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

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2010–0025]

RIN 0960–AH21

Revisions to Direct Fee Payment Rules

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are adopting, with two revisions, our interim final rules that implemented amendments to the Social Security Act (Act) made by the Social Security Disability Applicants' Access to Professional Representation Act of 2010 (PRA). The interim final rules made permanent the direct fee payment rules for eligible non-attorney representatives under titles II and XVI of the Act and for attorney representatives under title XVI of the Act. They also revised some of our eligibility policies for non-attorney representatives under titles II and XVI of the Act. Based on public comment and subsequent inquiries, we are revising our rules to clarify that an eligible non-attorney representative's liability insurance policy must include malpractice coverage. We are also reaffirming that a business entity legally permitted to provide the required insurance in the States in which the non-attorney representative conducts business must underwrite the policies.

DATES: These rules are effective February 5, 2015.

FOR FURTHER INFORMATION CONTACT: Eric Ice, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–3233. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We published the interim final rules ''Revisions to Direct Fee Payment Rules'' on July 28, 2011 (76 FR 45184), and the rules became effective on August 29, 2011.[1] In the preamble to the interim final rules, we explained how we would implement the revisions made to the Act by the PRA.[2]

The PRA established five requirements that non-attorney representatives must meet to be eligible for direct fee payment. A representative must:

(1) Have a bachelor's degree from an accredited institution of higher education or have been determined by us to have equivalent qualifications derived from training and work experience;

(2) Pass an examination that we write and administer, which tests knowledge of the relevant provisions of the Act and the most recent developments in Social Security Administration (SSA) and court decisions affecting titles II and XVI of the Act;

(3) Secure professional liability insurance, or equivalent insurance, which we determine to be adequate to protect claimants in the event of malpractice by the representative;

(4) Undergo a criminal background check to ensure the representative's fitness to practice before us; and

(5) Demonstrate ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, which are designed to enhance professional knowledge in matters related to entitlement to, or eligibility for, benefits based on disability under titles II and XVI of the Act. The continuing education courses, and the instructors providing the education courses, must meet our prescribed standards.

Revision to and Clarification of the Liability Insurance Coverage Requirement

To fulfill the third requirement described above, the interim final rules required an eligible non-attorney representative to provide proof of and maintain continuous liability insurance coverage in an amount we prescribe (20 CFR 404.1717(a)(6) and 416.1517(a)(6)). We explained in the preamble that we would accept either business liability and professional liability insurance to meet this requirement.[3] In response to a comment, we are clarifying in the final rule that eligible non-attorney representatives must provide proof of and maintain continuous liability insurance that includes coverage for malpractice claims against the representative in an amount we prescribe.

We are also clarifying our requirement that insurance policies be underwritten by a business entity that is legally permitted to provide the insurance we require in the States in which the non-attorney representative conducts business. When we first established the demonstration project, we required that insurance policies be underwritten by firms that are licensed to provide insurance in the States where the individuals practice. On August 16, 2007, we published a **Federal Register** notice[4] explaining our decision that the insurance requirement would be met if the representative's insurance policy was underwritten by a business entity that is legally permitted to provide professional liability insurance in the States in which the representative conducts business. After we published our interim final rules on July 28, 2011, some representatives asked us whether we were continuing the August 2007 policy or whether we were returning to the original requirement that the insurance policies be underwritten by firms that are licensed to provide insurance in the States where the individual practices. We did not intend to change the requirement we explained in August 2007, and therefore clarified final sections 404.1717(a)(6) and 416.1517(a)(6) to make this point clearer.

Other Changes

We also made minor changes to correct punctuation and wording to the following sections:

- Corrected final sections *404.903(z)* and *416.1403(a)(24)* by deleting ''and'' after the semicolon.
- Corrected final sections *404.903(aa)* and *416.1403(a)(25)* by deleting the

[1] 76 FR 45184.

[2] Public Law 111–142, as codified at 42 U.S.C. 406(e).

[3] 76 FR 45184, 45187–45188.

[4] 72 FR 46121.

period and adding a semicolon and the word ''and.''

• Corrected final sections *404.1717(d)(1)(ii)* and *416.1517(d)(1)(ii)* by adding a semicolon after the word ''section.''

• Corrected final section *416.1517(f)(1) to read* ''. . . paragraphs (a)(1), (a)(2), (a)(3), or (a)(5) of this section'' to correspond to the text in 20 CFR *404.1717(f)(1).*

Public Comments

The 60-day public comment period closed on September 26, 2011. We received comments from three individuals and two organizations (the National Association of Disability Representatives (NADR) and the National Organization of Social Security Claimants' Representatives (NOSSCR).[5] We carefully considered the comments. We have condensed, summarized, and paraphrased some of the comments due to their length. We tried to summarize the commenters' views accurately and respond to the significant issues raised by the commenters that were within the scope of these rules.

Education and Experience

The Social Security Protection Act of 2004 (SSPA) included a requirement that we determine whether a non-attorney representative has ''equivalent qualifications derived from training and work experience'' if the representative does not have ''a bachelor's degree from an accredited institution of higher education.'' [6] In 2005, we published a notice in the **Federal Register** in which we explained that we would use a formula that balanced the applicant's years of education and his or her relevant professional experience when we determined whether an applicant met the ''equivalent qualifications'' requirement.[7] In the 5 years that followed, we found the balancing formula difficult to administer and revised this requirement in the interim final rules.[8] As we explained in the preamble to the interim final rules, we required applicants to demonstrate that they have either a bachelor's degree from an accredited institution of higher learning or at least 4 years of relevant professional experience and either a high school diploma or GED certificate.[9]

Comment: We received a comment from NADR indicating that it concurred that relevant professional experience is essential for representatives who have not completed a bachelor's degree. However, NADR noted that the SSPA demonstration project included a formula that balanced undergraduate education and work experience. NADR encouraged us to allow for some flexibility in evaluating relevant work experience for individuals who have received credit for undergraduate course work, but who have not earned a bachelor's degree.

Response: It is not practicable for us to evaluate relevant work experience for individuals who have received credit for undergraduate course work but who have not earned a bachelor's degree. As we stated above and in the preamble to the interim final rule, we found the balancing formula that considered various combinations of education and work experience difficult to administer and we therefore streamlined the process and simplified our administration of this requirement. We believe requiring a person without a bachelor's degree to have at least 4 years of relevant professional experience is appropriate because a bachelor's degree generally requires 4 years of study. We believe this requirement appropriately ensures that the representatives possess the qualifications called for in the Act.

Comment: NADR asked us to clarify what constitutes ''relevant work experience.'' NADR was concerned that applicants might lose their application fee because we will now evaluate their education or equivalent qualifications after they pay the application fee and pass the examination.

Response: In the preamble to the interim final rules, we stated that

> We will continue to consider relevant professional experience to be work through which the applicant demonstrates familiarity with medical reports and the ability to describe and assess mental or physical limitations. As in the past, an applicant may gain this kind of experience in fields such as teaching, counseling or guidance, social work, personnel management, public employment service, nursing, or health care professions. We will also continue to consider relevant professional experience to include work involving claims for benefits under title II or XVI of the Act.[10]

We believe that this description provides sufficient detail for applicants to determine if their prior experience qualifies as relevant work experience. It would not be feasible for us, and potentially limiting for applicants, if we attempted to include an exhaustive list of all qualifying experience in our regulations. Given the changing job market and the wide variety of work experience that may qualify as ''relevant professional experience,'' any list we could develop would necessarily be under-inclusive. Accordingly, we will continue to determine on a case-by-case basis whether an applicant has relevant professional experience, rather than attempting to include in our regulations a list of jobs that would qualify.

Comment: One individual asked how we will determine equivalent qualifications derived from training and work experience when a non-attorney representative is self-employed and has begun, but has not yet completed, a bachelor's degree. This commenter also asked what documentation we would request in this circumstance to show the non-attorney representative has 4 years of relevant professional experience.

Response: A self-employed non-attorney representative who does not have a bachelor's degree must have at least 4 years of relevant professional experience and either a high school diploma or GED certificate. This professional experience may be from relevant self-employment work. In this situation, we may require copies of the representative's tax returns and a description of job duties that would enable us to evaluate the applicant's relevant professional experience.

Comment: One individual asked how we will consider a paralegal certificate.

Response: If a non-attorney representative has a high school diploma or GED certificate and a paralegal certificate but not a bachelor's degree, he or she must have 4 years of relevant professional experience, as described above.

Written Examination

Comment: NADR suggested that we provide sample test materials. NOSSCR suggested that we make actual questions from past examinations available. NOSSCR asserted that without these materials there was no way for the public to assess whether our examination met the statutory requirements of testing a representative's knowledge of the relevant provisions of the Act and the most recent developments in SSA and court decisions affecting titles II and XVI of the Act.[11]

Response: We provide several sample examination questions for the public to view. They are currently accessible through the Direct Payment to Eligible Non-Attorney Representatives Web page at *http://www.ssa.gov/representation/nonattyrep.htm* by selecting the link to the contractor's Web site.

[5] The comments are available for public viewing at *www.regulations.gov* under docket ''SSA–2010–0025.''

[6] Public Law 108–203, section 303(b)(1) .

[7] 70 FR 2447, 2448–49.

[8] 42 U.S.C. 406(e)(2)(A).

[9] 76 FR 45184, 45186, 45187.

[10] 76 FR 45184, 45187.

[11] 42 U.S.C. 406(e)(2)(B).

However, we do not plan to make any of our actual tests available to the public. We have taken a number of measures to ensure the validity of the examination and to make sure that it tests knowledge of the relevant provisions of the Act and the most recent developments in agency and court decisions affecting title II and title XVI of the Act. Our employees, including some of our administrative law judges and other subject matter experts, develop the scope and content of the examination questions to ensure that our test is comprehensive. The contractor that proctors the examination has in-depth knowledge in testing services, including test research and development; test validation; test scoring; test logistics and administration; statistical analysis; and the design, development, and administration of assessment centers and performance examinations. We are confident these measures ensure that our test complies with the statutory requirements cited by the commenter.

Comment: NADR acknowledged our current budgetary constraints, but suggested that we administer the examination electronically using computers in secure locations, such as in our field or hearing offices, when such technological improvements and enhancements become available. The commenter believed that this approach would allow us to offer the examinations at least twice a year in more locations.

Response: We are not adopting these suggestions at this time. As the commenter recognized, we currently do not have separate facilities at field and hearing offices or designated computer equipment to administer examinations, nor do we have funds available to adopt this comment. We are also concerned that proctoring examinations at field and hearing offices could disrupt our service to the public. However, we may consider offering additional examinations if demand warrants, and we have the resources available to do so.

Comment: NADR wanted us to raise the minimum passing score from 70 to 75 because we discontinued the requirement that an applicant show he or she has represented at least five claimants within a 24-month period.

Response: We are not adopting this suggestion. We continue to believe that a representative who attains a score of at least 70 has demonstrated that he or she has sufficient knowledge of the Act, our regulations, and related court decisions to meet the statutory testing requirement.

Comment: NOSSCR wanted us to assess advocacy skills in the examination.

Response: We are not adopting this suggestion. The Act does not require that we assess a representative's advocacy skills and we believe the current examination and other criteria are sufficient measures of a non-attorney representative's knowledge.

Liability Insurance

Comment: NADR asked us to require non-attorney representatives to ask their insurance companies to notify us when the non-attorney representative modifies or terminates his or her insurance coverage.

Response: We are not adopting this suggestion. Implementing this proposal could result in an additional workload for us to follow up with insurance companies and to analyze more correspondence than necessary. It would be unnecessary and would impose a significant burden on our scarce administrative resources to review these policies every time there is a slight modification. We believe the representative should remain responsible for providing us with proper proof of current liability insurance coverage.

Comment: NOSSCR asserted that our rules allowing non-attorney representatives to maintain business liability insurance was not consistent with the Act's requirement that non-attorney representatives have ''professional liability insurance, or equivalent insurance, which the Commissioner has determined to be adequate to protect claimants in the event of malpractice by the representative.'' [12] NOSSCR asserted that most business liability insurance contracts do not include errors and omissions coverage for malpractice and are therefore not equivalent to professional liability insurance coverage. NOSSCR asked us to revise our rules to require eligible non-attorney representatives to maintain only professional liability insurance contracts that include malpractice coverage.

Response: We agree with NOSSCR that our rules should specify that all liability insurance policies must include malpractice coverage and that our current regulations do not clearly state this requirement. Therefore, we are revising final sections 404.1717(a)(6) and 416.1517(a)(6) to require that each eligible non-attorney representative provide proof of and maintain continuous liability insurance that includes coverage for malpractice claims against the representative and be in an amount we prescribe.

Criminal Background Check

Comment: NADR asked which types of information within a criminal background check could disqualify a non-attorney representative from being eligible to receive direct fee payment.

Response: We explained in sections 20 CFR 404.1717(a) and 416.1517(a) of the interim final rules that

A non-attorney representative is eligible to receive direct payment of his or her fee out of your past due benefits if he or she:

(4) Passes our criminal background investigation (including checks of our administrative records), and attests under penalty of perjury that he or she:

(i) Has not been suspended or disqualified from practice before us and is not suspended or disbarred from the practice of law in any jurisdiction;

(ii) Has not had a judgment or lien assessed against him or her by a civil court for malpractice or fraud;

(iii) Has not had a felony conviction; and

(iv) Has not misrepresented information provided on his or her application or supporting materials for the application.

We will reject the application if the applicant fails to meet any of these criteria. In addition, we list the factors we consider under this requirement at the Direct Payment to Eligible Non-Attorney Representatives Web page *http://www.ssa.gov/representation/nonattyrep.htm* and selecting the link to the contractor's Web site. As we note on that Web site, we will also reject an application if the applicant fails to pass our administrative records check or fails to provide documentation requested by the contractor to perform the criminal background investigation.

Continuing Education

The SSPA included a requirement that eligible non-attorney representatives demonstrate ongoing completion of qualified courses of continuing education. In 2005, we published a notice in the **Federal Register** under which we required the non-attorney representative to complete certain hours of continuing education requirements during certain time periods, depending on how long the representative participated in the demonstration project and whether the representative was a course instructor.[13] We found that framework unnecessarily complex and burdensome to administer.

[12] 42 U.S.C. 406(e)(2)(C).

[13] See 70 FR 41250.

As a result, in sections 404.1717(a)(7) and 416.1517(a)(7) of the interim final rules, we required the non-attorney representative to complete and provide proof that he or she has completed all continuing education courses that we prescribe by the deadline we prescribe in order to meet the PRA's continuing education requirement.

Comment: NADR disagreed with our decision to end our prior framework of balancing the continuing education requirement with the representative's length of participation in the demonstration project.

Response: We do not agree with this comment. The framework we set out in the 2005 **Federal Register** notice was confusing to many representatives and unnecessarily complex and burdensome for us to administer. As a result, a number of representatives had difficulty understanding our requirements and contacted us for guidance throughout the reporting period. We anticipate that the streamlined and uniform approach that we established in the interim final rules and are making final in these rules will benefit representatives.

Comment: NADR suggested that the educational opportunities that will satisfy the continuing education requirement should be widely available.

Response: We agree that the courses, whether our own or from vendors, should be widely available. We plan to prescribe courses that will satisfy the continuing education requirement. These courses may include a variety of electronic presentations. We will inform eligible non-attorney representatives of the deadline for completing the courses, and how they should report to us that they have completed the courses through alternate methods, *e.g.* through our Web site: *http://www.socialsecurity.gov/representation.*

Comment: NADR suggested that we create a process through which we would pre-approve vendor courses if the vendor supplied us with certain information. The commenter asked us to provide written approval of these courses so that the vendors can state in marketing materials that the courses meet our criteria.

