its award-specific identity.

applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet Absolute Priority 1, 2, or 3.

Note: Applicants must indicate in their application whether they are applying under absolute priority 1, absolute priority 2, or absolute priority 3. An applicant that applies under absolute priority 2, but is not eligible for funding under absolute priority 2, or applies under absolute priority 3, but is not eligible for funding under absolute priority 3, may be considered for funding under absolute priority 1.

Because a diverse group of communities could benefit from P3, the Secretary establishes an absolute priority for applications that propose to serve disconnected youth in one or more rural communities [11] only, and an absolute priority for applications that propose to serve disconnected youth in one or more Indian tribes, and an absolute priority for applications that propose to serve disconnected youth in other communities. P3 is intended, through a demonstration, to identify effective strategies for serving disconnected youth. The Agencies are aware such strategies may differ across environments, and wish to test the authority in a variety of settings. Stakeholder input emphasized that tribal and rural communities in particular can face unique challenges in effectively serving disconnected youth.

These priorities are:

Absolute Priority 1—Improving Outcomes for Disconnected Youth.

Under this priority, we provide funding to an applicant that proposes a pilot designed to improve outcomes for disconnected youth.

Absolute Priority 2—Improving Outcomes for Disconnected Youth in Rural Communities.

Under this priority, we provide funding to an applicant that (1) meets absolute priority 1; and (2) proposes to serve disconnected youth in one or more rural communities only.

Note: To assist us in verifying whether an applicant qualifies for absolute priority 2, an applicant that applies under absolute priority 2 must include the following information in its application: (1) A list of the communities it proposes to serve; and (2) a list and the National Center for Education Statistics (NCES) identification codes of (a) the LEA or LEAs that serve each of the communities it proposes to serve if the applicant qualifies for this priority through the criterion using the Small, Rural School Achievement program or the Rural and Low-Income School program or (b) the school or schools that serve each of the communities it proposes to serve if the applicant qualifies for this priority through the criterion using school-level NCES locale codes.

Absolute Priority 3—Improving Outcomes for Disconnected Youth in Tribal Communities.

Under this priority, we provide funding to an applicant that (1) meets absolute priority 1; (2) will serve disconnected youth in one or more Indian tribes; and (3) represents a partnership that includes one or more Indian tribes.

Competitive Preference Priorities: For FY 2014 and any subsequent year for which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), up to an additional 5 points will be awarded to an application based on how well the application meets competitive preference priority 1, up to an additional 10 points to an application based on how well the application meets competitive preference priority 2, and an additional 2 points to an application that meets competitive preference priority 3.

Background for Competitive Preference Priorities 1 and 2:

Under competitive preference priorities 1 and 2, we will award points to applicants based on their plans to conduct independent impact evaluations of at least one service-delivery or operational component of their pilots, in addition to participating in the national P3 evaluation, which is discussed in the *Program Requirements* section of this notice. In proposing these site-specific impact evaluations, applicants should use the strongest possible designs and research methods and use high-quality administrative data in order to maximize confidence in the evaluation findings and minimize the costs of conducting these evaluations. Federal start-up funds and blended funds may be used to finance these evaluations, which will augment the evidence that is gained through any impact studies that are included in the national P3 evaluation.

Competitive Preference Priority 1—Quasi-Experimental Site-Specific Evaluations (Up to 5 points).

Under this priority, competitive preference will be given to applicants that propose to conduct an independent evaluation of the impacts on disconnected youth of their overall program or specific components of their program using a quasi-experimental [12] design. Proposals will be scored based on the clarity and feasibility of the proposed evaluation design and the applicants' demonstrated expertise in planning and conducting a quasi-experimental evaluation study.

Competitive Preference Priority 2—Experimental Site-Specific Evaluations (Up to 10 points).

Under this priority, competitive preference will be given to applicants that propose to conduct an independent evaluation of the impacts of their overall program or components of their program on disconnected youth using a randomized controlled trial.[13] Applicants' proposals will be scored based on the clarity and feasibility of the proposed evaluation design and the applicants' demonstrated expertise in planning and conducting experimental evaluation studies.

Please see Appendix A for the requirements for evaluation proposals that are related to competitive preference priorities 1 and 2.

Competitive Preference Priority 3—Promise Zones (0 or 2 points).

Background:

Under this priority, competitive preference will be given to applicants

[11] A rural community is a community that is served only by one or more local educational agencies (LEAs) that are currently eligible under the Small, Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, or includes only schools designated by the National Center for Education Statistics with a locale code of 42 or 43. Applicants may determine whether a particular LEA is eligible for the SRSA or RLIS programs by referring to information on the following Department Web site: *http://www2.ed.gov/programs/reapsrsa/eligible14/index.html.* The first tab in the spreadsheets available at this site lists LEAs that are eligible for SRSA; the second tab lists LEAs that are eligible for RLIS. Applicants may determine school locale codes by referring to the following Department Web site: *http://nces.ed.gov/ccd/schoolsearch/.* Involvement in a pilot by an LEA or school is not a requirement to participate in P3.

[12] ''Quasi-experimental design'' means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet ED's What Works Clearinghouse Evidence Standards with reservations. (34 CFR 77.1(c); see also the What Works Clearinghouse Procedures and Standards Handbook, Version 3.0, March 2014, available at: *http://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_procedures_v3_0_standards_handbook.pdf.*)

[13] ''Randomized controlled trial'' means a study that employs random assignment of, to give education-based examples, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcome for the treatment group and for the control group. These studies, depending on design and implementation, can meet ED's What Works Clearinghouse Evidence Standards without reservations. (34 CFR 77.1(c); see also the What Works Clearinghouse Procedures and Standards Handbook, Version 3.0, March 2014, available at: *http://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_procedures_v3_0_standards_handbook.pdf.*)

that propose projects that are designed to serve and coordinate with a federally designated Promise Zone. Promise Zone designees have committed to establishing comprehensive, coordinated approaches in order to ensure that America's most vulnerable children succeed from cradle to career. In January 2014, President Obama announced the first five Promise Zones, located in: The Choctaw Nation of Oklahoma, Los Angeles, Philadelphia, San Antonio, and Kentucky Highlands. This designation is designed to assist local leaders in creating jobs, increasing economic activity, improving educational opportunities, leveraging private investment, and reducing violent crime in high-poverty urban, rural, and tribal communities. By partnering with Promise Zone designees, the Federal government will help communities access the resources and expertise they need—including the resources from various neighborhood revitalization initiatives—to ensure that Federal programs and resources support the efforts to transform these communities.

Priority:

This priority is for projects that are designed to serve and coordinate with a federally designated Promise Zone.

Note: Applicants should submit a letter of support from the lead organization of a designated Promise Zone describing the contribution of the applicant's proposed activities. A list of designated Promise Zones and lead organizations can be found at *http://hud.gov/promisezones.*

Application Requirements:

The following requirements apply to all applications submitted under this competition. Any application that does not include the required documents or information will not be considered.

(a) *Statement of Need for a Defined Target Population.*

(1) The applicant must define the target population to be served, based on data and analysis demonstrating the need for services within the relevant geographic area. The target population must be consistent with the population identified by section 526(a)(2) of the Act.

(2) The applicant's statement of need must include data demonstrating how the target population lags behind other groups in achieving the outcomes that the pilot will seek to attain, including an analysis of disparities in circumstances and outcomes among the target population and these other groups. These data must be based on a needs assessment that was conducted or updated within the past three years using representative data on youth from the jurisdiction(s) proposing the pilot. Applicants do not need to include a copy of the needs assessment with the application, but must identify when the assessment was conducted.