Response: It would be administratively burdensome to pre-approve all potential courses that meet our standards for satisfying the statutory requirement for continuing education.[14] We will identify either our own courses or general types of courses and will provide sufficient information so that the representative can individually identify vendors' courses that meet our standards and satisfy this requirement. We will identify these courses through alternate methods, *e.g.* through our Web site: *http://www.socialsecurity.gov/representation.*

Comment: NADR asked us to include links on our Web site to vendors that have approved courses.

Response: We will include links on our Web site or our contractor's Web site to our own courses. As noted above, we will also provide sufficient information to allow representatives to identify vendors' courses that meet our requirements.

Comment: NADR suggested that we require non-attorney representatives to keep proof of course attendance for up to 3 years so we could conduct audits of attendance.

Response: We are not adopting this suggestion because we revised this criterion to make it less complex and less burdensome.

Representational Experience

As we discussed in the preamble to the interim final rule, under the procedures we followed for the demonstration project, we required a non-attorney representative to show that he or she had specific minimum representational experience.[15] We required a non-attorney representative to show that he or she represented at least five claimants before us within a 24-month period within the 60 months before the month in which the applicant filed the application. We eliminated this requirement in the interim final rules because we found it complicated the application process without adding significant benefit.

Comment: NOSSCR disagreed with this decision and asked us to add that at least two of the five required cases take place at the hearing level.

Response: In our experience administering the demonstration project, we found that passing the written examination is a better barometer of a representative's knowledge and skills than the representational experience requirement. The representational requirement is not one of the statutory prerequisites to the direct payment of fees to non-attorney representatives and, therefore, we have decided to exercise our discretion not to include it in our current process.

Protest Procedures

Both the SSPA and the PRA require that a non-attorney representative meet the statutory requirements before we determine that he or she is eligible to receive direct fee payment. Once we determine that a non-attorney representative is eligible to receive direct fee payment, he or she must continue to meet all of the requirements. The **Federal Register** notice we published to explain the demonstration project set out protest procedures that we followed for that project. In the interim final rules, we also included rules that explained how we would handle protests when we determine that a non-attorney representative is not eligible to receive direct fee payment. We explained that the protest procedures in the interim final rules were easier to understand, follow, and administer than the procedures we followed under the demonstration project.

Comment: NADR asked us to state that we would refund an applicant's application fee for failing to arrive for an examination due to weather or travel disruptions because they are ''circumstances beyond an applicant's control.''

Response: The interim final rules provided we would refund the application fee if ''[c]ircumstances beyond the applicant's control that could not have been reasonably anticipated and planned for prevent an applicant from taking a scheduled examination.''[16] We believe it is inappropriate to include in our regulations the examples the commenter cited. In our experience, we have found that including examples in our regulations inappropriately limits the application of the rule to the specific examples cited in a manner that we do not intend. In addition, it is unclear that all weather or travel disruptions would be both beyond the applicant's control and constitute circumstances that the applicant could not have reasonably anticipated and planned for, as the regulation requires. If an applicant requests a refund because he or she did not take the examination, we will consider the reasons presented and make a decision based on the facts of each individual case. The applicant retains the responsibility to submit documentation to support his or her request.

Comment: One individual and one organization wanted us to give non-attorney representatives more than 10 calendar days to file a protest. NADR wanted us to give 10 business days to file a protest, in addition to 5 days for mailing. NADR also wanted us to allow a representative to file a request for an extension of time to protest when extenuating circumstances existed. The individual wanted us to give

[14] 42 U.S.C. 406(e)(2)(E).

[15] 76 FR 45184, 45189.

[16] 20 CFR 404.1717(c)(1)(ii) and 416.1517(c)(1)(ii).

representatives at least 15 days to file a protest, or, ideally, to provide 30 days to protest, as we do in our sanctions procedures.

Response: The definition of the phrase ''Date we notify him or her'' in sections 404.1703 and 416.1503 of the interim final rules makes it clear that we begin counting the 10 calendar days to file a protest 5 days after the date on the notice. We add 5 days to account for mail time, although a representative may show us that he or she received it after this 5-day period. Therefore, we do give representatives 15 days to protest our finding that he or she is ineligible to receive direct fee payment for the reasons set out in sections 404.1717(d) and 416.1517(d) of the rules, as the second commenter suggested.

We disagree with the comment to revise the deadline in our protest rules from 10 calendar days to 10 business days for two reasons. The majority of our other rules use calendar days instead of business days as a basis for calculating action deadlines.[17] Further, our rules clearly explain how to calculate a deadline that falls on a non-work day.[18]

We also disagree with the comment to allow for an extension of time to file a protest based on extenuating circumstances. We inform non-attorney representatives who apply for direct fee payment eligibility about our requirements and timeframes in the application materials, on our Web site or our contractor's Web site, and in other correspondence, we send to them. When there is evidence that a representative may not meet our eligibility prerequisites, we will request the missing documentation from him or her. It is the representative's responsibility to respond to our requests in a timely manner.

Finally, we disagree with the comment to extend the time in which to protest our finding that a non-attorney representative is ineligible to receive direct fee payment from 10 to 30 calendar days, to match our sanctions rules. An adverse decision from a sanctions proceeding results in the representative being unable to practice before us. In contrast, a non-attorney representative may continue to practice before us and be paid for his or her services directly by the claimant even if we determine he or she is ineligible to receive direct fee payment from us. For that reason, a shorter time frame to file a protest in the direct pay context is appropriate.

[17] See *e.g.* 20 CFR 404.521(b), 404.1512(d)(1), 405.5, and 411.435(c)(2).

[18] 20 CFR 404.3(b) and 416.120(d).

Terminology

Comment: One individual asked us to change the title of ''non-attorney representative'' to something ''more dignified.'' NOSSCR asked us to specify what designation a non-attorney representative may use after he or she is found eligible for direct fee payment. NOSSCR also asked us to revise our regulations to clarify that a non-attorney representative who is eligible for direct fee payment is not certified or licensed by us.

Response: We began using the term ''non-attorney representative'' in 2004 because this is the term used by Congress in the SSPA, and again in the PRA. We believe it works well and are not changing it at this time.

We agree with NOSSCR that being eligible for direct pay does not mean that the representative is certified or licensed by us. Our current rules clearly state that we only pay fees directly to non-attorney representatives who successfully meet the eligibility requirements in 20 CFR 404.1717(a) and 416.1517(a). This eligibility to receive direct fee payment does not confer our certification, license, accreditation, or endorsement of the individual to be a representative. Therefore, eligible non-attorney representatives may not advertise themselves in any way that may create the appearance that we have approved or endorsed them as representatives. Further, a representative who performs an action to deceive or knowingly mislead a claimant or prospective claimant or beneficiary may violate our rules of conduct and standards of responsibility for representatives in 20 CFR 404.1740 and 416.1540. Because we believe that the purpose of the direct pay application process is clear and that the current rules of conduct and standards of responsibility are sufficient to discipline any representative who portrays his or her credentials deceptively, we are not adopting the suggestion to revise our rules in this manner.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 135653

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

Regulatory Flexibility Act

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

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

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

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons stated in the preamble, we are adopting the interim rule with request for comments amending 20 CFR chapter III, part 404, subparts J and R, and part 416 subparts N and O that we published on July 28, 2011 at 76 FR 45184 as final with the following changes:

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

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

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

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.903 by revising paragraphs (z) and (aa) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(z) Starting or discontinuing a continuing disability review;

(aa) Issuing a receipt in response to your report of a change in your work activity; and

* * * * *

Subpart R—Representation of Parties

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

Authority: Secs. 205(a), 206, 702(a)(5), and 1127 of the Social Security Act (42 U.S.C. 405(a), 406, 902(a)(5), and 1320a–6).

■ 4. Amend § 404.1717 by revising paragraphs (a)(6) and (d)(1)(ii) to read as follows:

§ 404.1717 Direct payment of fees to eligible non-attorney representatives.

(a) * * *

(6) Provides proof of and maintains continuous liability insurance coverage that is underwritten by an entity that is legally permitted to provide professional liability insurance in the States in which the representative conducts business. The policy must include coverage for malpractice claims against the representative and be in an amount we prescribe; and

* * * * *

(d) * * *

(1) * * *

(ii) Meet at all times the criminal background investigation criteria, as described in paragraph (a)(4) of this section;

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

■ 5. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 6. Revise § 416.1403 paragraphs (a)(24) and (25) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(24) Starting or discontinuing a continuing disability review;

(25) Issuing a receipt in response to your report of a change in your earned income; and

* * * * *

Subpart O—Representation of Parties

■ 7. The authority citation for subpart O of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1127, and 1631(d) of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–6, and 1383(d)).

■ 8. Amend § 416.1517 by revising paragraphs (a)(6), (d)(1)(ii), and (f)(1) to read as follows:

§ 416.1517 Direct payment of fees to eligible non-attorney representatives.

(a) * * *

(6) Provides proof of and maintains continuous liability insurance coverage that is underwritten by an entity that is legally permitted to provide professional liability insurance in the States in which the representative conducts business. The policy must include coverage for malpractice claims against the representative and be in an amount we prescribe; and

* * * * *

(d) * * *

(1) * * *

(ii) Meet at all times the criminal background investigation criteria, as described in paragraph (a)(4) of this section;

* * * * *

(f) * * *

(1) Did not meet the initial criteria for eligibility in paragraph (a)(1), (2), (3), or (5) of this section in a prior application period; or

* * * * *

[FR Doc. 2014–30921 Filed 1–5–15; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2014–0005; T.D. TTB–126; Ref: Notice No. 143]

RIN 1513–AC07

Expansion of the Fair Play Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is expanding the approximately 33-square mile ''Fair Play'' viticultural area in El Dorado County, California, by 1,200 acres (approximately 2 square miles). The established viticultural area and the expansion area are both located entirely within the larger El Dorado and Sierra Foothills viticultural areas. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective February 5, 2015.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated December 10, 2013, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) authorizes the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth the standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name

and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Petitioners may use the same process to request changes involving established AVAs. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for modifying established AVAs. Petitions to expand an established AVA must include the following:

- Evidence that the area within the proposed expansion area boundary is nationally or locally known by the name of the established AVA;
- An explanation of the basis for defining the boundary of the proposed expansion area;
- A narrative description of the features of the proposed expansion area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed expansion area similar to the established AVA and distinguish it from adjacent areas outside the established AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed expansion area, with the boundary of the proposed expansion area clearly drawn thereon; and
- A detailed narrative description of the proposed expansion area boundary based on USGS map markings.

Petition To Expand the Fair Play AVA

TTB received a petition from Randy and Tina Rossi, owners of Saluti Cellars winery and vineyard, proposing that the established Fair Play AVA in El Dorado County, California, be expanded. The Fair Play AVA (27 CFR 9.168) was established by T.D. ATF–440, which was published in the **Federal Register** on February 26, 2001 (66 FR 11539). The Fair Play AVA contains approximately 250 acres of commercially producing vineyards and covers approximately 33 square miles in southern El Dorado County, California, around the small, unincorporated community of Fair Play. The proposed expansion area and the established AVA are both located within the El Dorado AVA (27 CFR 9.61), which, in turn, is within the larger, multicounty Sierra Foothills AVA (27 CFR 9.120). The Fair Play AVA and the proposed expansion area do not overlap any other established or proposed AVAs.

The proposed expansion area is adjacent to the northeast corner of the established Fair Play AVA boundary and covers approximately 1,200 acres (approximately 2 square miles). One commercial vineyard, Saluti Cellars, is within the proposed expansion area. The petition included a letter from the president of the Fair Play Winery Association in support of the proposed expansion.

According to the petition, the soils, topography, and climate of the proposed expansion area are similar to those of the established Fair Play AVA. The proposed expansion area and the established AVA are both regions of steep hillsides and ridge tops with elevations between 2,000 and 3,000 feet. The soils of the proposed expansion area and the established AVA are deep, well-drained sandy loams and coarse sandy loams derived mainly from granite, with the Holland, Musick, and Shaver soil series being the most prevalent soil series. Finally, the proposed expansion area and the Fair Play AVA both have growing seasons of between 230 and 250 days and receive between 35 and 40 inches of rain annually.

Although the proposed expansion area is more similar to the Fair Play AVA than the surrounding regions, the proposed expansion area still shares some of the features of the surrounding El Dorado and Sierra Foothills AVAs. For example, the well-drained sandy loam soils that characterize the proposed expansion area are also found in limited amounts within the two larger AVAs, although the most common soils within the El Dorado and Sierra Foothills AVA are poorly drained volcanic soils. The proposed expansion area is a region of rolling hills that become progressively steeper, similar to the topography of the El Dorado and Sierra Foothills AVAs. However, the range of elevations within the smaller proposed expansion area is not as great as within the two larger AVAs, which have elevations ranging from 500 to 3,500 feet. Finally, although the range of annual rainfall amounts and the growing season lengths within the proposed expansion area and the Fair Play AVA are within the ranges of those of the larger El Dorado and Sierra Foothills AVA, the wider range of elevations within the two larger AVAs results in a much wider range of precipitation amounts and growing season lengths.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 143 in the **Federal Register** on June 17, 2014 (79 FR 34474), proposing to expand the Fair Play AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed expansion area. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed expansion area, and for a comparison of the distinguishing features of the proposed expansion area to the surrounding areas and to the established Fair Play AVA, see Notice No. 143.

In Notice No. 143, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. The comment period closed on August 18, 2014. TTB received no comments in response to Notice No. 143.

TTB Determination

After careful review of the petition, TTB finds that the soil, climate, and topography evidence provided by the petitioner sufficiently demonstrates that although the proposed expansion area shares some of the broader characteristics of the larger El Dorado and Sierra Foothills AVAs, it is also similar to the established Fair Play AVA and should also be recognized as part of that AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB expands the 33-square mile ''Fair Play'' AVA to include the approximately 2-square mile expansion area as described in Notice No. 143, effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary of the AVA expansion in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance, and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

The expansion of the Fair Play AVA will not affect any other existing AVA, and bottlers using ''Fair Play,'' ''El Dorado,'' or ''Sierra Foothills'' as an appellation of origin or in a brand name for wines made from grapes within the ''Fair Play,'' ''El Dorado,'' or ''Sierra Foothills'' AVAs will not be affected by this expansion of the Fair Play AVA. The expansion of the Fair Play AVA will allow vintners to use ''Fair Play,'' ''El Dorado,'' or ''Sierra Foothills'' as appellations of origin for wines made primarily from grapes grown within the expansion area if the wines meet the eligibility requirements for the appellation.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Section 9.168 is amended by revising paragraphs (b), (c)(4) through (c)(7), (c)(12), and (c)(13) to read as follows:

§ 9.168 Fair Play.

(a) * * *

(b) *Approved maps.* The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Fair Play viticultural area are titled:

(1) Aukum, Calif., 1952 (photorevised 1973);

(2) Camino, CA, 1952 (photorevised 1973);

(3) Sly Park, CA, 1952 (photorevised 1973); and

(4) Omo Ranch, Calif., 1952 (photorevised 1973).

(c) * * *

(4) The boundary continues east along Grizzly Flat Road to its intersection with the 2,200-foot contour line (''Camino Quadrangle'');

(5) The boundary continues northeasterly and then easterly along the 2,200-foot contour line until the contour line intersects with Jackass Canyon Creek near the eastern boundary of Section 10, T. 9 N., R. 12. E., on the ''Camino Quadrangle'' map;

(6) The boundary then proceeds southeast along Jackass Canyon Creek, crossing over the southwestern corner of the ''Sly Park'' Quadrangle map and onto the ''Omo Ranch'' Quadrangle map, to the headwaters of the creek, then proceeds in a straight line southeast to Grizzly Flat Road in Section 24, T. 9 N., R. 12 E.;

(7) The boundary continues east along Grizzly Flat Road until the road intersects with the range line between R. 12 E. and R. 13 E. (''Omo Ranch Quadrangle'');

* * * * *

(12) The boundary continues west along the South Fork of the Cosumnes River to its intersection with the western boundary of Section 14, T. 8 N., R 11 E. (''Aukum Quadrangle'');

(13) The boundary then proceeds north along the western boundary lines of Sections 14, 11, and 2, T. 8 N., R 11 E., and then the western boundary lines of Sections 35 and 26, T. 9 N., R 11 E., to return to the beginning point (''Aukum Quadrangle'').

Signed: October 14, 2014.

John J. Manfreda,

Administrator.

Approved: November 18, 2014.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. 2014–30942 Filed 1–5–15; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 230

RIN 0596–AD21

Forest Land Enhancement Program (FLEP)

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule removes regulations for the Forest Land Enhancement Program (FLEP) from the Code of Federal Regulations in conformity with Sec. 8001 of the Agriculture Act of 2014 (2014 Farm Bill), in which Congress repealed FLEP. The Program's funding authority expired in fiscal year 2007.

DATES: The rule is effective March 9, 2015. Submit comments by February 5, 2015.

ADDRESSES: Written comments concerning this rule should be addressed to Karl R. Dalla Rosa, 201 14th Street SW., Washington, DC 20024, Room 3SC. Comments may also be sent via email to *kdallarosa@fs.fed.us*

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 201 14th Street, SW., Washington, DC 20024, Room 3SC. Visitors are encouraged to call ahead to 202–205–6206 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Karl R. Dalla Rosa, Forest Stewardship

Program Manager, Cooperative Forestry, at 202–205–6206, or via email at *kdallarosa@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Land Enhancement Program (FLEP) was adopted in the 2002 Farm Bill (Pub. L. 107–171, Sec. 8002), as an amendment to the Cooperative Forestry Assistance Act of 1978 (Pub. L. 95–313; 16 U.S.C. 2101 *et seq.*). FLEP replaced the Stewardship Incentives Program (SIP) and the Forestry Incentives Program (FIP). FLEP was optional in each State and was a voluntary program for non-industrial private forest (NIPF) landowners. It provided for technical, educational, and cost-share assistance to promote the sustainability of NIPF forests. The law provided FLEP with $100 million from the Commodity Credit Corpration and spending authority though fiscal year 2007. However, half of these funds were diverted to wildfire control in 2003; $40 million of these funds were not replenished; and the spending was cancelled. With Sec. 8001 of the Agriculture Act of 2014, or the 2014 Farm Bill, Congress repealed FLEP.

List of Subjects in 36 CFR Part 230

Forests and forest products, Grant programs-natural resources, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, 36 CFR part 230 is amended as follows:

PART 230—STATE AND PRIVATE FORESTRY ASSISTANCE

■ 1. The authority citation for part 230 is revised to read as follows:

Authority: 16 U.S.C. 2109.

Subpart C [Removed]

■ 2. Remove subpart C (consisting of §§ 230.30 through 230.46).

Dated: December 17, 2014.

Robert Bonnie,

Under Secretary, Natural Resources and Environment.

[FR Doc. 2014–30806 Filed 1–5–15; 8:45 am]

BILLING CODE 3411–15–P

Proposed Rules

Federal Register

Vol. 80, No. 3

Tuesday, January 6, 2015

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0016–0017]

RIN 1904–AB99

Energy Conservation Program: Clarification for Energy Conservation Standards and Test Procedures for Fluorescent Lamp Ballasts

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposes to clarify its energy conservation standards and test procedures for fluorescent lamp ballasts established under the Energy Policy and Conservation Act. DOE proposes to reorganize, reformat, correct, and clarify the scope of the energy conservation standards. In addition, DOE proposes to remove the outdated test procedure at Appendix Q and redesignate the current test procedure at Appendix Q1 as Appendix Q. DOE also proposes clarifications to supplement the test procedure setup at redesignated Appendix Q. Finally, DOE proposes to revise the laboratory accreditation language and provide clarification on the process for evaluating compliance with standards.

DATES: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) no later than March 9, 2015. See section V, ''Public Participation,'' for details.

ADDRESSES: Any comments submitted must identify the NOPR for Clarification for Energy Conservation Standards and Test Procedures for Fluorescent Lamp Ballasts, and provide docket number EE–2009–BT–TP–0016–0017 and/or regulatory information number (RIN) number 1904–AB99. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: FLB-2009-TP-0016@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/62.* This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through regulations.gov.

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

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *fluorescent_lamp_ballasts@ee.doe.gov.*

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

SUPPLEMENTARY INFORMATION:

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I. Authority and Background

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (''EPCA'' or, ''the Act''), Pub. L. 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the ''Energy Conservation Program for Consumer Products Other

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

Than Automobiles.'' [2] These include fluorescent lamp ballasts, the subject of today's notice. (42 U.S.C. 6292(a)(13))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to the Department of Energy (DOE) that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

DOE published test procedure final rules on April 24, 1991, October 22, 2009, and May 4, 2011 (hereafter the ''May 2011 test procedure final rule''), establishing active mode test procedures, standby and off mode test procedures, and revised active mode test procedures respectively. 56 FR 18677, 74 FR 54445, and 76 FR 25211. The May 2011 test procedure final rule established Appendix Q1 to subpart B of 10 CFR part 430. DOE also published final rules establishing and amending energy conservation standards for fluorescent lamp ballasts on September 19, 2000, and November 14, 2011 (hereafter the ''November 2011 standards final rule''), which completed the two energy conservation standard rulemakings required under 42 U.S.C. 6295(g)(7). 65 FR 56740 and 76 FR 70547. The November 2011 standards final rule established the regulations located at 10 CFR 430.32(m)(8)–(10). This rulemaking clarifies the contents of the energy conservation standards and test procedures promulgated by DOE.

II. Summary of the Notice of Proposed Rulemaking

In this notice of proposed rulemaking (NOPR), DOE discusses key aspects of the energy conservation standards and test procedures for fluorescent lamp ballasts and proposes to clarify the corresponding requirements and specifications in the CFR. DOE proposes modifications to the organization of 10 CFR 430.32(m) to clarify the applicability of the standards and exemptions. DOE also proposes to consolidate 10 CFR 430.32(m) by deleting standards that are no longer applicable. In addition, DOE proposes to clarify definitions relating to ballast luminous efficiency (BLE) standards.

DOE proposes to remove the outdated test procedure for ballast efficacy factor (BEF) at Appendix Q and redesignate the test procedure for BLE at Appendix Q1 as Appendix Q. In addition, DOE proposes to add testing clarifications to redesignated Appendix Q and proposes modifying redesignated Appendix Q to clarify the reference lamp pairings for testing. DOE also proposes clarifications to redesignated Appendix Q for test setup and measurement and provides rounding instructions for BLE. In addition, DOE proposes general changes to definitions, language, and corrections to the text.

Finally, DOE proposes to revise the laboratory accreditation language at 10 CFR 430.25. This NOPR also discusses the process for evaluating compliance with standards by providing example calculations for evaluating compliance with BLE standards.

Manufacturers would be required to comply with the clarifications included in this rulemaking within 180 days after the publication of the final rule.

III. Discussion

A. Energy Conservation Standards

In the second rulemaking cycle required by 42 U.S.C. 6295(g)(7), DOE amended existing energy conservation standards and adopted standards for additional ballasts in a final rule published on November 14, 2011 (hereafter ''2011 Ballast Rule''). The new and amended standards are based on BLE and apply to all products listed in Table III.1. DOE has required compliance with these BLE standards since November 14, 2014.

TABLE III.1—BALLAST LUMINOUS EFFICIENCY STANDARDS IMPLEMENTED BY THE 2011 BALLAST RULE

Fluorescent lamp ballasts shall have a ballast luminous efficiency no less than A/(1+B*total lamp arc power ∧ − C) where A, B, and C are as follows:

Product class	A	B	C
Instant start and rapid start ballasts (not classified as residential) that are designed to operate 4-foot medium bipin lamps 2-foot U-shaped lamps 8-foot slimline lamps	0.993	0.27	0.25
Programmed start ballasts (not classified as residential) that are designed to operate 4-foot medium bipin lamps 2-foot U-shaped lamps 4-foot miniature bipin standard output lamps 4-foot miniature bipin high output lamps	0.993	0.51	0.37
Instant start and rapid start ballasts (not classified as sign ballasts) that are designed to operate 8-foot high output lamps	0.993	0.38	0.25
Programmed start ballasts (not classified as sign ballasts) that are designed to operate 8-foot high output lamps	0.973	0.70	0.37
Sign ballasts that operate 8-foot high output lamps	0.993	0.47	0.25
Instant start and rapid start residential ballasts that operate 4-foot medium bipin lamps 2-foot U-shaped lamps 8-foot slimline lamps	0.993	0.41	0.25
Programmed start residential ballasts that are designed to operate 4-foot medium bipin lamps 2-foot U-shaped lamps	0.973	0.71	0.37

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

Several ballasts are exempt from BLE and power factor standards established by the 2011 Ballast Rule. See 10 CFR 430.32(m)(9). These exemptions consist of:

(1) Low frequency T8 ballasts that are designed, labeled, and marketed for use only in electromagnetic-interference-sensitive-environments and shipped in packages of 10 or fewer;

(2) Programmed start ballasts that operate 4-foot medium bipin (MBP) T8 lamps and deliver on average less than 140 milliamperes to each lamp; and

(3) Dimming ballasts except for those specified in 10 CFR 430.32(m)(10).

See 10 CFR 430.32(m)(9)

Dimming ballasts designed for the operation of one F34T12, two F34T12, two F96T12/ES, and two F96T12HO/ES lamps and that meet the specifications found at 10 CFR 430.32(m)(10)(i) and (ii) are subject to BLE standards specified in 10 CFR 430.32(m)(10)(iii).

DOE is proposing several changes to the energy conservation standards section of the CFR for ballasts (10 CFR 430.32(m)) to clarify the applicability of standards and exemptions and improve readability. These changes are described in detail in the following sections.

1. Changes to Organization

DOE is proposing modifications to the organization of 10 CFR 430.32(m) to clarify the applicability of standards and exemptions. DOE is proposing to consolidate 10 CFR 430.32(m) by deleting standards that are no longer applicable. 10 CFR 430.32(m) currently contains the standards established by NAECA 1988, the 2000 Ballast Rule, EPACT 2005, and the 2011 Ballast Rule. The standards established by each of these actions are accompanied by compliance dates and exemptions. DOE is proposing to remove the sections of 10 CFR 430.32(m) that no longer apply (*i.e.,* existing sections 10 CFR 430.32(m)(1)–(m)(7)). DOE also proposes to reorganize the remaining sections of 10 CFR 430.32(m) to enhance readability. DOE will outline the key topics of standards, compliance dates, and exemptions.

Additionally, DOE is proposing modifications to the standards table in 10 CFR 430.32(m). In many cases, several different types of ballasts are subject to the same BLE standards. However, due to a formatting error, the table in existing section 430.32(m)(8) added additional lines and borders between these ballast types subject to the same BLE standards. For example, instant start and rapid start ballasts (not classified as residential) that are designed to operate 4-foot MBP, 2-foot U-shaped, and 8-foot slimline lamps are all subject to the same BLE standards. To clarify that certain groups of ballasts are subject to the same standards, DOE proposes to remove some lines and borders to accurately group the ballasts and standards. The chart will conform to what is shown in Table III.1.

2. Changes to Definitions and Terminology

DOE is also proposing changes to the definitions and terminology used in 10 CFR 430.32(m) pertaining to BLE standards. DOE is proposing to remove descriptions of terminology at existing (m)(8)(iv)–(vi) and instead reference redesignated Appendix Q (see section III.B) for definitions of the terms average total lamp arc power, instant start, programmed start, rapid start, residential ballast, and sign ballast. In addition, DOE is proposing to use the phrase ''that are not residential ballasts'' in amended sections 10 CFR 430.32(m)(1)(ii)(A) and (m)(2)(ii)(A) to refer to any ballasts that do not meet the definition of residential ballast in redesignated Appendix Q. This change would improve clarity through consistent usage of a single phrase and reducing cross-references to other paragraphs.

Finally, DOE is proposing to replace the phrase ''designed, labeled, and marketed'' with the phrase ''designed and marketed'' as defined at 10 CFR 430.2, in the description of a low frequency ballast at amended section 10 CFR 430.32(m)(3)(ii). The definition of ''designed and marketed'' at 10 CFR 430.2 clarifies that a ballast is recognized as designed and marketed if the intended application of the lamp is stated in a publicly available document (*e.g.,* product literature, catalogs, packaging labels, and labels on the product itself).[3]

Similarly, DOE is proposing to replace the phrase ''for use in connection with'' with the phrase ''designed and marketed to operate'' at amended section 10 CFR 430.32(m)(2) and amended section 10 CFR 430.32(m)(3)(i). DOE is also proposing to replace the phrase ''that operate'' with ''that are designed to operate'' at amended section 10 CFR 430.32(m)(1)(ii)(B). These revisions eliminate potential confusion or ambiguity by clarifying the original intent of this language.

[3] The definition of ''designed and marketed'' was established in the general service fluorescent lamp and incandescent reflector lamp energy conservation standard rulemaking. See *http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-STD-0006.*

B. Test Procedure

Manufacturers were previously required to use the test procedure for ballasts at 10 CFR part 430, subpart B, appendix Q to determine compliance with BEF standards. The May 2011 test procedure final rule established appendix Q1 to subpart B of 10 CFR part 430 to determine compliance with BLE standards. As stated in section III.A, compliance with BLE standards has been required since November 14, 2014. Because the BEF standards are no longer applicable, DOE is proposing to remove the test procedure for BEF at Appendix Q and redesignate the Appendix Q1 test procedure for BLE as Appendix Q. DOE is also proposing several changes to redesignated Appendix Q to clarify the test procedures for measuring BLE. These changes are described in detail in the following sections.

1. Lamp Pairing for Testing

In the May 2011 test procedure final rule, DOE specified that ballasts are to be paired with the most common wattage lamp and provided a table (Table A of existing appendix Q1 of subpart B of part 430) to indicate which lamp should be used with each ballast. 76 FR 25211 (May 4, 2011) Table A lists the ballast description along with the lamp type intended for testing. Though ballasts can frequently operate lamps of the same diameter but different wattages, DOE requires testing with only one lamp wattage per ballast. To clarify this requirement, DOE is proposing to indicate in section 2.3.1.7 of redesignated Appendix Q that each ballast should be tested with only one lamp type corresponding to the lamp diameter and base type the ballast is designed and marketed to operate. For example, a ballast designed and marketed to operate both 32 watt (W) 4-foot MBP T8 lamps and 28 W 4-foot MBP T8 lamps should only be tested with the 32 W lamp. Additionally, stakeholders requested clarification on testing ballasts that are designed and marketed as operating both T8 and T12 lamps. Therefore, DOE is also proposing to indicate in section 2.3.1.5 of redesignated Appendix Q that a ballast designed and marketed to operate both T8 and T12 lamps must be tested with T8 lamps. DOE believes T8 lamps will be the most common lamp type paired with these ballasts.

In addition, DOE proposes to revise Table A of existing Appendix Q1 to further clarify this requirement. DOE proposes to add borders to Table A in redesignated Appendix Q to emphasize that testing with only one lamp type per ballast is necessary. DOE also proposes

to revise the column heading corresponding to the lamp description to read ''lamp type'' to provide a clear linkage to the direction that only one lamp type should be paired with each ballast for testing. Table III.2 and Table III.3 present an example from Table A, highlighting the existing and proposed versions, respectively.