(b) *Flexibility, including waivers.*

(1) *Federal requests for flexibility, including waivers.* The applicant must describe the Federal flexibility that is needed to implement the proposed pilot and to improve outcomes for the target population, focusing on changes to major program requirements that would otherwise inhibit implementation. Flexibility involves both the ability to blend funds, thereby aligning certain administrative activities, and other waivers of program requirements. Examples of potential requests for flexibility include, but are not limited to: changes to eligibility requirements, allowable uses of funds, or performance reporting. Applicants must cite the specific Federal statutory, regulatory, or other requirements for which they are requesting flexibility. (More information on flexibility, including waivers, is provided in the FAQ section of the application package.)

Note: The waiver request process for P3, which is part of the application process, differs from standard agency processes. Applicants do not need to submit separate waiver requests or information to the respective agencies outside of the P3 application process.

(2) *Non-Federal flexibility, including waivers.* In addition to Federal flexibility, successful implementation of proposals may also depend on flexibility related to requirements imposed at the State, local, or tribal level. The Agencies do not have the authority to waive non-Federal requirements. Applicants therefore must identify the specific State, local, or tribal policies, regulations, or other requirements that may impede the pilot's ability to achieve its goals so that, if the proposed pilot and flexibility, including waivers, are approved, requirements across non-Federal levels of government are aligned to support effective implementation. Applicants must provide written assurance that:

(A) The State, local, or tribal government(s) with authority to grant any needed non-Federal flexibility, including waivers, will approve such flexibility within 60 days of an applicant's designation as a pilot finalist; or

(B) Non-Federal flexibility, including waivers, is not needed in order to successfully implement the pilots.

(c) *Project Design.*

The applicant must present a project design for how it will improve specific outcomes for the target population. The design must indicate the proposed length of the pilot, which may not extend beyond September 30, 2018, and whether and how the applicant intends to incorporate future funding, including FY 2015 funding, into the multi-year project if Congress extends P3 authority.[14] Applicants may propose to expand the number of Federal programs supporting pilot activities using FY 2015 or other future funding beyond the Federal programs proposed using FY 2014 funds. The applicant's design must include the following elements.

(1) An explanation of how the strategies and activities that the pilot will employ are based on (or informed by) available research evidence.[15]

Note: Applicants must cite the studies on service interventions and system reform that informed their pilot design and explain the relevance of the cited evidence to the proposed project.

(2) A graphic depiction (not longer than one page) of the pilot's logic model [16] that illustrates the underlying

[14] Authority for pilots to blend funds for future years is subject to Congressional action as well as agency approval. However, because the Agencies will evaluate applications, in part, based on their multi-year plans, an applicant should provide as much information as possible about its future plans. Once pilots are selected, the Agencies may consider changes, including changes in scope and objectives, to pilot designs in subsequent years as a result of new funding streams. The reason for considering those changes is that, because P3 is intended to test a new approach to improving outcomes for disconnected youth, the pilots that demonstrate successful performance and effective governance processes may be able to build on these gains by using additional funding streams and/or including additional partners in future years.

[15] The best evidence for the expected effects of proposed interventions and reforms will be based on one or more studies using a randomized controlled trial. The next best evidence will be studies using a quasi-experimental (matched comparison group). Some studies that use these designs have been reviewed and are available in Federal registries of evidence-based interventions, such as the What Works Clearinghouse (WWC) (*http://ies.ed.gov/ncee/wwc/*) and the Clearinghouse on Labor Evaluation and Research (CLEAR) (*http://clear.dol.gov/*). Correlational analysis may also be used as evidence to support an applicant's proposed reform. More information on Federal registries is provided in the FAQ section of the application package. Applicants are encouraged to identify (and cite) studies that support their proposed pilot strategies and activities (whether from Federal registries or other sources) to explain the strengths and limitations of the existing evidence and to describe how the proposed strategies and activities will take into account those strengths and limitations in the existing evidence. Applicants proposing reforms on which there is not yet research evidence (such as innovations that have not been formally tested or tested only on a small scale) must document how evidence or practice knowledge informed the proposed pilot design.

[16] ''Logic model'' (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and

theory of how the pilot's strategy will produce intended outcomes. More information on logic models is provided in the FAQ section of the application package.

(3) A description of the Federal program funds the applicant will blend in the pilot to carry out the activities described. In order to qualify for a pilot, the proposal must include at least two Federal programs: (a) That have policy goals related to P3; and (b) at least one of which is administered (in whole or in part) by a State, local, or tribal government (see Appendix B for examples of specific programs that applicants may want to consider). If applicable, the applicant should also describe any Federal funds that will support the proposed pilot or complementary activities by being braided rather than blended, such as funds that are not eligible under the Act to be blended, but may still support relevant activities under the pilot.

Note: Agencies will review the blending of FY 2014 competitive grants in pilots on a case-by-case basis in order to consider how the scope, objectives, and target populations of the existing award align with the proposed pilot. As discussed under the selection criteria, applicants will be scored, in part, based on the extent to which they demonstrate that alignment.

(d) *Work Plan and Project Management.* The applicant must provide a detailed work plan that describes how the proposed work will be accomplished. The applicant must describe the professional qualifications that will be required of the project manager and other key personnel to ensure proper management of pilot activities.

(e) *Partnership Capacity and Management.* The applicant must—

(1) Identify the proposed partners, including any and all State, local, and tribal entities and non-governmental organizations that would be involved in implementation of the pilot. Partnerships that cross programs and funding sources but are under the jurisdiction of a single agency or entity must identify the different sub-organizational units involved.

(2) Provide assurance of the proposed partners' commitment, such as a memorandum of understanding (MOU) or letter of commitment. The assurance of commitment must be signed by the executive leader or other accountable senior representative of each relevant organization or agency and include, at a minimum: (a) A description of each proposed partner's commitment of financial or in-kind resources (if any); (b) how each proposed partner's existing vision and current and proposed activities align with those of the proposed pilot; and (c) how each proposed partner will be held accountable under the proposed governance structure.

(3) Describe how the applicant and proposed partners will use and coordinate resources in order to improve outcomes for disconnected youth. This description may include whether proposed efforts are aligned with, or whether the applicants' and proposed partners' jurisdiction is participating in, complementary Administration initiatives or efforts, such as Promise Zones and Pay for Success, or efforts that are focused on populations such as foster youth, young men of color, or homeless youth. For projects that include a focus on placing youth in work-based training and employment opportunities, applicants should address engagement with business and industry in identifying employment opportunities and skills, defining competencies, designing programs, and developing curricula, when applicable.

Note: While applicants must describe how the proposed project will use and coordinate resources, participation in complementary initiatives or efforts of the Administration is not a requirement for participation in P3.

(f) *Data and Evaluation Capacity.*

(1) Applicants must describe the proposed partnership's data and evaluation capacity, including its ability to collect, analyze, and use data for decision-making, learning, continuous improvement, and accountability. Specifically, the applicant must describe the extent to which the proposed partners have done, and will continue to do, the following:

(A) Manage and maintain computerized administrative data systems to track program participants, services, and outcomes;

(B) Execute data-sharing agreements with programs or organizations to share information with program partners and evaluators for case management, performance management, and evaluation purposes, in accordance with Federal, State, and other privacy laws and requirements;

(C) Link or make progress toward linking programmatic data to administrative data from relevant government agencies;

(D) Collect, store, and make data available to program partners, researchers, and evaluators in accordance with Federal, State, and other privacy laws and regulations;

(E) Use data to determine cost-effective strategies for improving outcomes; and

(F) Regularly analyze program data to assess progress, identify operational strengths and weaknesses, and determine how implementation could be strengthened to improve outcomes.