TABLE III.2—EXISTING TABLE A EXCERPT

Ballast type	Nominal lamp wattage	Lamp diameter and base	Frequency adjustment factor	
			Low-frequency	High-frequency
Ballasts that operate straight-shaped lamps (commonly referred to as 4-foot medium bipin lamps) with medium bipin bases and a nominal overall length of 48 inches.	32	T8 MBP	0.94	1.0
	34	T12 MBP	0.93	1.0

TABLE III.3—PROPOSED REVISIONS TO TABLE A EXCERPT

Ballast type	Lamp type		Frequency adjustment factor	
	Nominal lamp wattage	Lamp diameter and base	Low-frequency	High-frequency
Ballasts that operate straight-shaped lamps (commonly referred to as 4-foot medium bipin lamps) with medium bipin bases and a nominal overall length of 48 inches.	32	T8 MBP	0.94	1.0
	34	T12 MBP	0.93	1.0

For clarity, DOE also proposes to revise the ballast type description for sign ballasts in Table A to read ''Sign ballasts that operate rapid-start lamps (commonly referred to as 8-foot high output lamps) with recessed double contact bases and a nominal overall length of 96 inches.'' Additionally, DOE proposes to add a definition for ''sign ballast'' in redesignated Appendix Q based on the existing description of sign ballast in 10 CFR 430.32(m). See section III.B.4 for more information.

2. Testing at Full Output

In section 2.5.1.2 of existing Appendix Q1, DOE specifies that the ballast should be operated at full output during the stabilization process, and measurements should be made after the stabilization condition is reached. DOE is proposing to revise this statement in redesignated Appendix Q to make clear that the ballast should remain at full output while the measurements are taken. This is consistent with DOE's intent that both dimming and fixed light output ballasts are tested at full light output.

3. Measurement Clarification

DOE specifies in section 2.3.2.1 of existing Appendix Q1 that the power analyzer must have n+1 channels where n is the number of lamps a ballast operates. DOE notes that, for certain ballasts, it is possible for n+1 to be greater than the number of channels supplied by a single power analyzer. DOE is proposing to clarify in redesignated Appendix Q that the test lab use the minimum number of power analyzers possible during testing. A power analyzer commonly used in the lighting industry has six channels, but can be linked to a second power analyzer when additional channels are needed. If a test lab needed seven channels to test a ballast that operates six lamps, for example, they should use only two analyzers.

4. Changes to Definitions

DOE is proposing changes to existing Appendix Q1 relating to definitions used in the test procedure. DOE proposes to modify the definition of ''residential ballast'' in the definitions section of existing Appendix Q1 to align with the existing description at 10 CFR 430.32(m)(8)(vi) and the definition of ''designed and marketed'' at 10 CFR 430.2 (see section III.A.2 for more information). DOE proposes to define residential ballast in redesignated Appendix Q as ''a fluorescent lamp ballast that meets FCC consumer limits as set forth in 47 CFR part 18 and is designed and marketed for use only in residential applications.'' DOE also proposes to remove the definition of ''commercial ballast'' that is in the existing Appendix Q1 and instead proposes to use the phrase ''that are not residential ballasts'' in redesignated Appendix Q when referring to any ballasts that do not meet the definition of residential ballast. This proposed change would align redesignated Appendix Q with the proposed terminology changes in the energy conservation standards at 430.32(m).

In addition, DOE is proposing to add several terms to the definitions section of redesignated Appendix Q pertaining to BLE standards. First, DOE proposes to add a definition for average total lamp arc power to provide specific clarification on the calculation. Average total lamp arc power is referenced in the BLE standards equation (at 10 CFR 430.32(m)(8)) shown in Table III.1. To clarify how to calculate the applicable BLE standard, DOE proposes to add the definition of average total lamp arc power to the definitions section of redesignated Appendix Q. The proposed definition for average total lamp arc power is ''the average of the total lamp arc power (as defined and measured in section 2.6.1) of the ballast units tested.''

DOE also proposes to add a definition for ''dimming ballast'' to redesignated Appendix Q. The proposed definition for a dimming ballast is ''a ballast that is designed to vary its output and that can achieve an output less than or equal to 50 percent of its maximum electrical output.'' This proposed definition aligns with and clarifies the dimming ballast exemptions currently specified in 10 CFR 430.32(m). Thus, DOE also proposes to remove the description of a dimming ballast currently at 10 CFR 430.32(m)(9)(i). As proposed, 10 CFR 430.32 would instead reference the new definition for ''dimming ballast'' in redesignated Appendix Q.

In addition, DOE proposes to add a definition for ''sign ballast'' to the definitions section of redesignated Appendix Q. DOE proposes to define sign ballast based on the description currently at 10 CFR 430.32(m)(8)(v) and the definition of ''designed and marketed'' at 10 CFR 430.2 (see section III.A.2 for more information). DOE is proposing to define sign ballast as ''a

ballast that has an Underwriters Laboratories Inc. Type 2 rating and is designed and marketed for use only in outdoor signs.'' Rather than listing a description of sign ballast, as does section 2.3.1.4 of existing Appendix Q1, DOE proposes that section 2.3.1.6 of redesignated Appendix Q reference the term in the definitions section of redesignated Appendix Q.

Subsequently, DOE proposes new language in redesignated Appendix Q to reference the definitions section of redesignated Appendix Q. Specifically, in section 2.4.3, DOE proposes to reference definitions in redesignated Appendix Q and therefore replace the language ''For ballasts designed and labeled for residential applications'' with ''For residential ballasts.'' In addition, DOE proposes to replace the language ''For ballasts designed and labeled as cold-temperature outdoor sign ballasts'' with ''For sign ballasts.''

Finally, DOE proposes redesignated Appendix Q without the terms ''active mode'' and ''standby mode'' because these terms are already defined at 10 CFR 430.2. The definitions in existing Appendix Q1 are consistent with the definitions in 10 CFR 430.2 and are therefore redundant.

5. Rounding Ballast Luminous Efficiency

Currently, rounding requirements are not provided for the reported value of BLE. When developing standards in the November 2011 standards final rule, DOE rounded BLE to the thousandths place when analyzing the costs and benefits of the adopted standard. For consistency with the intent of the 2011 standards final rule, DOE proposes to specify rounding the reported value of BLE to the nearest thousandths place. This requirement would appear at 10 CFR 430.23(q)(2).

6. Language Changes and Corrections to the Text

DOE is also proposing new language at redesignated Appendix Q for some of the testing requirements. DOE is proposing to use the terminology ''designed and marketed for operation'' to clarify references to the intended ballast types. See section III.A.2 for more information on the definition of ''designed and marketed.'' Within sections 2.3.1.2, 2.3.1.4.1, 2.3.1.4.2, 2.3.1.4.3, and 2.4.3 of existing Appendix Q1, DOE proposes to change all instances of the following phrases to ''designed and marketed for operation'' in redesignated Appendix Q:

(1) ''Designed to operate;''
(2) ''That only operate;'' and
(3) ''Capable of operating.''

Additionally, DOE is proposing to modify the language of section 2.1 to clarify the references to industry standards. DOE believes the sentence as currently written does not clearly explain that the industry standards incorporated by reference in the CFR must be used in place of those listed in the industry standard ANSI C82.2. DOE is proposing to add the word ''standards'' as noted in the following sentence: ''In addition when applying ANSI C82.2, the standards ANSI C78.81, ANSI C82.1, ANSI C82.11, and ANSI C82.13 (all incorporated by reference; see § 430.3) must be used instead of the versions listed as normative references in ANSI C82.2.''

DOE is also proposing a correction in redesignated Appendix Q relating to an error in existing Appendix Q1 that occurred during publication of the May 2011 test procedure final rule. In section 2.3.1, the heading numbers skip from 2.3.1 to 2.3.1.1.1 (*i.e.,* 2.3.1.1 is omitted). DOE is proposing to correct this heading numbering error in redesignated Appendix Q.

Finally, DOE proposes to revise a grammatical issue in redesignated Appendix Q that is in existing section 1.7 of Appendix Q1, which defines ''instant-start.'' In section 1.7 of redesignated Appendix Q, DOE proposes to insert the word ''in'' so that the definition of instant-start reads ''is the starting method used in instant-start systems as defined in American National Standards Institute (ANSI) C82.13 (incorporated by reference see 10 CFR 430.3).''

C. Compliance and Certification

1. Laboratory Accreditation

DOE has received feedback that the language in 10 CFR 430.25 is causing confusion. Specifically, there has been confusion over the role of the National Voluntary Laboratory Accreditation Program (NVLAP), other accrediting bodies, Underwriter's Laboratories (UL), and Council of Canada. In order to reduce this confusion, DOE proposes to revise the text to read: ''testing must be conducted by test laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) or by an accreditation body that has a mutual recognition agreement for which NVLAP is a signatory.'' DOE believes this revision will clarify that testing may take place at laboratories accredited by NVLAP or by an organization with an equivalent function as NVLAP.

Additionally, DOE proposes to remove the statement at 10 CFR 430.25 noting that testing for fluorescent lamp ballasts performed in accordance with the existing Appendix Q is not required to be conducted by test laboratories accredited by NVLAP or an accrediting organization recognized by NVLAP. Because DOE is proposing to remove the BEF test procedure at existing Appendix Q and replace it with the BLE test procedure from existing Appendix Q1, this statement is also no longer relevant.

Finally, DOE proposes to remove statements indicating the relevant Appendix for testing specific lighting products. DOE proposes to remove these unnecessary statements so that 10 CFR 430.25 is focused solely on laboratory accreditation.

2. Evaluating Compliance With Standards

Compliance with BLE standards should be evaluated according to 10 CFR 429.26. As prescribed at 10 CFR 429.26(a)(2), for each basic model of fluorescent lamp ballast, a minimum of four units must be randomly selected and tested using redesignated Appendix Q. The manufacturer must then evaluate compliance with the standard by comparing the mean from testing and the lower 99 percent confidence limit (LCL) of the true mean divided by 0.99. The mean of the sample is computed using the equation at section 429.26(a)(2)(ii)(A), and the equation to evaluate the LCL is found at section 429.26(a)(2)(ii)(B). The following is an example calculation for evaluating compliance with BLE standards.

Table III.4 presents example test data used to evaluate compliance with standards for a fluorescent lamp ballast designed and marketed for operation of a maximum of two F96T8 lamps.

Table III.4 Example Test Data for Two-Lamp F96T8 Ballast*

Ballast Number	Number of Lamps	Input to Ballast			Lamp 1			Lamp 2			BLE	Power Factor
		Input Voltage (V)	Input Current (A)	Input Power (W)	Output Voltage (V)	Output Current (A)	Output Power (W)	Output Voltage (V)	Output Current (A)	Output Power (W)		
Unit 1	2	277.5	0.5118	140.0	260.8	0.2556	64.83	259.6	0.2566	65.07	0.9279	0.99
Unit 2	2	277.2	0.5134	140.3	261.4	0.2549	64.77	259.6	0.2580	65.40	0.9278	0.99
Unit 3	2	276.9	0.5023	137.1	251.9	0.2569	63.55	250.0	0.2598	63.81	0.9290	0.99
Unit 4	2	276.8	0.5139	140.3	260.7	0.2570	65.13	261.1	0.2558	65.18	0.9288	0.99

* Example test data includes data necessary for example calculation.

The ballast is a universal voltage, high frequency ballast designed to operate 8-foot slimline lamps and is intended for use in non-residential applications. Four units of the basic model are tested using the test procedure at redesignated Appendix Q. Each unit is tested while operating two 59 W F96T8 lamps and the resulting measurements are shown in Table III.4. The required calculations are performed for each ballast and include computing the BLE and power factor. To calculate the BLE of unit 1, Equation 1 is utilized.

$$\text{Ballast Luminous Efficiency} = \frac{\text{Total Test Ballast Lamp Arc Power}}{\text{Ballast Input Power}} \times \beta$$

Equation 1

Where:

Total Test Ballast Lamp Arc Power = sum of the lamp arc powers for all lamps operated by the ballast (as determined by section 2.5.1.5 of amended Appendix Q),

Ballast Input Power = measured input power to the ballast (as determined by section 2.5.1.6 of amended Appendix Q), and

β = frequency adjustment factor (Table A of amended Appendix Q).

Equation 2 shows the calculaton for BLE using the data from Table III.4 for unit 1.

$$\text{Ballast Luminous Efficiency}_{\text{Unit1}} = \frac{(64.83 + 65.07)}{140.0} \times 1.0 = 0.9279$$

Equation 2

The power factor is also calculated for unit 1 using Equation 3.

$$\text{Power Factor} = \frac{\text{Input Power}}{\text{Input Voltage} \times \text{Input Current}}$$

Equation 3

Equation 4 shows the calculation for power factor using the data from Table III.4 for unit 1.

$$\text{Power Factor}_{\text{Unit1}} = \frac{140.0}{277.5 \times 0.5118} = 0.99$$

Equation 4

The same process is repeated for each of the three remaining ballast units. The resulting BLE and power factor values are shown in Table III.4.

To determine the minimum BLE that a basic model must meet or exceed to be compliant with standards,

manufacturers must average the total lamp arc power of the units and input the average into the appropriate energy conservation standard efficiency level. The reported BLE for each basic model must meet or exceed the output of Equation 5. For instant start ballasts that are designed to operate 8-foot slimline lamps, A = 0.993; B = 0.27; and C = 0.25.

$$BLE = \frac{A}{1 + B \times power^{-c}}$$

Equation 5

Where:

power = average total lamp arc power.

The total lamp arc power is calculated using the data from Table III.4 for each of the tested ballasts as shown in Equation 6. The average total lamp arc power of the sample is then calculated as shown in Equation 7. Equation 8 uses the resulting average total lamp arc power to calculate the BLE standard.

$$\text{Total Lamp Arc Power}_{\text{Unit1}} = 64.83 + 65.07 = 129.90$$

Equation 6

$$\text{Average Total Lamp Arc Power} = \frac{129.90 + 130.17 + 127.36 + 130.31}{4} = 129.44$$

Equation 7

$$BLE = \frac{0.993}{1 + 0.27 \times 129.44^{-0.25}} = 0.919$$

Equation 8

Next, as stated previously, manufacturers must follow the provisions laid out in section 429.26 to certify for compliance. The mean BLE of the sample is calculated using Equation 9.

$$\bar{x} = \frac{1}{n} \sum_{i=1}^{n} x_i$$

Equation 9

Where:

$\bar{x}$ = sample mean,

n = number of samples, and

x_i = i^{th} sample.

The mean BLE calculation using the data from Table III.4 is shown in Equation 10.

$$\bar{x} = \frac{1}{4}(0.9279 + 0.9278 + 0.9290 + 0.9288) = 0.928$$

Equation 10

The lower 99 percent confidence limit of the true mean is calculated using Equation 11.

$$LCL = \bar{x} - t_{0.99}\left(\frac{s}{\sqrt{n}}\right)$$

Equation 11

Where:

$\bar{x}$ = sample mean,

s = sample standard deviation,

n = number of samples, and

$t_{0.99}$ = t statistic for a 99% one-tailed confidence interval with n − 1 degrees of freedom.

Equation 12 and Equation 13 show calculations for LCL and LCL divided by 0.99, respectively, using the test data from Table III.4.

$$LCL = 0.9284 - 4.541\left(\frac{0.0006131}{\sqrt{4}}\right) = 0.9270$$

Equation 12

$$\frac{LCL}{0.99} = \frac{0.9270}{0.99} = 0.936$$

Equation 13

Manufacturers may report that products perform within a range of values constrained by the standard and the statistical value based on test data. The standard serves as the minimum allowable BLE, and the lower of the mean BLE or LCL of the true mean divided by 0.99 serves as the maximum allowable BLE value reported for compliance. No additional tolerances are provided when determining BLE. Therefore, in this example, the minimum allowable BLE reported for compliance is the standard of 0.919 and the maximum BLE allowable to be reported is 0.928.

3. Compliance Date for This Proposed Rule

Compliance with existing standards has been required since the dates discussed in section III.A.1. The proposed amendments in this rulemaking would be effective 30 days following publication of a final rule. Consistent with 42 U.S.C. 6293(c), any representations of energy efficiency or energy use would be required to be based on any final amended test procedure no later than 180 days after the publication of the final rule in the **Federal Register**.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

This rulemaking clarifies existing requirements for testing and compliance with standards and does not change the burden associated with fluorescent lamp ballast regulations on any entity large or small. Therefore, DOE concludes and certifies that this rulemaking would not have a significant economic impact on a substantial number of small entities.

Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the SBA [4] for review under 5 U.S.C. 605(b). DOE certifies that this rule would have no significant impact on a substantial number of small entities. DOE seeks comment regarding whether the proposed clarifications in this proposed rulemaking would have a significant economic impact on any small entities.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of fluorescent lamp ballasts must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for fluorescent lamp ballasts, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including fluorescent lamp ballasts. (76 FR 12422 (March 7, 2011). The collection-of-

[4] Small Business Administration.

information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes revisions to provide clarification for energy conservation standards and test procedures for fluorescent lamp ballasts. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would clarify the existing energy conservation standards and test procedures without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined today's proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859

(March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action to clarify the energy conservation standards and test procedures for measuring the energy efficiency of fluorescent lamp ballasts is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed rule does not revise the existing incorporation of industry standards regarding fluorescent lamp ballasts. Therefore, the Department concludes that the requirements of section 32(b) of the FEAA, (*i.e.,* that the standards were developed in a manner that fully provides for public participation, comment, and review) do not apply to this rulemaking.

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

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

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the proposed clarification regarding laboratory accreditation.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on December 29, 2014.

Kathleen B. Hogan,

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

For the reasons stated in the preamble, DOE is proposing to amend part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.23 is amended by revising paragraph (q)(2) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(q) * * *

(2) Calculate ballast luminous efficiency (BLE) using section 2.6.1 of Appendix Q1 to this subpart. Round BLE to the nearest thousandths place.

* * * * *

■ 3. Section 430.25 is revised to read as follows:

§ 430.25 Laboratory Accreditation Program.

The testing for general service fluorescent lamps, general service incandescent lamps (with the exception of lifetime testing), incandescent reflector lamps, medium base compact fluorescent lamps, and fluorescent lamp ballasts (with the exception of the testing conducted pursuant to Appendix Q of this subpart as it appeared at 10 CFR part 430, subpart B revised as of January 1, 2014) must be conducted by test laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) or by an accreditation body that has a mutual recognition agreement for which NVLAP is a signatory.

Appendix Q to Subpart B of Part 430 [Removed]

■ 4. Appendix Q to subpart B of part 430 is removed.

■ 5. Appendix Q1 to subpart B of part 430 is redesignated as appendix Q to subpart B of part 430 and revised to read as follows:

Appendix Q to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Fluorescent Lamp Ballasts

1. Definitions

1.1. *AC control signal* means an alternating current (AC) signal that is supplied to the ballast using additional wiring for the purpose of controlling the ballast and putting the ballast in standby mode.

1.2. *Average total lamp arc power* means the average of the total lamp arc power (as defined and measured in section 2.6.1) of the ballast units tested.

1.3. *Cathode heating* refers to power delivered to the lamp by the ballast for the purpose of raising the temperature of the lamp electrode or filament.

1.4. *DC control signal* means a direct current (DC) signal that is supplied to the ballast using additional wiring for the purpose of controlling the ballast and putting the ballast in standby mode.

1.5. *Dimming ballast* means a ballast that is designed to vary its output and that can achieve an output less than or equal to 50 percent of its maximum electrical output.

1.6. *High-frequency ballast* is as defined in ANSI C82.13 (incorporated by reference; see § 430.3).

1.7. *Instant-start* is the starting method used in instant-start systems as defined in ANSI C82.13 (incorporated by reference; see § 430.3).

1.8. *Low-frequency ballast* is a fluorescent lamp ballast that operates at a supply frequency of 50 to 60 Hz and operates the lamp at the same frequency as the supply.

1.9. *PLC control signal* means a power line carrier (PLC) signal that is supplied to the ballast using the input ballast wiring for the purpose of controlling the ballast and putting the ballast in standby mode.

1.10. *Programmed-start* is the starting method used in programmed-start systems as defined in ANSI C82.13 (incorporated by reference; see § 430.3).

1.11. *Rapid-start* is the starting method used in rapid-start type systems as defined in ANSI C82.13 (incorporated by reference; see § 430.3).

1.12. *Reference lamp* is a fluorescent lamp that meets certain operating conditions as defined by ANSI C82.13 (incorporated by reference; see § 430.3).

1.13. *Residential ballast* means a fluorescent lamp ballast that meets FCC consumer limits as set forth in 47 CFR part 18 and is designed and marketed for use only in residential applications.

1.14. *RMS* is the root mean square of a varying quantity.

1.15. *Sign ballast* means a ballast that has an Underwriters Laboratories Inc. Type 2 rating and is designed and marketed for use only in outdoor signs.

1.16. *Wireless control signal* means a wireless signal that is radiated to and received by the ballast for the purpose of controlling the ballast and putting the ballast in standby mode.

2. Active Mode Procedure

2.1. Where ANSI C82.2 (incorporated by reference; see § 430.3) references ANSI C82.1–1997, the operator must use ANSI C82.1 (incorporated by reference; see § 430.3) for testing low-frequency ballasts and must use ANSI C82.11 (incorporated by reference; see § 430.3) for testing high-frequency ballasts. In addition when applying ANSI C82.2, the standards ANSI C78.81 (incorporated by reference; see § 430.3), ANSI C82.1, ANSI C82.11, and ANSI C82.13 must be used instead of the versions listed as normative references in ANSI C82.2.

2.2. *Instruments*

2.2.1. All instruments must be as specified by ANSI C82.2 (incorporated by reference; see § 430.3).

2.2.2. *Power Analyzer.* In addition to the specifications in ANSI C82.2 (incorporated by reference; see § 430.3), the power analyzer must have a maximum 100 pF capacitance to ground and frequency response between 40 Hz and 1 MHz.

2.2.3. *Current Probe.* In addition to the specifications in ANSI C82.2 (incorporated by reference; see § 430.3), the current probe must be galvanically isolated and have frequency response between 40 Hz and 20 MHz.

2.3. *Test Setup*

2.3.1. The ballast must be connected to a main power source and to the fluorescent lamp load according to the manufacturer's wiring instructions and ANSI C82.1 (incorporated by reference; see § 430.3) and ANSI C78.81 (incorporated by reference; see § 430.3).

2.3.1.1. Wire lengths between the ballast and fluorescent lamp must be the length provided by the ballast manufacturer. Wires must be kept loose and not shortened or bundled.

2.3.1.2. If the wire lengths supplied with the ballast are of insufficient length to reach both ends of lamp, additional wire may be added. Add the minimum additional wire length necessary, and the additional wire must be the same wire gauge as the wire supplied with the ballast. If no wiring is provided with the ballast, 18 gauge or thicker wire must be used. The wires must be separated from each other and ground to prevent parasitic capacitance for all wires used in the apparatus, including those wires from the ballast to the lamps and from the lamps to the measuring devices.

2.3.1.3. The fluorescent lamp must meet the specifications of a reference lamp as defined by ANSI C82.13 (incorporated by reference; see § 430.3) and be seasoned at least 12 hours.

2.3.1.4. The ballast must be connected to the number of lamps equal to the maximum number of lamps the ballast is designed and marketed to operate.

2.3.1.5. With the exception of sign ballasts (described in section 2.3.1.6 and its subsections), ballasts designed and marketed to operate both T8 and T12 lamps must be tested with T8 lamps.

2.3.1.6. For sign ballasts (as defined in section 1.15):

2.3.1.6.1. A T8 lamp in accordance with Table A of this section must be used for sign ballasts that are designed and marketed to only operate T8 lamps.

2.3.1.6.2. A T12 lamp in accordance with Table A of this section must be used for sign ballasts that are designed and marketed to only operate T12 lamps.

2.3.1.6.3. A T12 lamp in accordance with Table A of this section must be used for sign ballasts that are designed and marketed to operate both T8 and T12 lamps.

2.3.1.7. Each ballast must be tested with only one lamp type corresponding to the lamp diameter the ballast is designed and marketed to operate in accordance with Table A of this section.

TABLE A—LAMP-AND-BALLAST PAIRINGS AND FREQUENCY ADJUSTMENT FACTORS

Ballast type	Lamp type		Frequency adjustment factor (β)	
	Lamp diameter and base	Nominal lamp wattage	Low-frequency	High-frequency
Ballasts that operate straight-shaped lamps (commonly referred to as 4-foot medium bipin lamps) with medium bipin bases and a nominal overall length of 48 inches.	T8 MBP	32	0.94	1.0
	T12 MBP	34	0.93	1.0
Ballasts that operate U-shaped lamps (commonly referred to as 2-foot U-shaped lamps) with medium bipin bases and a nominal overall length between 22 and 25 inches.	T8 MBP	32	0.94	1.0
	T12 MBP	34	0.93	1.0
Ballasts that operate rapid-start lamps (commonly referred to as 8-foot-high output lamps) with recessed double contact bases and a nominal overall length of 96 inches.	T8 HO RDC	86	0.92	1.0
	T12 HO RDC	95	0.94	1.0
Ballasts that operate instant-start lamps (commonly referred to as 8-foot slimline lamps) with single pin bases and a nominal overall length of 96 inches.	T8 slimline SP	59	0.95	1.0
	T12 slimline SP	60	0.94	1.0
Ballasts that operate straight-shaped lamps (commonly referred to as 4-foot miniature bipin standard output lamps) with miniature bipin bases and a nominal length between 45 and 48 inches.	T5 SO Mini-BP	28	0.95	1.0
Ballasts that operate straight-shaped lamps (commonly referred to as 4-foot miniature bipin high output lamps) with miniature bipin bases and a nominal length between 45 and 48 inches.	T5 HO Mini-BP	54	0.95	1.0
Sign ballasts that operate rapid-start lamps (commonly referred to as 8-foot high output lamps) with recessed double contact bases and a nominal overall length of 96 inches.	T8 HO RDC	86	0.92	1.0
	T12 HO RDC	110	0.94	1.0

MBP, Mini-BP, RDC, and SP represent medium bipin, miniature bipin, recessed double contact, and single pin, respectively.
A ballast must be tested with only one lamp type based on the ballast type description and lamp diameter it is designed and marketed to operate.

2.3.2. Power Analyzer

2.3.2.1. The power analyzer must have n+1 channels where n is the number of lamps a ballast operates. Use the minimum number of power analyzers possible during testing.

2.3.2.2. *Lamp Arc Voltage.* Leads from the power analyzer should attach to each fluorescent lamp according to Figure 1 of this section for rapid- and programmed-start ballasts, Figure 2 of this section for instant-start ballasts operating single pin (SP) lamps,

and Figure 3 of this section for instant-start ballasts operating medium bipin (MBP), miniature bipin (mini-BP), or recessed double contact (RDC) lamps. The programmed- and rapid-start ballast test setup includes two 1000 ohm resistors placed in parallel with the lamp pins to create a midpoint from which to measure lamp arc voltage.

2.3.2.3. *Lamp Arc Current.* A current probe must be positioned on each fluorescent lamp according to Figure 1 for rapid- and programmed-start ballasts, Figure 2 of this section for instant-start ballasts operating SP lamps, and Figure 3 of this section for instant-start ballasts operating MBP, mini-BP, and RDC lamps.

2.3.2.3.1. For the lamp arc current measurement, the full transducer ratio must be set in the power analyzer to match the current probe to the power analyzer.

$$Full\ Transducer\ Ratio = \frac{I_{in}}{V_{out}} \times \frac{R_{in}}{R_{in} + R_s}$$

Where: I_{in} is the current through the current transducer, V_{out} is the voltage out of the transducer, R_{in} is the power analyzer impedance, and R_s is the current probe output impedance.

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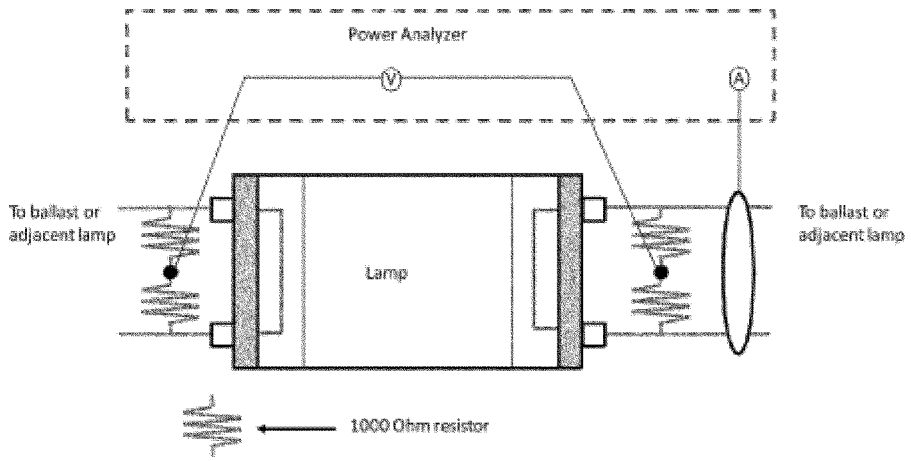

Figure 1: Programmed- and Rapid-Start Ballast Instrumentation Setup

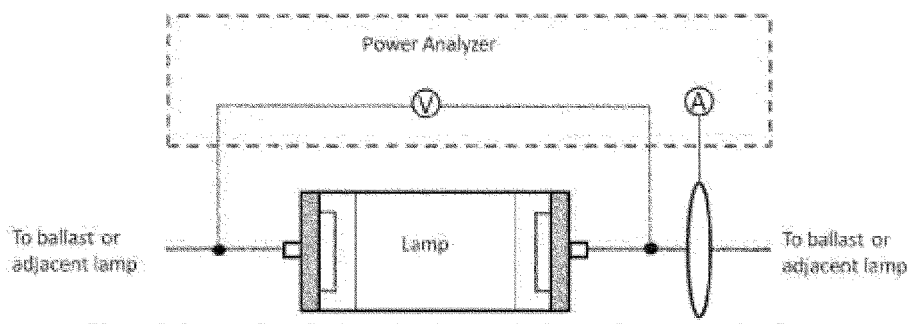

Figure 2: Instant-Start Ballasts that Operate SP Lamps Instrumentation Setup

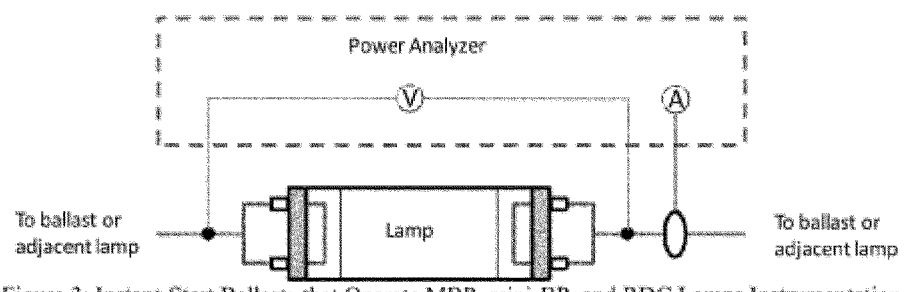

Figure 3: Instant-Start Ballasts that Operate MBP, mini-BP, and RDC Lamps Instrumentation Setup

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2.4. *Test Conditions*

2.4.1. The test conditions for testing fluorescent lamp ballasts must be done in accordance with ANSI C82.2 (incorporated by reference; see § 430.3). DOE further specifies that the following revisions of the normative references indicated in ANSI C82.2 should be used in place of the references directly specified in ANSI C82.2: ANSI C78.81 (incorporated by reference; see § 430.3), ANSI C82.1 (incorporated by reference; see § 430.3), ANSI C82.3 (incorporated by reference; see § 430.3), ANSI C82.11 (incorporated by reference; see § 430.3), and ANSI C82.13 (incorporated by reference; see § 430.3). All other normative references must be as specified in ANSI C82.2.