(2) The applicant must propose outcome measures and interim indicators to gauge pilot performance. At least one outcome measure must be in the domain of education, and at least one outcome measure must be in the domain of employment. Applicants may specify additional employment and education outcome measures, as well as outcome measures in other domains of well-being, such as criminal justice, physical and mental health, and housing. Regardless of the outcome domain, applicants must identify at least one interim indicator for each proposed outcome measure. Examples of education- and employment-related outcome measures and interim indicators include:

- For High School Diploma Attainment: High school enrollment, attendance, and grade promotion;
- For Community College Completion: Class attendance and credit accumulation; and
- For Sustained Employment in Career Field: Job placement or acquisition, employment retention, and earnings.

The specific outcome measures and interim indicators the applicant uses should be grounded in its logic model, and informed by applicable program results or research, as appropriate. More information on outcomes and interim indicators is available in the FAQs included in the application package.

(3) For each proposed outcome measure and interim indicator, the applicant must describe:

(A) The methodology and progress milestones (such as monthly, quarterly, annually) that will be used to assess progress;

(B) The sources of data that will be used, and whether the data are subject to audit or other means of validation for accuracy; and

(C) The frequency with which data will be recorded by the pilot and the frequency with which the applicant proposes to report on outcome measures, interim indicators, and project progress milestones to the Federal government.

Note: Lead Federal agencies will work with selected pilots to finalize the reporting requirements and to determine the frequency of reporting as part of the performance partnership agreement. The lead Federal agency for each pilot reserves the right to

describes the relationships among the key components and outcomes, theoretically and operationally. (34 CFR 77.1(c).)

negotiate the selected interim indicators, outcome measures, and project progress milestones, and to add relevant performance measures as part of the performance agreement process.

(g) *Budget and Budget Narrative.*

(1) The applicant must identify specific funding levels for the funding sources to be used in the pilot, specifically—

(A) For each Federal program, the amount of funds to be blended and the percentage of total program funding received by the applicant that this amount represents;

(B) The total amount of funds from all Federal programs that would be blended under the pilot;

(C) The source and amount of any non-Federal funds and programs, including funds from State, local, tribal, philanthropic, and other sources, that will be used for the pilot, as well as a description of how those funds and programs will complement Federal funds in the implementation of the proposed strategy and activities; and

(D) The total amount of all funds, Federal and non-Federal, that will be used to support activities related to the pilot.

(2) The applicant must indicate whether in-kind contributions or other braided Federal funds will be used to support the pilot and, if so, identify these contributions.

(3) The applicant must provide a detailed budget and a budget narrative that describe how the pilot will use the requested start-up grant funds, as well as the FY 2014 and FY 2015 Federal program funds that the applicant proposes to blend. The budget must cover all years during which FY 2014 and FY 2015 Federal funds would be used to support the pilot and must include at least the first full year of the pilot. The applicant should request a specific start-up grant amount that is between $400,000 and $700,000 and describe how the pilot will use these start-up funds to support effective implementation, such as planning, governance, technical assistance, site-specific evaluation, capacity-building, and coordination activities. Examples of other uses include supporting the measurement of pilot performance and results, such as modifications to information systems.

Program Requirements:

(a) In addition to any site-specific evaluations that pilots may undertake, the Agencies are initiating a national P3 evaluation. Each P3 pilot must participate fully in any federally sponsored P3 evaluation activity, including the national evaluation of P3, which will consist of the analysis of participant characteristics and outcomes, an implementation analysis at all sites, and rigorous impact evaluations of promising interventions in selected sites. The applicant must acknowledge in writing its understanding of these requirements by submitting the form provided in Appendix A, ''Evaluation Commitment Form,'' as an attachment to its application.

(b) All P3 pilots must participate in a community of practice [17] that includes an annual in-person meeting of pilot sites (paid with grant funding that must be reflected in the pilot budget submitted; see the FAQ in the application package for more information) and virtual peer-to-peer learning activities. This commitment involves each pilot site working with the lead Federal agency on a plan for supporting its technical assistance needs, which can include learning activities supported by foundations or other non-Federal organizations as well as activities financed with Federal funds for the pilot.

(c) P3 pilots must secure necessary consent from parents, guardians, students, or youth program participants to access data for their pilots and any evaluations, in accordance with applicable Federal, State, local, and tribal laws. Applicants must explain how they propose to ensure compliance with Federal, State, local, and tribal privacy laws and regulations as pilot partners share data to support effective coordination of services and link data to track outcome measures and interim indicators at the individual level to perform, where applicable, a low-cost, high-quality evaluation.

(d) Each P3 pilot, along with other non-Federal government entities involved in the partnership, must enter into a performance agreement that will include, at a minimum, the following (as required by section 526(c)(2) of the Act):

(1) The length of the agreement;

(2) The Federal programs and federally funded services that are involved in the pilot;

(3) The Federal discretionary funds that are being used in the pilot;

(4) The non-Federal funds that are involved in the pilot, by source (which may include private funds as well as governmental funds) and by amount;

(5) The State, local, or tribal programs that are involved in the pilot and their respective roles;

(6) The populations to be served by the pilot;

(7) The cost-effective Federal oversight procedures that will be used for the purpose of maintaining the necessary level of accountability for the use of the Federal discretionary funds;

(8) The cost-effective State, local, or tribal oversight procedures that will be used for the purpose of maintaining the necessary level of accountability for the use of the Federal discretionary funds;

(9) The outcome (or outcomes) that the pilot is designed to achieve;

(10) The appropriate, reliable, and objective outcome-measurement methodology that will be used to determine whether the pilot is achieving, and has achieved, specified outcomes;

(11) The statutory, regulatory, or administrative requirements related to Federal mandatory programs that are barriers to achieving improved outcomes of the pilot; [18] and

(12) Criteria for determining when a pilot is not achieving the specified outcomes that it is designed to achieve and subsequent steps, including:

(i) The consequences that will result; and

(ii) The corrective actions that will be taken in order to increase the likelihood that the pilot will achieve such specified outcomes.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department of Education generally offers interested parties the opportunity to comment on proposed definitions, requirements, and selection criteria. However, Section 437(d)(1) of the General Education Provisions Act (GEPA) (20 U.S.C. 1232(d)(1)) allows the Secretary to exempt the first grant competition under a new or substantially revised program authority from rulemaking requirements and regulations.

This is the first P3 grant competition and, therefore, it qualifies for this exemption. In order to ensure timely

[17] ''Community of practice'' means a group of pilots that agrees to interact regularly to solve a persistent problem or improve practice in an area that is important to them and the success of their projects. Establishment of communities of practice under P3 will enable pilots to meet, discuss, and collaborate with each other regarding grantee projects.