2.4.2. *Room Temperature and Air Circulation.* The test facility must be held at 25 ±2 °C, with minimal air movement as defined in ANSI C78.375 (incorporated by reference; see § 430.3).

2.4.3. *Input Voltage.* Disregard the directions in ANSI C82.2 (incorporated by reference; see § 430.3) section 4.1, and use the following directions for input voltage instead. For ballasts that are not residential ballasts designed and marketed for operation at multiple voltages, test the ballast at 277V ±0.1%. For residential ballasts designed and marketed for operation at multiple voltages, test the ballast at 120V ±0.1%. For sign ballasts designed and marketed for operation at multiple voltages, test the ballast at 120V ±0.1%. Ballasts designed and marketed for operation at only one input voltage must be tested at that specified voltage.

2.5. *Test Method*

2.5.1. *Ballast Luminous Efficiency.*

2.5.1.1. The ballast must be connected to the appropriate fluorescent lamps and to measurement instrumentation as indicated by the Test Setup in section 2.3.

2.5.1.2. The ballast must be operated at full output for at least 15 minutes but no longer than 1 hour until stable operating conditions are reached. Once this condition is reached and with the ballast continuing to operate at full output, measure each of the parameters described in sections 2.5.1.3 through 2.5.1.9 concurrently.

2.5.1.2.1. Stable operating conditions are determined by measuring lamp arc voltage, current, and power once per second in accordance with the setup described in section 2.3. Once the difference between the maximum and minimum values for lamp arc voltage, current, and power do not exceed one percent over a four minute moving window, the system is considered stable.

2.5.1.3. *Lamp Arc Voltage.* Measure lamp arc voltage (volts) using the setup described in section 2.3.2.2.

2.5.1.4. *Lamp Arc Current.* Measure lamp arc current (amps) using the setup described in section 2.3.2.3.

2.5.1.5. *Lamp Arc Power.* The power analyzer must calculate output power by using the measurements described in sections 2.5.1.3 and 2.5.1.4.

2.5.1.6. *Input Power.* Measure the input power (watts) to the ballast in accordance with ANSI C82.2 (incorporated by reference; see § 430.3), section 7.

2.5.1.7. *Input Voltage.* Measure the input voltage (volts) (RMS) to the ballast in accordance with ANSI C82.2 (incorporated by reference; see § 430.3), section 3.2.1 and section 4.

2.5.1.8. *Input Current.* Measure the input current (amps) (RMS) to the ballast in accordance with ANSI C82.2 (incorporated by reference; see § 430.3), section 3.2.1 and section 4.

2.5.1.9. *Lamp Operating Frequency.* Measure the frequency of the waveform delivered from the ballast to any lamp in accordance with the setup in section 2.3.

2.6. *Calculations*

2.6.1. Calculate ballast luminous efficiency (BLE).

$$Ballast\ Luminous\ Efficiency = \frac{Total\ Test\ Ballast\ Lamp\ Arc\ Power}{Ballast\ Input\ Power} \times \beta$$

Where: Total Test Ballast Lamp Arc Power is the sum of the lamp arc powers for all lamps operated by the ballast as determined by section 2.5.1.5, Ballast Input Power is as determined by section 2.5.1.6, and β is equal to the frequency adjustment factor in Table A.

2.6.2. Calculate Power Factor (PF).

$$PF = \frac{Ballast\ Input\ Power}{Input\ Voltage\ \times Input\ Current}$$

Where: Ballast Input Power is determined in accordance with section 2.5.1.6, Input Voltage is determined in accordance with section 2.5.1.7, and Input Current is determined in accordance with section 2.5.1.8.

3. Standby Mode Procedure

3.1. The measurement of standby mode power need not be performed to determine compliance with energy conservation standards for fluorescent lamp ballasts at this time. On or after [Date 180 Days after Publication of Final Rule in the **Federal Register**], if a manufacturer makes any representations with respect to the standby mode power use of fluorescent lamp ballasts, then testing must also include the provisions of this test procedure related to standby mode energy consumption.

3.2. *Test Conditions*

3.2.1. The test conditions for testing fluorescent lamp ballasts must be established in accordance with ANSI C82.2 (incorporated by reference; see § 430.3). The test conditions for measuring standby power are described in sections 5, 7, and 8 of ANSI C82.2. Fluorescent lamp ballasts that are designed and marketed for connection to control devices must be tested with all commercially available compatible control devices connected in all possible configurations. For each configuration, a separate measurement of standby power must be made in accordance with section 3.3 of the test procedure.

3.3. *Test Method and Measurements*

3.3.1. The test for measuring standby mode energy consumption of fluorescent lamp ballasts must be done in accordance with ANSI C82.2 (incorporated by reference; see § 430.3).

3.3.2. Send a signal to the ballast instructing it to have zero light output using the appropriate ballast communication protocol or system for the ballast being tested.

3.3.3. *Input Power.* Measure the input power (watts) to the ballast in accordance with ANSI C82.2, section 13, (incorporated by reference; see § 430.3).

3.3.4. *Control Signal Power.* The power from the control signal path must be measured using all applicable methods described below.

3.3.4.1. *AC Control Signal.* Measure the AC control signal power (watts), using a wattmeter (W), connected to the ballast in accordance with the circuit shown in Figure 4 of this section.

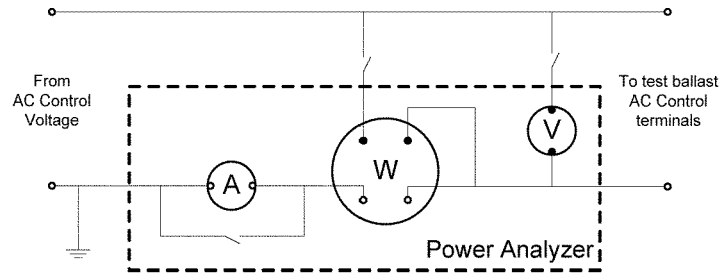

Figure 4. Circuit for Measuring AC Control Signal Power in Standby Mode

3.3.4.2. *DC Control Signal.* Measure the DC control signal voltage, using a voltmeter (V), and current, using an ammeter (A), connected to the ballast in accordance with the circuit shown in Figure 5 of this section. The DC control signal power is calculated by multiplying the DC control signal voltage and the DC control signal current.

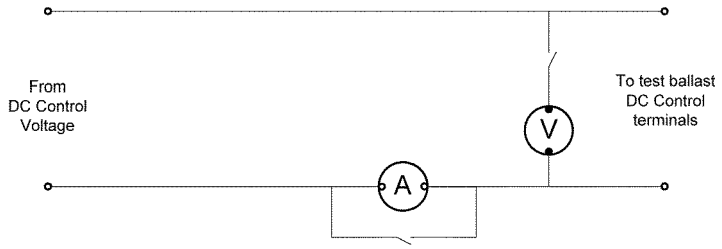

Figure 5: Circuit for Measuring DC Control Signal Power in Standby Mode

3.3.4.3. *Power Line Carrier (PLC) Control Signal.* Measure the PLC control signal power (watts) using a wattmeter (W) connected to the ballast in accordance with the circuit shown in Figure 6 of this section. The wattmeter must have a frequency response that is at least 10 times higher than the PLC being measured in order to measure the PLC signal correctly. The wattmeter must also be high-pass filtered to filter out power at 60 Hertz.

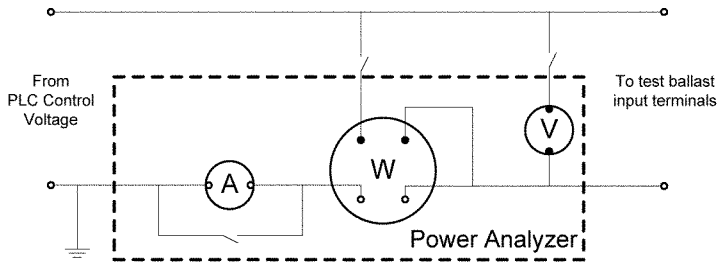

Figure 6: Circuit for Measuring PLC Control Signal Power in Standby Mode

3.3.4.4. *Wireless Control Signal.* The power supplied to a ballast using a wireless signal is not easily measured, but is estimated to be well below 1.0 watt. Therefore, the wireless control signal power is not measured as part of this test procedure.

■ 5. Section 430.32 is amended by revising paragraph (m) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(m) *Fluorescent lamp ballasts.* (1) Standards for fluorescent lamp ballasts (other than dimming ballasts as defined in appendix Q of subpart B of this part)

Except as provided in paragraphs (m)(2) and (m)(3) of this section, each fluorescent lamp ballast manufactured on or after November 14, 2014

(i) Designed and marketed—

(A) To operate at nominal input voltages at or between 120 and 277 volts;

(B) To operate with an input current frequency of 60 Hertz; and

(C) For use in connection with fluorescent lamps (as defined in § 430.2)

(ii) Must have—

(A) A power factor of:

(1) 0.9 or greater for ballasts that are not residential ballasts; or

(2) 0.5 or greater for residential ballasts.

(B) A ballast luminous efficiency not less than the following:

BLE = A/(1 + B × average total lamp arc power ∧ −C) Where A, B, and C are as follows:*

Description	A	B	C
Instant start and rapid start ballasts (not classified as residential ballasts) that are designed and marketed to operate ..... 4-foot medium bipin lamps; 2-foot U-shaped lamps; or 8-foot slimline lamps.	0.993	0.27	0.25
Programmed start ballasts (not classified as residential ballasts) that are designed and marketed to operate ..... 4-foot medium bipin lamps; 2-foot U-shaped lamps; 4-foot miniature bipin standard output lamps; or 4-foot miniature bipin high output lamps.	0.993	0.51	0.37
Instant start and rapid start ballasts (not classified as sign ballasts) that are designed and marketed to operate 8-foot high output lamps	0.993	0.38	0.25
Programmed start ballasts (not classified as sign ballasts) that are designed and marketed to operate 8-foot high output lamps	0.973	0.70	0.37
Sign ballasts that are designed and marketed to operate 8-foot high output lamps	0.993	0.47	0.25
Instant start and rapid start residential ballasts that are designed and marketed to operate ..... 4-foot medium bipin lamps; 2-foot U-shaped lamps; or 8-foot slimline lamps.	0.993	0.41	0.25
Programmed start residential ballasts that are designed and marketed to operate ..... 4-foot medium bipin lamps or 2-foot U-shaped lamps.	0.973	0.71	0.37

* Average total lamp arc power, instant start, programmed start, rapid start, residential ballast, and sign ballast are as defined in appendix Q of subpart B of this part.

(2) Standards for certain dimming ballasts (as defined in appendix Q of subpart B of this part).

Except as provided in paragraph (m)(3) of this section, each dimming ballast manufactured on or after November 14, 2014; designed and marketed to operate one F34T12, two F34T12, two F96T12/ES, or two F96T12HO/ES lamps; and

(i) Designed and marketed—

(A) To operate at nominal input voltages at or between 120 and 277 volts;

(B) To operate with an input current frequency of 60 Hertz; and

(C) For use in connection with fluorescent lamps (as defined in § 430.2).

(ii) Must have—

(A) A power factor of:

(1) 0.9 or greater for ballasts that are not residential ballasts; or

(2) 0.5 or greater for residential ballasts.

(B) A ballast luminous efficiency not less than the following:

Designed and marketed for operation of a maximum of	Ballast input voltage	Total nominal lamp watts	Ballast luminous efficiency	
			Low frequency ballasts	High frequency ballasts
One F34T12 lamp	120/277	34	0.777	0.778
Two F34T12 lamps	120/277	68	0.804	0.805
Two F96T12/ES lamps	120/277	120	0.876	0.884
Two F96T12HO/ES lamps	120/277	190	0.711	0.713

(3) Exemptions

The power factor and ballast luminous efficiency standards described in paragraph (m)(1)(ii) and (m)(2)(ii) of this section do not apply to:

(i) A dimming ballast (as defined in appendix Q of subpart B of this part) designed and marketed to operate exclusively lamp types other than one F34T12, two F34T12, two F96T12/ES, or two F96T12HO/ES lamps;

(ii) A low frequency ballast (as defined in appendix Q of subpart B of this part) that is designed and marketed to operate T8 diameter lamps; is designed and marketed for use in electromagnetic-interference-sensitive-environments only; and is shipped by the manufacturer in packages containing 10 or fewer ballasts; or

(iii) A programmed start ballast that operates 4-foot medium bipin T8 lamps and delivers on average less than 140 milliamperes to each lamp.

* * * * *

[FR Doc. 2014–30827 Filed 1–5–15; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–1123; Directorate Identifier 2014–CE–037–AD]

RIN 2120–AA64

Airworthiness Directives; GA 8 Airvan (Pty) Ltd Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for GA 8 Airvan (Pty) Ltd Model GA8–TC320 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as missing required engine mount fire seal washers, which could reduce the engine retention capability in the event of a fire. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by February 20, 2015.

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

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

For service information identified in this proposed AD, contact GA 8 Airvan (Pty) Ltd, c/o GippsAero Pty Ltd, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: + 61 03 5172 1200; fax: +61 03 5172 1201; email: *techpubs@gippsaero.com;* Internet: *http://www.gippsaero.com/customer-support/technical-publications.aspx.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1123; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–1123; Directorate Identifier 2014–CE–037–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The Civil Aviation Safety Authority (CASA), which is the aviation authority for Australia, has issued AD No. AD/GA8/8, dated November 24, 2014 (referred to after this as ''the MCAI''), to correct an unsafe condition for GA 8 Airvan (Pty) Ltd Model GA8–TC320 airplanes and was based on mandatory continuing airworthiness information originated by an aviation authority of another country. The MCAI states:

> A recent review of the engine mount installation on the GA8–TC 320 aircraft has highlighted the omission of engine mount fire seal washers during the assembly process.
>
> The current engine mount configuration does not meet the certification basis for the aircraft, specifically regulation 23.865 of the Federal Aviation Regulations of the United States of America, where engine mounts located in designated fire zones are required to be suitably shielded so that they are capable of withstanding the effects of a fire. The Gippsland Aeronautics GA8–TC 320 aircraft require the installation of an approved steel washer at each of the engine mount locations to address a potential risk of reduced engine retention capability in the event of a fire.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1123.

Relevant Service Information

GippsAero has issued Mandatory Service Bulletin SB–GA8–2014–115, Issue 1, dated October 6, 2014. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. The service information describes procedures for inspecting the orientation of the engine isolator mounts to verify proper installation, re-installing if necessary, and installing steel washers on the forward side of each side of the engine isolator mounts.

FAA's Determination and Requirements of the Proposed AD

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

Costs of Compliance

We estimate that this proposed AD will affect 13 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $10 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $5,655, or $435 per product.

According to the manufacturer, all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701:

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Amend § 39.13 by adding the following new AD:

GA 8 Airvan (Pty) Ltd: Docket No. FAA–2014–1123; Directorate Identifier 2014–CE–037–AD.

(a) Comments Due Date

We must receive comments by February 20, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GA8 Airvan (Pty) Ltd GA8–TC320 airplanes, all serial numbers affected, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 71: Power Plant.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as missing required engine mount fire seal washers, which could reduce the engine retention capability in the event of a fire. We are issuing this AD to inspect the engine mounts to verify they have been installed with the correct orientation and install steel washers at each isolator mount location, which, if not done, could result in reduced engine retention capability in the event of a fire.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (f)(4) of this AD:

(1) Within the next 300 hours time-in-service after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, inspect the orientation of the engine isolator mounts to verify that the mounts have been installed properly following the Accomplishment Instructions in GippsAero Mandatory Service Bulletin SB–GA8–2014–115, Issue 1, dated October 6, 2014.

(2) Before reinstalling the engine isolator mounts following the inspection required in paragraph (f)(1) of this AD, before further flight, install a part number J–2218–61 steel washer on the forward side of each of the four engine isolator mounts, following the Accomplishment Instructions in GippsAero Mandatory Service Bulletin SB–GA8–2014–115, Issue 1, dated October 6, 2014.

(3) If after the inspection required in paragraph (f)(1) of this AD, any of the engine isolator mounts are found to not comply with the specifications found in the Accomplishment Instructions of GippsAero Mandatory Service Bulletin SB–GA8–2014–115, Issue 1, dated October 6, 2014, before further flight, re-install the isolators to the correct orientation, or if damage is found, replace with airworthy parts.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

(h) Related Information

Refer to MCAI Civil Aviation Safety Authority (CASA) AD No. AD/GA8/8, dated November 24, 2014. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1123. For service information related to this AD, contact GA 8 Airvan (Pty) Ltd, c/o GippsAero Pty Ltd, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: + 61 03 5172 1200; fax: +61 03 5172 1201; email: *techpubs@gippsaero.com;* Internet: *http://www.gippsaero.com/customer-support/technical-publications.aspx.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on December 29, 2014.

Robert Busto,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–30910 Filed 1–5–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1319; Directorate Identifier 2012–NM–179–AD]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

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

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA withdraws a notice of proposed rulemaking (NPRM) that proposed to revise Airworthiness Directive (AD) 2012–12–15, which applies to all The Boeing Company Model 757 airplanes. The NPRM would have corrected errors in certain paragraph references in AD 2012–12–15; continued to require revising the maintenance program by incorporating new and revised fuel tank system limitations in the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness; and continued to require the initial inspection of certain repetitive AWL inspections to phase-in those inspections, and repair if necessary. Since the proposed AD was issued, we have received new data that the unsafe condition has been addressed by AD 2012–12–15, and the compliance relief that would have been provided by the proposed AD is no longer relevant. Accordingly, the proposed AD is withdrawn.

DATES: As of January 6, 2015, the proposed rule, which was published in the **Federal Register** on January 30, 2013 (78 FR 6247), is withdrawn.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–1319; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD action, the NPRM (78 FR 6247, January 30, 2013), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6506; fax: 425–917–6590; email: *jon.regimbal@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a notice of proposed rulemaking (NPRM) to revise AD 2012–12–15, Amendment 39–17095 (77 FR 42964, July 23, 2012), which applies to all The Boeing Company Model 757 airplanes. That NPRM was published in the **Federal Register** on January 30, 2013 (78 FR 6247). The NPRM would have corrected errors in certain paragraph references in AD 2012–12–15; continued to require revising the maintenance program by incorporating new and revised fuel tank system limitations in the AWLs section of the Instructions for Continued Airworthiness; and continued to require the initial inspection of certain repetitive AWL inspections to phase-in those inspections, and repair if necessary. The NPRM resulted from the discovery of errors in certain paragraph references in AD 2012–12–15. The proposed actions were intended to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Actions Since NPRM (78 FR 6247, January 30, 2013) Was Issued

Since we issued the NPRM (78 FR 6247, January 30, 2013), commenters identified errors in the service information that was referenced in the NPRM. We reviewed those errors, considered the amount of time needed to address those errors in the service information, and re-considered the effect of the errors identified in AD 2012–12–15, Amendment 39–17095 (77 FR 42964, July 12, 2012). The identified errors in AD 2012–12–15 could have the unintended effect of implying that the grace period was 24 months after June 12, 2008 (which is the effective date of AD 2008–10–11, Amendment 39–15517 (73 FR 25974, May 8, 2008)), which is earlier than the intended 24 months after August 27, 2012 (the effective date of AD 2012–12–15). In either case, the grace period will have passed before the new, corrected AD would be effective. The compliance time relief that would have been provided by the new, corrected AD is no longer relevant, and there would be no benefit to publishing that new, corrected AD.

FAA's Conclusions

Upon further consideration, we have determined that the compliance time relief that would have been provided to operators by the NPRM (78 FR 6247, January 30, 2013) is no longer relevant. Accordingly, the NPRM is withdrawn.

Withdrawal of the NPRM (78 FR 6247, January 30, 2013), does not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

Regulatory Impact

Since this action only withdraws an NPRM (78 FR 6247, January 30, 2013), it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

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

The Withdrawal

Accordingly, we withdraw the NPRM, Docket No. FAA–2012–1319, Directorate Identifier 2012–NM–179–AD, which was published in the **Federal Register** on January 30, 2013 (78 FR 6247).

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

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–30911 Filed 1–5–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2014–F–2307]

Humic Products Trade Association; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Humic Products Trade Assn. has filed a petition proposing that the food additive regulations be amended to

provide for the safe use of humate, fulvic acid and humic substances as a source of iron in animal feed.

DATES: Submit either electronic or written comments on the petitioner's request for categorical exclusion from preparing an environmental assessment or environmental impact statement by February 5, 2015.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: David Edwards, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9568.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2290) has been filed by the Humic Products Trade Assn., P.O. Box 963, Spring Green, WI 53588. The petition proposes to amend Title 21 of the Code of Federal Regulations (CFR) in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of humate, fulvic acid and humic substances as a source of iron in animal feed. The petitioner has requested a categorical exclusion from preparing an environmental assessment or environmental impact statement under 21 CFR 25.32(r).

Interested persons may submit either electronic comments regarding this request for categorical exclusion to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **DATES** and **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.*

Dated: December 30, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–30932 Filed 1–5–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 574, 960, 966, 982, 983, and 990

[Docket No. FR 5743–P–01]

RIN 2506–AC38

Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: Section 243 of the Department of Housing and Urban Development Appropriations Act, 2014 (2014 Appropriations Act), authorized HUD to implement certain statutory changes to the United States Housing Act of 1937 (1937 Act) made by the 2014 Appropriations Act through notice, followed by notice and comment rulemaking. Notices implementing the changes were published on May 19, 2014, and June 25, 2014. Consistent with statutory direction, this proposed rule commences the rulemaking process to codify in regulation the statutory changes made to the 1937 Act by the 2014 Appropriations Act and to solicit comment on HUD's implementation of these changes through the published notices. HUD intends to address the FY14 provision on consortia through separate rulemaking.

In addition, this rulemaking also proposes changes to streamline regulatory requirements pertaining to certain elements of the Housing Choice Voucher (HCV), Public Housing (PH), and various multifamily housing (MFH) rental assistance programs; to reduce the administrative burden on public housing agencies (PHAs) and MFH owners; and to align, where feasible, requirements across programs. One of the proposed changes would also affect the HOME Investment Partnerships program, Continuum of Care program, and the Housing Opportunities for Persons With AIDS (HOPWA) program which are administered by HUD's Office of Community Planning and Development.

DATES: *Comment Due Date:* March 9, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions, please contact the following people (none of the phone numbers are toll-free):

HOME program: Marcia Sigal, 202–402–3002.

HOPWA: Will Rudy, 202–402–1934.

Office of Special Needs Housing programs: Brett Gagnon, 202–402–3509.

Multifamily Housing programs: Claire Brolin, 202–708–3000.

Housing Choice Voucher program: Becky Primeaux, 202–402–6050.

Public Housing program: Todd Thomas, 202–402–5849.

Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Relay Service at 800–877–8339. Any of the above-listed contacts may also be reached via postal mail at the following address: Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years and in accordance with Executive Order 13563 (Improving Regulation and Regulatory Review)[1] and several HUD-initiated streamlining initiatives,[2] HUD solicited recommendations from program participants on how program operations could be streamlined to reduce costs and enhance efficiency, while still maintaining HUD's core program oversight functions (*e.g.,* reducing improper payments,[3] etc.). With respect to public housing programs, HUD received input from national and local industry groups, individual public housing agencies (PHAs), and Moving-to-Work (MTW) agencies, among others. Where possible, HUD has sought to streamline requirements across programs, with a particular focus on aligning program requirements across the public housing and Section 8 (tenant- and project-based) portfolios. This proposed rule therefore includes several provisions where the requirements of programs operated out of the Office and Public and Indian Housing are aligned with the requirements of project-based Section 8 programs operated out of HUD's Office of Housing.

In response to HUD's solicitation of comments, HUD received many recommendations. Among these recommendations, HUD specifically examined recommendations to relieve the administrative burden on PHAs and MFH owners while maintaining important tenant protections and oversight practices. Some of the recommendations required statutory change and were included in recent budget proposals; several of the recommendations were enacted in FY14 and are being implemented through this proposed regulation. Others have been implemented through notice; for example, Notice PIH 2013–03[4] (extended by Notice PIH 2013–26) provides temporary compliance assistance to PHAs through several provisions that are proposed to be made permanent through this rulemaking. Some of the statutorily permitted recommendations lacked authority to be implemented by notice and are included in this proposed rule.

In addition to the PH and HCV programs, this proposed rule would affect the following MFH programs, as of the date of this proposal:

A. *Project-Based Section 8* (New Construction, State Agency-Financed, Substantial Rehabilitation, Rural Housing Services, Loan Management Set-Aside, and Property Disposition Set-Aside).

B. *Section 8 Moderate Rehabilitation.*

C. *Rent Supplement Program.*

D. *Section 202 Supportive Housing for the Elderly* (including PAC and PRAC).

E. *Section 811 Supportive Housing for Persons with Disabilities* (including PRAC and PRA).

F. *Section 235.*

G. *Section 236.*

H. *Section 221.*

The proposed rule would also affect certain programs administered by the Assistant Secretary for Community Planning and Development: HOME Investment Partnerships program (HOME) and the Continuum of Care program. HUD is also taking the opportunity afforded by this proposed rule to relocate HOPWA program requirements currently codified in 24 CFR part 5 to the main HOPWA program regulations at 24 CFR part 574. Although the substance of these provisions would not be revised, the proposed relocation will improve the clarity of the program regulations by locating all HOPWA regulatory requirements in a single part of the Code of Federal Regulations. The section-by-section summary of this proposed rule is organized by the program(s) the proposed rule would affect. Section A addresses proposed regulatory changes that cross all programs (*e.g.,* HCV, MFH, and PH). Section B presents proposed changes that would affect the administration of both the HCV and PH programs. Section C contains proposed changes that affect the PH program only. Changes proposed only to the HCV program are in section D.[5] The proposed regulatory changes are then presented in order by section number.

II. This Proposed Rule—Section-by-Section Proposed Changes

A. HCV, MFH, and PH Program Regulations

Verification of Social Security Numbers (§ 5.216)

Under current regulations, most applicants are required to have a Social Security Number (SSN) at move-in. Absent a regulatory waiver, this requirement results in an applicant family being denied assistance if the addition of a child occurs in close proximity to the applicant's move-in date and the family is unable to obtain a SSN for the child, due to circumstances beyond its control. By contrast, HUD regulations provide for the addition to a participant family of a new household member under the age of 6 years who has no assigned SSN.

HUD proposes to align the requirements across applicant and participant households with respect to new household members under the age of 6 years who lack SSNs. Specifically, HUD proposes to authorize applicant households to become program participants even if a child under the age of 6 years is added to the household within the 6-month period prior to the household's date of admission and that child has not yet been issued an SSN. The household would have 90 days from the date of move-in to provide the documentation evidencing issuance of an SSN. As is the case with program participants, an extension of one 90-day period would be required for assistance applicants under certain circumstances.

Definition of Extremely Low-Income Families (§§ 5.603, 960.102)

HUD's 2014 Appropriations Act[6] defines the term ''extremely low-income family'' to mean a very low-income family whose income does not exceed the higher of 30 percent of area median income or the poverty level. This rule would amend § 5.603 to include the revised definition of an extremely low-income family. This definition applies

[1] See *http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.*

[2] HUD's Delivering Together Initiative was started to reduce burdens on public housing agencies and improve cross-program collaboration (see *http://www.hud.gov/offices/hsg/mfh/trx/meet/2011tracsindustrybriefing.pdf*). The Public Housing Administrative Reform Initiative sought to identify public housing administrative processes that could be streamlined (see *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/phari*).

[3] The Rental Housing Integrity Improvement Project (see *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip*) is a strategy designed to reduce income and rent calculation errors and improper payments that result from such errors.

[4] See *http://portal.hud.gov/hudportal/documents/huddoc?id=pih2013-03.pdf.*

[5] One of the proposed changes also affects the CPD programs listed earlier.

[6] HUD's 2014 Appropriations Act is Title II of Division L of Public Law 113–76, 128 Stat. 5, approved January 17, 2014. See general provision section 238 of this Act at 128 Stat. 635.

to all programs assisted under the 1937 Act.

In addition to the change in the definition, this rule proposes to correct some improper cross-citations in §§ 5.603 and 960.102, but proposes no substantive changes associated with these corrections.

Use of Actual Past Income (§ 5.609)

HUD's current regulations define ''annual income'' to mean income projected to be received in the 12 months following admission or the annual reexamination date. The process of projecting income introduces the potential for error.

This rule proposes to allow PHAs and MFH owners to define annual income as either actual past income or projected income. Actual past income would be based on amounts received prior to admission or the annual reexamination effective date and would therefore simply exclude the additional step of projecting income based on this information.

For PHAs, whichever definition is chosen for either the HCV or PH program must be applied to all families in the respective program. Likewise, a MFH owner must apply the same definition of annual income for all families in a single property.

If a PHA or MFH owner chooses to define annual income as actual past income, then it may not adopt the option provided in the proposed revisions to §§ 5.657, 960.257, and 982.516 to provide for the streamlined annual reexamination of fixed-income families (see below). In other words, if a PHA or MFH owner adopts the streamlined annual reexamination for families on fixed incomes, below, then it must use projected income to determine annual income. Also, the PHA must use projected income if the family makes a request (for example the family may have experienced a decrease in income that would result in a lower family payment than would be calculated if income is defined as actual past income).

Exclusion of Mandatory Education Fees From Income (§ 5.609(b)(9))

Current regulations provide that education assistance in excess of amounts needed for tuition is to be counted as income for the purposes of determining whether an individual is eligible to receive assistance. However, in recent years, appropriations acts have also excluded from income amounts needed to pay required fees charged to students as part of a growing trend among institutions of higher education moving from a traditional tuition-only structure to a structure of tuition and fees. Fees often include, but are not limited to, student service fees, student association fees, student activity fees, and laboratory fees.

HUD believes that including many of these fixed fees within the definition of tuition, in accordance with statutory instructions in recent years, will increase opportunities for its participants to further their education. Therefore, HUD is amending the definition of income with respect to higher education costs pursuant to the recent statutory changes.

Streamlined Annual Reexamination for Families on Fixed Incomes (§§ 5.657, 960.257, 982.516)

PHAs and MFH owners are statutorily required to verify income and calculate rent annually, including for families on fixed incomes. The requirement to undertake the complete process for income verification and rent determination for families on fixed incomes is not necessary given the infrequency of changes to their incomes. Further, this requirement consumes considerable staff time and resources.