[18] The Agencies cannot grant waivers of requirements under mandatory programs or programs funded outside of Division H of the Act, except where the agency has existing administrative authority to provide waivers. The Act requires that P3 performance agreements list barriers in mandatory programs even though P3 authority does not authorize these programs to be blended for pilot purposes. While these programs' funds are not eligible for blending funds under P3, applicants are encouraged to identify strategies for better coordinating the delivery of services with these programs to the extent possible. Medicaid, TANF and certain Foster Care programs authorized by the Social Security Act are examples of mandatory programs.

awards, the Secretary has decided to forgo public comment on the priorities, definitions, requirements, and selection criteria under section 437(d)(1) of GEPA. These priorities, definitions, requirements, and selection criteria will apply to the FY 2014 grant competition and any subsequent year for which we make awards from the list of unfunded applicants from this competition.

Program Authority: Section 526 of Division H of the Consolidated Appropriations Act, 2014 (Public Law 113–76).

Applicable Regulations:

This application notice (also referred to as a notice inviting applications (NIA)) is being published before the Department adopts the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 CFR part 200. We expect to publish interim final regulations that would adopt those requirements before December 26, 2014, and make those regulations effective on that date. Because grants awarded under this NIA will likely be made after the Department adopts the requirements in 2 CFR part 200, we list as applicable regulations both those that are currently effective and those that will be effective at the time the Department makes grants.

The current regulations follow: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485.

At the time we award grants under this NIA, the following regulations will apply: (a) EDGAR in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474.

Regardless of the timing of publication, the following also applies to this NIA: The notice of final priority—Promise Zones, published in the **Federal Register** on March 27, 2014 (79 FR 17035).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: Up to $7,100,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applicants from this competition.

Estimated Range of Awards: $400,000 to $700,000.

Estimated Average Size of Award: $550,000.

Estimated Number of Awards: 10.

Note: The Agencies are not bound by any estimates in this notice.

Project Period: Not to extend beyond September 30, 2018.

III. Eligibility Information

1. *Eligible applicants:* An application must be submitted by a lead applicant on behalf of a partnership that involves all public and private organizations (including non-profit, business, industry, and labor organizations) that will participate in pilot implementation and governance. The lead applicant must be a State, local, or tribal government entity, represented by a Chief Executive, such as a governor, mayor, or other elected leader, or the head of a State, local, or tribal agency. In addition to formally submitting the application, the official representing the lead applicant will serve as the primary official who is responsible for the pilot project if the proposal is selected as a pilot. A private, non-profit organization is not an eligible applicant for a pilot; however, it may have a significant role in the design, governance, and implementation of a pilot and may, if appropriate, be a signatory to the performance agreement. For more information on the potential roles and participation of non-profit organizations in a pilot, see the FAQs in the application package.

For each application selected as a pilot, the respective representatives of all participating State, local, and tribal governments must be parties to the performance agreement governing the pilot. For example, when a P3 pilot proposed at the local or tribal level is financed with funds administered by a State, the administering State agency must be a party to the agreement and must agree to any waivers or other proposals that are needed to implement the pilot and also fall under that State agency's jurisdiction. If a State or group of States proposes a pilot that would be implemented only in certain communities and would involve participation by local government jurisdictions, these jurisdictions will need to be party to the agreement and agree to implement the pilot as proposed by the State(s).

2. *Cost-Sharing or Matching:* This program does not require cost-sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Braden Goetz, U.S. Department of Education, 400 Maryland Avenue SW., Room 11141, PCP, Washington, DC 20202. Telephone: (202) 245–7405.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: January 8, 2015.

Note: Submission of a notice of intent to apply is optional.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit the application narrative to no more than 40 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to the application cover sheet; the detailed annual budget; the assurances and certifications; or the abstract, the absolute and competitive priorities, the

resumes, the bibliography, or the letters of commitment and MOUs. However, the recommended page limit does apply to all of the application narrative section.

b. *Submission of Proprietary Information:*

Given the types of projects that may be proposed in applications for Performance Partnership Pilots, your application may include business information that you consider proprietary. The Department's regulations define ''business information'' in 34 CFR 5.11.

Because we plan to make successful applications available to the public, and may make all applications available, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4 of the Freedom of Information Act. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information, please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: November 24, 2014.

Deadline for Notice of Intent to Apply: January 8, 2015.

Note: Submission of a notice of intent to apply is optional.

Deadline for Transmittal of Applications: March 4, 2015.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: May 4, 2015.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:*

Applications for competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Performance Partnerships Pilots program, CFDA number 84.420A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for P3 at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include

the CFDA number's alpha suffix in your search (*e.g.,* search for 84.420, not 84.420A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under For Further Information Contact in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Braden Goetz, U.S. Department of Education, 400 Maryland Avenue SW., Room 11141, PCP, Washington, DC 20202. FAX: (202) 245–7838.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education,

Application Control Center, Attention: CFDA Number 84.420A, LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.420A, 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria.* We are establishing the following selection criteria for the FY 2014 grant competition and any subsequent year for which we make awards from the list of unfunded applicants from this competition. Eligible applicants may receive up to 100 total points based on the extent to which their applications address these selection criteria. The number of points that may be awarded for each criterion is indicated in parentheses next to the criterion. An applicant's final score will include both points awarded based on selection criteria and also any points awarded for the three competitive preference priorities.

A. Need for Project (5 Points)

In determining the need for the proposed project, we will consider the extent to which the applicant used a comprehensive needs assessment completed within the previous three years that draws on representative data on youth in the jurisdiction(s) to be served by the pilot that are disaggregated according to relevant demographic factors to: (1) Show disparities in outcomes among key sub-populations; and (2) identify an appropriate target population of disconnected youth with a high level of need. Examples of relevant demographic factors include race, ethnicity, gender, age, disability status, involvement in systems such as foster care or justice, status as pregnant or parenting, and other key factors selected by the applicant.

B. Need for Requested Flexibility, Including Blending of Funds and Other Waivers (10 Points)

In determining the need for the requested flexibility, including blending of funds and other waivers, we will consider the following factors—

(1) The extent to which the applicant presents evidence that specific Federal barriers are hindering successful achievement of outcomes for the target population of disconnected youth identified by the applicant and cites the relevant statute(s), regulation(s), and/or administrative requirement(s) for which it is seeking flexibility, including waivers (5 points); and

(2) The extent to which the applicant provides a justification of how requested flexibility, including blending funds and other waivers, will reduce barriers, increase efficiency, support implementation of the pilot, and produce significantly better outcomes for the target population(s) (5 points).

C. Project Design (25 Points)

In determining the strength of the project design, we will consider the following factors—

(1) The extent to which the applicant presents a clear and logical plan that is likely to improve outcomes significantly for the target population, by addressing the gaps and the disparities identified through the needs assessment, including the extent to which—

(a) The inputs and activities shown in the logic model are necessary and sufficient to achieve the project's objectives, and

(b) The assumptions of the logic model are identified and a rationale is provided for them. For example, applicants proposing job training or employment strategies should include data on the demand for particular occupations in the relevant geographic areas (10 points);

(2) The extent to which the applicant demonstrates that the pilot will use evidence-based and evidence-informed interventions, in addition to systems change, as documented by citations to the relevant evidence (5 points);

Note: Applicants should cite the studies on service interventions and system reform that informed their pilot design and explain the relevance of the cited evidence to the proposed project in terms of subject matter and evaluation evidence.

(3) The extent to which the pilot will provide intensive, comprehensive, and sustained service pathways and coordinated approaches that are likely to improve outcomes significantly over the short, medium, and long term by helping individuals progress seamlessly from one educational stepping stone to another, across work-based training and education, or through other relevant programmatic milestones to improve outcomes. For example, a pilot might prevent gaps in service that would jeopardize the achievement of outcomes by creating a seamless progression of services that provide continuous support as needed to the target population (5 points); and

(4) For Federal programs that are proposed to provide funding for pilots, the extent to which the applicant explains how the use of funds for the pilot: (a) Will not result in denying or restricting the eligibility of individuals for services that (in whole or in part) are otherwise funded by these programs; and (b) based on the best available information, will not otherwise adversely affect vulnerable populations that are the recipients of those services. If the applicant proposes to include FY 2014 competitive grant funds that have already been awarded, the extent to

which the applicant demonstrates that the scope, objectives, and target population(s) of the existing award align with the proposed pilot (see the FAQs included in the application package for more information) (5 points).

D. Work Plan and Project Management (10 Points)

In determining the strength of the work plan and project management, we will consider the extent to which the applicant presents a strong work plan and project management approach that includes—

(1) A detailed timeline and implementation milestones, including—

(a) A statement of when any necessary preparatory work will be completed, which must be within 180 days of being awarded pilot start-up funding;

(b) The expected start date of a project manager, the expected award dates of contracts and other authorized subawards, and expected dates for establishing agreements among the partners;

(c) The start date of the pilot services, such as participant intake and services;

(d) When the partnership will begin to implement pilot services or changes to administrative systems and policy and which partners are responsible for key tasks;

(e) The number of participants expected to be served under the pilot for each period, such as quarterly or annually (for example, number of participants enrolled, and the number achieving specified education, employment, and other outcomes); and

(f) For an applicant that is proposing an evaluation (as described in competitive preference priorities 1 and 2), when it will begin evaluation activities, including execution of a contract with an independent evaluator.

(2) A description of how the proposed budget and budget narrative align with the work plan, identifying how each implementation milestone will be adequately funded as outlined in the proposed budget;

(3) A description of any existing or anticipated barriers to implementation and how they will be overcome; and

(4) A description of the professional qualifications that will be required of the project manager and other key personnel, including a description of how such qualifications are sufficient to ensure proper management of all grant activities, such as timely reporting and the ability to manage a strategic partnership (10 points).

Note: If the program manager or other key personnel are already on staff, the applicant should provide this person's resume or curriculum vitae.

E. Partnership Capacity (15 Points)

In determining the strength and capacity of the proposed pilot partnership, we will consider the following factors—

(1) The extent to which the applicant demonstrates that it has an effective governance structure in which partners that are necessary to successfully implement the pilot are represented and partners have the necessary authority, resources, expertise, and incentives to achieve the pilot's goals, resolve unforeseen issues, and sustain efforts to the extent possible after the project period ends, including by demonstrating the extent to which, and how, participating partners have successfully collaborated to improve outcomes for disconnected youth in the past. The proposed governance structure should reflect a plan for effective cooperation across levels of government, including a description of the State, local, and tribal roles in the partnership, or across entities within the same level of government, to improve outcomes for disconnected youth, such as through coordinated program delivery, easier program navigation for participants, or identification and resolution of State and local policy barriers (10 points);

(2) The extent to which the applicant demonstrates that its proposal was designed with input from all relevant stakeholders, including disconnected youth and other community partners. Where the project design includes job training strategies, the extent of employer input and engagement in the identification of skills and competencies needed by employers, the development of the curriculum, and the offering of work-based learning opportunities, including pre-apprenticeship and registered apprenticeship, will be considered (5 points).

F. Data Capacity (30 Points)

In determining the strength of the applicant's data capacity, we will consider the following factors—

(1) The extent to which the applicant demonstrates the capacity to collect, analyze, and use data for decision-making, learning, continuous improvement, and accountability, and has a strong plan to bridge the gaps in its ability to do so, including the extent to which the applicant has, and will continue to:

(a) Manage and maintain computerized administrative data systems to track program participants, services, and outcomes;

(b) Execute data-sharing agreements with programs or organizations to share information with program partners and evaluators for case management, performance management, and evaluation purposes in accordance with Federal, State, local, and other privacy laws and requirements;

(c) Use data to determine cost-effective strategies for improving outcomes; and

(d) Regularly analyze program data to assess the pilot's progress, identify operational strengths and weaknesses and determine how implementation can be strengthened to improve outcomes (5 points).

(2) The strength of the applicant's plan to manage and link data in ways that comply with all relevant Federal, State, and local privacy laws and regulations to ensure the protection of personally identifiable information (5 points).

(3) The extent to which the applicant shows how the outcomes of the proposed pilot are likely to be a significant improvement compared with what might have occurred in its absence, both during the pilot project period and, for longer-term outcomes, beyond the project period (10 points).

(4) The extent to which proposed outcome measures and interim indicators, as well as their measurement methodologies and progress milestones, are appropriate and sufficient to gauge progress toward pilot objectives (5 points).

(5) The extent to which the data sources for the outcome measures and interim indicators will be accessible and independently audited or validated for accuracy (5 points).

G. Budget and Budget Narrative (5 Points)

In determining the adequacy of the resources that will be committed to support the project, we will consider the extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the project.

2. *Review and Selection Process:* The Department will screen applications that are submitted in accordance with the requirements in this notice, and will determine which applications are eligible to be read based on whether they have met the eligibility and application requirements established by this notice.

The Department will use reviewers with knowledge and expertise on issues related to improving outcomes for disconnected youth to score the selection criteria. The Department will thoroughly screen all reviewers for conflicts of interest to ensure a fair and

competitive review. Reviewers with expertise in evaluation will score competitive preference priorities 1 and 2. The Department will assign 2 points for competitive preference priority 3 if the application includes a letter from the lead organization of a designated Promise Zone describing the contribution of the applicant's proposed activities.

Technical scoring. Reviewers will read, prepare a written evaluation, and assign a technical score to the applications assigned to their panel, using the selection criteria provided in this notice, competitive preference priorities 1 and 2, and the scoring rubric in Appendix D.

The Department will then prepare a rank order of applications based on their technical scores.

Flexibility, including blending of funds and other waivers. Using this rank order, representatives of the Agencies that administer programs under which flexibility in Federal requirements is sought will evaluate whether the flexibility, including blending of funds and other waivers, requested by top-scoring applicants meets the statutory requirements for Performance Partnership Pilots and is otherwise appropriate (as described in Appendix B). For example, if an applicant is seeking flexibility under programs administered by HHS and DOL, its requests for flexibility will be reviewed by HHS and DOL officials. Applicants may be asked to participate in an interview at this point in the process in order to clarify requests for flexibility and other aspects of their proposals.

For applicants that propose to include funds from FY 2014 competitive grants that have already been awarded, the flexibility review will include consideration of whether the scope, objectives, and target populations of the existing competitive grant award(s) are sufficiently and appropriately aligned with the proposed pilot. Any changes in terms and conditions of the existing competitive grant award(s) required for pilot purposes must be justified by the applicant (see FAQ included in the application package). The Agencies will review those requests on a case-by-case basis.

If 25 or fewer applications are received, the technical scoring and reviews of flexibility requests may be conducted concurrently.

Selecting finalists. Agency officials may recommend the selection of up to ten projects as Performance Partnership Pilots. In accordance with 34 CFR 75.217(d) and in consultation with the other Agencies, the Secretary will select finalists after considering the rank ordering, the recommendations of the Agencies that administer the programs for which the applicants are seeking flexibility and other information including an applicant's performance and use of funds and compliance history under a previous award under any Agency program. In selecting pilots, the agencies may consider high-ranking applications meeting absolute priority 2 or absolute priority 3 separately to ensure that there is a diversity of pilots. In addition, as required by the Act, each pilot must meet all statutory criteria.

For each finalist, a lead Federal agency designated by OMB will negotiate a performance agreement. If a performance agreement cannot be finalized for any applicant within 60 days, an alternative applicant may be selected as a finalist instead. The recommended projects will be considered finalists until performance agreements are signed by all parties, and pilot designation and start-up grant funds will be awarded only after execution of each finalist's performance agreement.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under current 34 CFR 74.14 and 80.12 and, when grants are made under this NIA, 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable or, when grants are awarded, the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may also notify you informally.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as outlined in the P3 performance agreement. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Performance measures and interim indicators, along with required reporting, will be outlined in P3 performance agreements.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Braden Goetz, U.S. Department of Education, 400 Maryland Avenue SW., Room 11141, PCP, Washington, DC 20202. Telephone: (202) 245–7405 or by email: *disconnectedyouth@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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Dated: November 19, 2014.

Johan E. Uvin,

Acting Assistant Secretary for Career, Technical, and Adult Education.

Appendices

Appendix A: Evaluation Commitment Form
Appendix B: Examples of Programs Potentially Eligible for Inclusion in Pilots
Appendix C: Competitive Preference Priorities 1 and 2 Evaluation Submission Requirements
Appendix D: Scoring Rubric

Appendix A: Evaluation Commitment Form

An authorized executive of the lead applicant and all other partners, including State, local, tribal, and non-governmental organizations that would be involved in the pilot's implementation, must sign this form and submit it as an attachment to the grant application. The form is not considered in the recommended application page limit.

Commitment To Participate in Required Evaluation Activities

As the lead applicant or a partner proposing to implement a Performance Partnership Pilot through a Federal grant, I/we agree to carry out the following activities, which are considered evaluation requirements applicable to all pilots:

Facilitate Data Collection: I/we understand that the award of this grant requires me/us to facilitate the collection and/or transmission of data for evaluation and performance monitoring purposes to the lead Federal agency and/or its national evaluator in accordance with applicable Federal, State, and local, and tribal laws, including privacy laws.

The type of data that will be collected includes, but is not limited to, the following:

- Demographic information, including participants' gender, race, age, school status, and employment status;
- Information on the services that participants receive; and
- Outcome measures and interim outcome indicators, linked at the individual level, which will be used to measure the effects of the pilots.

The lead Federal agency will provide more details to grantees on the data items required for performance and evaluation after grants have been awarded.

Participate in Evaluation: I/we understand that participation and full cooperation in the national evaluation of the Performance Partnership Pilot is a condition of this grant award. I/we understand that the national evaluation will include an implementation systems analysis and, for certain sites as appropriate, may also include an impact evaluation. My/our participation will include facilitating site visits and interviews; collaborating in study procedures, including random assignment, if necessary; and transmitting data that are needed for the evaluation of participants in the study sample, including those who may be in a control group.

Participate in Random Assignment: I/we agree that if our Performance Partnership Pilot or certain activities in the Pilot is selected for an impact evaluation as part of the national evaluation, it may be necessary to select participants for admission to Performance Partnership Pilot by a random lottery, using procedures established by the evaluator.

Secure Consent: I/we agree to include a consent form for, as appropriate, parents/guardians and students/participants in the application or enrollment packet for all youth in organizations implementing the Performance Partnership Pilot consistent with any Federal, State, local, and tribal laws that apply. The parental/participant consent forms will be collected prior to the acceptance of participants into Performance Partnership Pilot and before sharing data with the evaluator for the purpose of evaluating the Performance Partnership Pilot.

SIGNATURES

Lead Applicant
Print Name _____
Signature _____
Organization _____
Date _____

Partner
Print Name _____
Signature _____
Organization _____
Date _____

Partner
Print Name _____
Signature _____
Organization _____
Date _____

Partner
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Print Name _____
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Organization _____
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Partner
Print Name _____
Signature _____
Organization _____
Date _____

Appendix B: Examples of Programs Potentially Eligible for Inclusion in Pilots

Programs that may be included in pilots are limited to those that target disconnected youth, or are designed to prevent youth from disconnecting from school or work, that provide education, training, employment, and other related social services. Programs that serve youth as well as other populations may still be eligible for inclusion. In general, the Agencies will consider whether the inclusion of a program in a pilot is consistent with, or conflicts with, other significant legal or policy considerations.

The Agencies recognize that for Performance Partnership Pilots to be successful they must protect vulnerable populations and individuals served by programs included in each pilot at the same time that funds are blended and pilots are given new flexibilities. For a program to be blended as part of a pilot, the Federal agency must determine that doing so will: (1) Not deny or restrict an individual's eligibility to services; and (2) not adversely affect vulnerable populations that receive services from that program. More information on these determinations is provided in the FAQ section of the application package.

Some programs may introduce a greater likelihood of adversely affecting vulnerable populations, if blended in a pilot, and therefore warrant greater levels of review during the application process to ensure appropriate safeguards. Certain programs may be particularly well suited for blending if they have broad authority or a purpose well aligned with that of a Performance Partnership Pilot and therefore have very low risk of violating the P3 statutory protections. On the other hand, other programs may not be appropriate for a pilot at all if the Agencies determine that their inclusion would infringe on the statutory protections, or that inclusion would undermine important Federal policies or objectives. Where Federal programs are not eligible or suitable for blending under P3, pilots may consider how to braid funding streams, or align them in ways that promote more effective and efficient outcomes even though each stream of funds maintains a separate identity and remains subject to the requirements of the program for which the funds were appropriated.

To assist applicants in determining whether to propose various Federal programs for inclusion in a pilot using funds from FY 2014 and later years, the Agencies have identified three categories of risk as well as specific examples of the types of programs in each category. This resource identifies programs that should likely not be included in a pilot and those for which agencies believe that applicants would have either a notably high or low burden of proof to show that the statutory protections will not be violated. This is not a comprehensive list of all programs that may be involved in a pilot, and applicants should consider the context of their localities in determining which programs to blend.

In addition, the inclusion of FY 2014 competitive grants that have already been

awarded will merit special consideration on a case-by-case basis to determine whether the scope, objectives, and target population(s) of the existing competitive grant award(s) appropriately and sufficiently align with, as well as enhance, the scope, objectives, and target population(s) of the proposed pilot.

Category 1: Programs With Low Likelihood of Adversely Affecting Vulnerable Populations

The Agencies have identified these programs as presenting a low likelihood of adversely affecting vulnerable populations if they are included in a pilot. The Agencies would require assurances, but not plans, for ensuring the protection of individuals and vulnerable populations in receiving services.

These programs may align with the purpose or requirements of Performance Partnership Pilots, or they may have sufficiently broad authority that blending those funds would be highly unlikely to violate the statutory protections.

Agency	Program
Corporation for National and Community Service	Americorps State Grants.
Corporation for National and Community Service	Social Innovation Fund.
Department of Education—Office of Career, Technical and Adult Education.	Adult Education and Family Literacy Act.
Department of Education—Office of Career, Technical and Adult Education.	Career and Technical Education.
Department of Education—Office of Innovation and Improvement	Promise Neighborhoods.
Institute of Museum and Library Services	National Leadership Grants for Museums/National Leadership Grants for Libraries.
Department of Labor—Employment and Training Administration	Workforce Investment Act—Adult.
Department of Labor—Employment and Training Administration	Workforce Investment Act—Youth.
Department of Labor—Employment and Training Administration	YouthBuild.
Department of Labor—Employment and Training Administration	Workforce Innovation Fund.
Department of Labor—Employment and Training Administration	Workforce Investment Act Section 166 Indian and Native American Youth Program.

Category 2: Programs Requiring Significant Review To Ensure That Vulnerable Populations Are Not Adversely Affected

The Agencies have identified these programs as potentially eligible for blending, but only with significant, robust safeguards in place to ensure that vulnerable populations are not adversely affected. While applicants should propose safeguards as needed, these safeguards would ultimately be negotiated and finalized through the performance agreement.

These programs typically serve highly vulnerable populations, such as homeless youth, foster youth, and students with disabilities. To blend funds from such programs, applicants must convincingly demonstrate that the outcomes of the population served by the original program will not diminish during the pilot.

Evidence may include plans for data collection on the vulnerable population, alternative service options, and alternative sources of funds. A pilot's Performance Agreement will include outcome measurements and accountability mechanisms related to these vulnerable populations.

Agency	Program
Department of Health and Human Services—Administration for Children and Families.	Adolescent Pregnancy Prevention Program (APPP).
Department of Health and Human Services—Administration for Children and Families.	Basic Centers Program (BCP—Runaway and Homeless Youth).
Department of Health and Human Services—Administration for Children and Families.	Chafee Education and Training Vouchers.
Department of Health and Human Services—Administration for Children and Families.	Street Outreach Program (SOP—Runaway and Homeless Youth).
Department of Health and Human Services—Administration for Children and Families.	Transitional Living Program (TLP—Runaway and Homeless Youth).
Department of Health and Human Services—Substance Abuse and Mental Health Services Administration.	"Now Is The Time" Healthy Transitions (HT): Improving Life Trajectories For Youth And Young Adults With, Or At Risk For, Serious Mental Health Conditions.
Department of Health and Human Services—Substance Abuse and Mental Health Services Administration.	State Youth Treatment (SYT) Cooperative Agreements.
Department of Labor—Employment and Training Administration	Reintegration of Ex-Offenders.

Category 3: Programs Likely Inappropriate for Pilots Due to High Likelihood of Restricting Eligibility for Services or Adversely Affecting Vulnerable Populations

The Agencies have determined that any blending of funds from these programs would: (1) Deny or restrict an individual's eligibility for services funded by these programs; or (2) adversely affect vulnerable populations that receive such services. These programs may entitle all eligible individuals to a service, or provide individuals with direct benefits such as vouchers, credits, and scholarships. Applicants can try to justify that the blending of these programs' funds would not violate the P3 statutory protections. Such justifications must be compelling.

Agency	Program
Department of Health and Human Services—Administration for Children and Families.	Promoting Safe and Stable Families, title IV–B, subpart 2 (discretionary appropriations only).

Appendix C: Competitive Preference Priorities 1 and 2 Evaluation Submission Requirements

In order to be awarded any of the additional points under competitive preference priorities 1 and 2, applicants must include the following two documents as separate attachments to their applications:

1. A Summary Evaluation Plan that describes how the pilot or a component of the pilot (such as a discrete service-delivery strategy) will be rigorously evaluated. The evaluation plan may not exceed 8 pages. Our reviewers will be instructed to read only the first 8 pages of the plan. The plan must include the following:

- A brief description of the research question(s) proposed for study, and an explanation of its/their relevance, including how the proposed evaluation will build on the research evidence base for the project as described in Requirement 4 and how the evaluation findings will be used to improve program implementation.
- A description of the impact-study methodology, including the key outcome measures, the process for forming a comparison or control group, a justification for the target sample size and strategy for achieving it, and the approach to data collection (and sources) that minimizes both cost and potential attrition;
- A proposed evaluation timeline, including dates for submission of required interim and final reports; and
- A plan for selecting and procuring the services of a qualified independent evaluator [19] prior to enrolling participants (or a description of how one was selected if agreements have already been reached). The applicant must describe how it will ensure that the independent evaluator has the capacity and expertise to conduct the evaluation, including estimating the effort for the evaluator including the time, expertise, and analysis needed to successfully complete the proposed evaluation.

2. A supplementary Evaluation Budget Narrative, which is separate from the overall application budget narrative and provides a description of the costs associated with funding the proposed program evaluation component, and an explanation of its funding source—*i.e.,* blended funding, start-up funding, or other funding (such as philanthropic). The budget must include a breakout of costs by evaluation activity (such as data collection and participant follow-up), and the applicant must describe a strategy for refining the budget after the services of an evaluator have been procured. There is no page limit for the Evaluation Budget Narrative. The applicant must include travel costs for the independent evaluator to attend at least one in-person conference in Washington, DC during the period of evaluation. All costs included in this supplementary budget narrative must be reasonable and appropriate to the project timeline and deliverables.

In designing their evaluations, we encourage eligible applicants to be familiar with the criteria for well-implemented quasi-experimental and experimental studies as described in both the Department of Education's What Works Clearinghouse Procedures and Standards Handbook (see *http://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_procedures_v3_0_standards_handbook.pdf*) and the Department of Labor's new standards for its Clearinghouse for Labor Evaluation and Research (CLEAR) (see *http://clear.dol.gov/sites/default/files/CLEAR_EvidenceGuidelines_1.1_revised.pdf*).

The Agencies will review the Summary Evaluation Plans and Evaluation Budget Narrative and provide feedback to applicants that receive competitive preference priority points and that are selected as pilot finalists or alternates. After award, these pilots must submit to the lead Federal agency a detailed evaluation plan of no more than 30 pages that relies heavily on the expertise of a qualified independent evaluator. The detailed evaluation plan must address the Agencies' feedback and expand on the Summary Evaluation Plan.

Appendix D: Scoring Rubric

Reviewers will assign points to an application for each selection sub-criterion, as well as for Competitive Preference Priority 1 (Quasi-Experimental Site-Specific Evaluations) and Competitive Preference Priority 2 (Experimental Site Specific Evaluations). The Department will assign points to Competitive Preference Priority 3 (Promise Zones) if the application includes a letter from the lead organization of a designated Promise Zone describing the contribution of the applicant's proposed activities. To help promote consistency across and within the panels that will review P3 applications, the Department has created a scoring rubric for reviewers to aid them in scoring applications.

The scoring rubric below shows the maximum number of points that may be assigned to each criterion, sub-criterion, and the competitive preference priority.

Selection criteria	Sub-criterion points	Criterion points
A. Need for the Project	5	5
The extent to which the applicant used a recent comprehensive needs assessment completed within the previous three years that draws on representative data on youth in the jurisdiction(s) to be served by the pilot that are disaggregated according to relevant demographic factors to (1) show disparities in outcomes among key sub-populations and (2) identify an appropriate target population of disconnected youth with a high level of need.		
B. Need for Requested Waivers		10
(B)(1) The extent to which the applicant presents evidence that specific Federal barriers are hindering successful achievement of outcomes for the target population of disconnected youth identified by the applicant and cites the relevant statute, regulation, and/or administrative requirements for which it is seeking flexibility, including waivers	5	
(B)(2) The extent to which the applicant provides a justification of how requested flexibility, including blending funds and other waivers, will reduce barriers, increase efficiency, support implementation of the pilot, and produce significantly better outcomes for the target population(s)	5	
C. Project Design		25
(C)(1) The extent to which the applicant presents a clear and logical plan that is likely to improve outcomes significantly for the target population by addressing the gaps and the disparities identified through the needs assessment, including the extent to which—	10	
(a) The inputs and activities shown in the logic model are necessary and sufficient to achieve the project's objectives, and		
(b) The assumptions of the logic model are identified and a rationale is provided for them. For example, applicants proposing job training or employment strategies should include data on the need for particular occupations in the relevant geographic areas.		

[19] Qualified Independent Evaluator: A qualified independent evaluator is an individual who coordinates with the grantee and the lead Federal agency for the pilot, but works independently on the evaluation and has the capacity to carry out the evaluation, including, but not limited to: Prior experience conducting evaluations of similar design (such as for random assignment evaluations, the evaluator will have successfully conducted a random assignment evaluation in the past); positive past performance on evaluations of a similar design, as evidenced by past performance reviews submitted from past clients directly to the awardee; lead staff with prior experience carrying out a similar evaluation; lead staff with minimum credential (such as a Ph.D. plus 3 years of experience conducting evaluations of a similar nature, or a Master's degree plus 7 years of experience conducting evaluations of a similar nature); and adequate staff time to work on the evaluation.

Selection criteria	Sub-criterion points	Criterion points
(C)(2) The extent to which the applicant demonstrates that the pilot will use evidence-based and evidence-informed interventions, in addition to systems change, as documented by citations to the relevant evidence	5	
(C)(3) The extent to which the pilot will provide intensive, comprehensive, and sustained service pathways and coordinated approaches that are likely to improve outcomes significantly over the short, medium and long term by helping individuals progress seamlessly from one educational stepping stone to another, across work-based training and education, or through other relevant programmatic milestones to improve outcomes. For example, a pilot might prevent gaps in service that would jeopardize the achievement of outcomes by creating a seamless progression of services that provide continuous support as needed to the target population	5	
(C)(4) For Federal programs that are proposed to provide funding for pilots, the extent to which the applicant explains how the use of funds for the pilot (a) will not result in denying or restricting the eligibility of individuals for services that (in whole or in part) are otherwise funded by these programs, and (b) based on the best available information, will not otherwise adversely affect vulnerable populations that are the recipients of those services. If the applicant proposes to include FY 2014 competitive grant funds that have already been awarded, the extent to which the applicant demonstrates that the scope, objectives, and target population(s) of the existing award align with the proposed pilot	5	
D. Work Plan and Project Management		10
(D) The extent to which the applicant presents a strong work plan and project management approach that includes—	10	
(1) A detailed timeline and implementation milestones, including—		
(a) A statement of when any necessary preparatory work will be completed, which must be within 180 days of being awarded pilot start-up funding;		
(b) The expected start date of a project manager, the expected award dates of subgrants and contracts, and expected dates for establishing agreements among the partners;		
(c) The start date of the pilot services, such as participant intake and services;		
(d) When the partnership will begin to implement pilot services or changes to administrative systems and policy and which partners are responsible for key tasks;		
(e) The number of participants expected to be served under the pilot for each period, such as quarterly or annually (for example, number of participants enrolled, and the number achieving specified education, employment, and other outcomes); and		
(f) For an applicant that is proposing an evaluation (as described in competitive preference priorities 1 and 2), when they will begin evaluation activities, including execution of a contract with an independent evaluator		
(2) A description of how the proposed budget and budget narrative align with the work plan, identifying how each implementation milestone will be adequately funded as outlined in the proposed budget; and		
(3) A description of any existing or anticipated barriers to implementation and how they will be overcome.		
(4) A description of the professional qualifications that will be required of the project manager and other key personnel are sufficient to ensure proper management of all grant activities, including timely reporting and the ability to manage a strategic partnership.		
E. Partnership Capacity		15
(E)(1) The extent to which the applicant demonstrates that it has an effective governance structure in which partners that are necessary to successfully implement the pilot are represented and partners have the necessary authority, resources, expertise and incentives to achieve the pilot's goals, resolve unforeseen issues, and sustain efforts to the extent possible after the project period ends, including by demonstrating the extent to which, and how, participating partners have successfully collaborated to improve outcomes for disconnected youth in the past. The proposed governance structure should reflect a plan for effective cooperation across levels of government, including a description of the State, local, and tribal roles in the partnership, or across entities within the same level of government to improve outcomes for disconnected youth, such as through coordinated program delivery, easier program navigation for participants, or identification and resolution of state and local policy barriers	10	
(E)(2) The extent to which the applicant demonstrates that its proposal was designed with input from all relevant stakeholders, including disconnected youth and other community partners. Where the project design includes job training strategies, the extent of employer input and engagement in the identification of skills and competencies needed by employers, the development of the curriculum, and the offering of work-based learning opportunities, including pre-apprenticeship and registered apprenticeship, will be considered	5	
F. Data Capacity		30
(F)(1) The extent to which the applicant demonstrates the capacity to collect, analyze, and use data for decision-making, learning, continuous improvement, and accountability, and/or has a strong plan to bridge the gaps in its ability to do so, including the extent to which the applicant has, and will continue to:	5	
(a) Manage and maintain computerized administrative data systems to track program participants, services, and outcomes;		
(b) Execute data-sharing agreements with programs or organizations to share information with program partners and evaluators for case management, performance management, and evaluation purposes in accordance with Federal, State, local, and other privacy laws and requirements;		
(c) Use data to determine cost-effective strategies for improving outcomes; and		

Selection criteria	Sub-criterion points	Criterion points
(d) Regularly analyze program data to assess the pilot's progress, identify operational strengths and weaknesses and determine how implementation can be strengthened to improve outcomes.		
(F)(2) The strength of the applicant's plan to collect, store, manage and link data in ways that comply with all relevant Federal, State, and local privacy laws and regulations to ensure the protection of personally identifiable information	5	
(F)(3) The extent to which the applicant shows how the outcomes of the proposed pilot will be a significant improvement compared with what might have occurred in its absence, both during the pilot project period and, for longer-term outcomes, beyond the project period	10	
(F)(4) The extent to which proposed outcome measures and interim indicators, as well as their measurement methodologies and progress milestones, are appropriate and sufficient to gauge progress toward pilot objectives	5	
(F)(5) The extent to which the data sources for the outcome measures and interim indicators will be accessible and independently audited or validated for accuracy	5	
G. Budget and Budget Narrative	5	5
The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the project.		
Total	100	100
Competitive Preference Priority 1: Quasi-Experimental Site-Specific Evaluations. Under this priority, competitive preference will be given to applicants that propose to conduct an independent evaluation of the impacts on disconnected youth of their overall program or specific components of their program using a quasi-experimental design. Proposals will be scored based on the clarity and feasibility of the proposed evaluation design and the applicants' demonstrated expertise in planning and conducting a quasi-experimental evaluation study	5	5
Competitive Preference Priority 2: Experimental Site-Specific Evaluations. Under this priority, preference will be given to applicants that propose to conduct an independent evaluation of the impacts of their overall program or components of their programs on disconnected youth using a randomized controlled trial. Applicants' proposals will be scored based on the clarity and feasibility of the proposed evaluation design and the applicants' demonstrated expertise in planning and conducting experimental evaluation studies	10	10
Competitive Preference Priority 3: Promise Zones. This priority is for projects that are designed to serve and coordinate with a federally designated Promise Zone	2	2

The reviewers will be asked to use the general ranges below as a guide when awarding points.

Maximum point value	Quality of applicant's response		
	Low	Medium	High
10	0–2	3–7	8–10
5	0–1	2–3	4–5

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