HUD proposes to simplify the requirements associated with determining the annual income of families on fixed incomes by allowing PHAs and owners to opt to conduct a streamlined annual reexamination of income for families when 100 percent of the family's income consists of fixed income sources. In a streamlined annual reexamination, PHAs and owners will recalculate family incomes by applying a published cost-of-living adjustment (COLA) for the source of income to the previously verified income amount. If COLA information is not publicly available and cannot be provided by the tenant through a document generated by a third party, then the PHA or owner must follow the standard verification process to determine the appropriate adjustment for the fixed-income source. If a family has several sources of fixed income, then the PHA or owner must apply the respective COLA or verify the adjustment for each source.

Calculating adjustments to annual income (*e.g.,* medical deductions, child care deductions) is still required as part of the streamlined annual reexamination of income. PHAs must follow the requirements related to deductions for such expenses, including third-party verification of these deductions. Furthermore, PHAs using the streamlined annual reexamination of income may not exercise the option to use actual past income to determine annual income under § 5.609 (instead, they must use projected income).

B. HCV and PH Program Regulations

Utility Reimbursements (§§ 960.253, 982.514)

As required by § 5.632 of the current regulations, where tenants pay for their utility usage, PHAs must reimburse tenants if the utility allowance exceeds the total tenant payment. HUD's public housing regulations at § 960.253 specify the conditions under which a utility reimbursement must be paid but do not specify how frequently such reimbursement must be made. HUD's HCV regulations at § 982.514, however, require voucher agencies to pay any utility reimbursement on a monthly basis. As a result, voucher agencies may have to process small monthly checks and expend postage to mail them to voucher holders, which may constitute an administrative and financial burden.

For both the public housing and HCV programs, this rule proposes to permit PHAs to make reimbursements of $20 or less (per quarter) on a quarterly basis, in order to eliminate the burdensome process of processing and mailing monthly reimbursement checks. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA would be required to reimburse the family for a prorated share of the applicable reimbursement.

Earned Income Disregard (§§ 5.617, 574.305, 960.255)

HUD's regulations at § 5.617 and § 960.255 establish the earned income disregard (EID), which permits certain tenants of public housing and persons with disabilities participating in the HCV and certain CPD programs [7] to accept a job without having their rent increase right away due to the increase in earned income. The EID is available for a total of 24 months, but those months can be spread across 48 months to account for intermittent job losses. In addition, PHAs are required to fully exclude income for the first 12 months of EID, and to exclude only 50 percent for the last 12 months. Tracking employment for a 48-month period and determining how much to exclude depending on the month can be burdensome to PHAs.

HUD proposes to retain the current framework for the earned income disregard in § 5.617 as applied to the HOPWA program and to relocate these

[7] The CPD programs are: HOME Investment Partnerships Program (24 CFR part 92), Housing Opportunities for Persons with AIDS (24 CFR part 574, and Continuum of Care program (24 CFR part 578). Current regulations refer to the Supportive Housing program, and HUD is proposing to update that reference to the Continuum of Care program.

requirements to a new § 574.305 in the HOPWA regulations in 24 CFR part 574. These requirements will continue to apply to qualified families, defined as those families that reside in HOPWA-assisted housing (including tenant-based rental assistance funded under HOPWA). HUD is retaining the current framework for HOPWA, while changing it for other programs, because under the HOPWA program every assisted household will have at least one family member that is a person with a disability (defined at § 5.403) and, therefore, will be affected by this rulemaking. If the new EID requirements were applied to the HOPWA program, it would disproportionately affect the HOPWA program portfolio and adversely affect HOPWA program participants. At the same time, however, HUD supports retaining the existing EID rules for the HOPWA program. For these reasons, § 574.305 is proposed to be created to retain the existing EID rules for the HOPWA program.

For programs other than HOPWA, HUD proposes to limit the EID to 24 consecutive months from the date that a participant qualifies for the EID. The rule would maintain the full exclusion for the first 12-month period, provided the eligible family member remains continually employed for such period. For the second 12-month period, the rule would provide PHAs with the discretion to phase in a rent increase, disregarding not less than 50 percent of the excluded amount in determining a family's rent, but again only if the eligible family member remains continually employed. After the expiration of the consecutive 24-month period during which a family has remained continually employed, the EID would terminate. These changes would eliminate the burden on PHAs of having to track employment starts and stops over a 48-month period.

HUD notes that, pursuant to section 3(b)(5)(B)(ii) of the 1937 Act (42 U.S.C. 1437a(b)(5)(B)(ii)), PHAs have wide discretion to exclude earned income in determining adjusted income for families residing in public housing. At their discretion, PHAs could therefore adopt policies that continue an earned income exclusion for such families beyond the point at which the EID terminates.

Family Declaration of Assets Under $5,000 (§§ 960.259, 982.516)

Families are required to report all assets annually. The amount of interest earned on those assets is included as income used to calculate the tenant's rent obligation. Tenants with assets below $5,000 typically generate minimal income from these assets, which results in small changes, if any, to tenant rental payments. PHAs spend significant time verifying such assets.

HUD proposes that, for a family that has net assets equal to or less than $5,000, a PHA, at both admission and recertification, may accept a family's declaration that it has net assets equal to or less than $5,000, without taking additional steps to verify the accuracy of the declaration. The declaration must state the amount of income the family expects to receive from such assets; this amount will be included in the family's income.

C. PH Program Regulations

Public Housing Rents for Mixed Families (§ 5.520(d))

a. When calculating prorated rents for families that include members both with and without citizenship or eligible immigration status, § 5.520(d) requires PHAs to determine the maximum rent by establishing the 95th percentile of all total tenant payments (TTPs) for each bedroom size. To do this, PHAs have to take the full set of TTPs, order them from highest to lowest, and identify the numeral below which 95 percent of TTPs fall.

This rule would require PHAs to use instead the established flat rent applicable to the unit, significantly reducing the administrative burden for PHAs.

b. Under the current method of calculating prorated rents for mixed families, when a mixed family's TTP is greater than the maximum rent, the mixed family ends up paying less under proration than would a family where all members are eligible for assistance.

This rule proposes to amend the regulation to use the mixed family's TTP when TTP exceeds the flat rent, eliminating this discrepancy.

Note: Several of the proposed changes to this provision simply eliminate references to the legacy Section 8 Rental Certificate program. The only substantive changes pertain to the method of prorating assistance for the public housing program.

Flat Rents (§ 960.253)

The 2014 Appropriations Act requires PHAs to establish flat rents equal to no less than 80 percent of the applicable Fair Market Rent. In the event that implementation of this requirement would increase a family's rent by more than 35 percent, the PHA must phase in the flat rent as necessary to ensure that a family's rental payment does not increase by more than 35 percent in any one year. This proposed rule would update the current regulations to reflect the new statutory requirements and provide additional information to PHAs on how to implement the new requirements, including details on how tenant-paid utilities affect flat rents and the information about rent options a PHA must provide to a family paying a flat-rent.

In addition, HUD's current regulation at § 960.253(d) permits PHAs to set a ceiling limit on rents for a period of three years from October 1, 1999, if the PHA had previously established ceiling rents. After that time, PHAs were required to adjust the ceiling rent to be equal to the flat rent for a unit. Given that the 3-year time period has expired and the flat rent provisions now determine a maximum rent, all ceiling rents must be set equal to flat rents. To further clarify, this proposed rule would apply the requirements for establishing and updating flat rents to the requirements for ceiling rents.[8]

Tenant Self-Certification for Community Service Requirements (§§ 960.605, 960.607)

Under HUD's current public housing regulations, PHAs are required annually to review and determine family member compliance with the community service requirement. For any qualifying activity administered by a third party that a family states it has completed, the PHA is required to obtain third-party verification. Although HUD's regulations at § 960.607(a) require family members who complete qualifying activities administered by a third party to obtain a certification signed by the third party, in many cases this requirement is not met, resulting in PHAs having to request third-party verification from organizations that either fail to maintain adequate records or are simply unresponsive. The effort to obtain third-party verification of compliance consumes considerable time and resources that could be directed to other PHA activities, and, in some cases, delays the recertification process.

HUD proposes to allow PHAs to accept a tenant's signed self-certification of compliance with the community service requirement. Any self-certification must include details (including contact information) on what the activity was and where it was completed and a certification that the

[8] HUD notes that section 238 of the Department of Housing and Urban Development Act, 2015, as part of the Fiscal Year (FY) 2015 Omnibus Consolidated and Further Continuing Appropriations Act (Public Law 113–235 (further revises section 3(a)(2)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437a(a)(2)(B)(i)), pertaining to flat rents. As to not delay issuance of this proposed rule, HUD will address the further revision in a separate proposed rule.

statement is true. Further, PHAs are encouraged to undertake periodic quality assurance reviews of self-certifications to test for fraudulent certifications.

Public Housing Grievance Procedures (§§ 966.52 Through 966.57)

Under HUD's current regulations, many portions of the grievance process are repetitive or overly prescriptive for PHAs. Through this rule, HUD proposes to eliminate the repetitive and overly prescriptive requirements in the regulations, and instead provide PHAs with additional flexibility to include procedures in the mandatory Admissions and Continued Occupancy Policies developed by each PHA. Procedures proposed to be streamlined are informal settlements (§ 966.54), grievance procedures for failure to request a hearing and requiring escrow deposits (§ 966.55), and matters relating to transcripts, copies, and the conduct of the hearing (§§ 966.56 and 966.57). Requirements relating to scheduling and location formerly contained in § 966.55 are proposed to be merged into § 966.56.

HUD also proposes to permit PHAs to establish expedited grievance procedures and eliminates a separate category of hearing panel by redefining ''hearing officer'' to include the possibility of more than one person hearing a complaint.

Limited Vacancies (§ 990.150)

Under current regulations, HUD is required to provide operating subsidy for a limited number of vacant units under an Annual Contributions Contract. The proposed rule would clarify that the number of vacant units eligible for operating subsidy shall be not more than 3 percent of the total units, on a project-by-project basis.

Section D: HCV Program Regulations

Start of Assisted Tenancy (§ 982.309)

Under current regulations, there is no option for PHAs to adopt policies regarding the date when a tenant may move into an assisted unit once the unit is ready for move-in.

HUD proposes to allow PHAs to limit move-ins to certain days of the month, such as the first day of the month. This would streamline administration of move-ins for some PHAs, reduce the need for pro-rated checks and possibly the number of checks issued, and provide Housing Assistance Payment (HAP) savings by eliminating overlapping HAP payments.

Biennial Inspections and the Use of Alternate Inspection Methods (§§ 982.405, 983.103)

The 2014 Appropriations Act authorizes PHAs to comply with the requirement to inspect HCV units during the term of a HAP contract by inspecting such units not less than biennially rather than annually to assure compliance with HUD's housing quality standards. To avoid duplication of effort, for example where an HCV-assisted tenant resides in a property inspected under another program (for example, the Low Income Housing Tax Credit program), the law authorizes a PHA to comply with the biennial inspection requirement by relying upon an inspection performed pursuant to such other program. Finally, the law authorizes the Secretary to adjust the frequency of inspections for mixed-finance properties assisted with project-based vouchers where inspections performed under such other program take place more or less frequently than biennially.

This rule proposes to update HUD's regulations to reflect the statutory changes and to provide details on how PHAs may use the new flexibilities. PHAs will be required to obtain copies of reports of these inspections and will be prohibited from relying upon such inspections if such copies may not be obtained. In addition, because section 8(o)(13)(F) of the 1937 Act states that the inspection requirements of section 8(o)(8) apply to the PBV program, this rule proposes to update the PBV inspection regulations (§ 983.103) to reflect the new statutory authority in section 8(o)(8).

Housing Quality Standards (HQS) Reinspection Fees (§ 982.405)

HUD proposes to allow PHAs the option of charging a reasonable fee to an owner if the owner indicates that an HQS violation is fixed, but a reinspection proves that the violation has not yet been fixed. This fee would not be permitted if the reinspection confirms that previous violations have been fixed but also reveals new HQS violations. The fee would pertain solely to owner obligations under § 982.404(a) and not to family obligations under § 982.404(b).

Exception Payment Standards for Providing Reasonable Accommodations (§§ 982.503, 982.505)

Current regulations require a PHA to request a waiver from a HUD Field Office for an exception payment standard above 110 percent of the fair market rent (FMR) to provide a reasonable accommodation for a family that includes a person with a disability. This process takes considerable administrative time for the PHA and, in some cases, the processing time for the waiver prevents the family from leasing the unit.

HUD proposes to allow PHAs to approve, if they so choose, a payment standard of not more than 120 percent of the FMR without HUD approval if required as a reasonable accommodation for a family that includes a person with a disability. This proposed streamlining provision would allow a PHA to establish a payment standard within limits currently permitted but designated for approval only by a HUD Field Office. For any voucher unit assisted under the program, PHAs would still be required to perform a rent reasonableness determination in accordance with section 8(o)(10) of the 1937 Act and HCV program regulations. Therefore, PHAs that utilize this provision must maintain documentation that the PHA performed the required rent reasonableness analysis.

Family Income and Composition: Regular and Interim Examinations (§ 982.516)

With respect to interim examinations, current regulations require PHAs to conduct a reexamination of income whenever a family member with income is added to a family participating in the voucher program. Regulations for the public housing program (at § 960.257) are less prescriptive.

In the interest of streamlining requirements across programs, HUD proposes to revise § 982.516 to align the regulatory language more closely with § 960.257, which will facilitate HUD's ability to issue guidance on interims that applies uniformly to the public housing and voucher programs.

Utility Payment Schedules (§ 982.517)

a. *Size and type of units.* HUD's current regulations require PHAs to establish a utility allowance based on size and type of units in a given locality. Requiring PHAs to establish a utility allowance based on both of these factors increases the complexity involved in developing a utility allowance schedule.

HUD proposes to require that the allowance be based on the size of the unit and either the type of the unit, as is currently required, or a streamlined version of ''unit type,'' limited to ''attached'' or ''detached.'' In other words, PHAs would have the option to define unit type as either ''attached'' or ''detached.'' For any family that would face a lower utility allowance because of this change to the schedule, the PHA

must provide at least 60 days' notice before the revised utility allowance schedule may go into effect.

b. *Size of dwelling units.* HUD's current regulations require PHAs to use utility allowances for the size of the dwelling unit actually leased by the family. The 2014 Appropriations Act requires that the amount allowed for tenant-paid utilities not exceed the utility allowance for the family unit size as determined by the PHA. Therefore, HUD proposes to revise the regulations to conform to the statutory change.

The proposed rule would require PHAs to use the lesser of the two standards, unless the family is living in a larger unit as a result of a reasonable accommodation, in which case the PHA would be required to use the utility allowance for the size unit the family is actually leasing. Section 982.517(e) already requires a PHA to approve a higher amount than shown on the utility allowance schedule as a reasonable accommodation, so HUD is proposing no revision to that provision. The proposed rule also includes a clarifying change to § 982.402, cross-referencing § 982.517.

III. Specific Issues for Comment

While HUD solicits and welcomes comments on all aspects of this rule, HUD specifically seeks comment on the following:

1. *Use of Actual Past Income (§ 5.609).* Does this provision provide a clear streamlining benefit to PHAs? If not, what additional specific changes should HUD consider?

a. For PHAs that choose to use past income to determine annual income, does requiring the same time frame for all sources of income and expenses still provide for streamlining, or does this make the information collection and verification process too complex? If it does make the process too complex, what alternatives should be available?

b. Should PHAs be permitted to use past income for only some income sources, rather than for the entire program? For example, does past income only work for families with consistent income amounts? Or, does past income also work for families that have sporadic income?

c. What other types of income documentation should HUD permit PHAs to use to verify past income?

2. *Earned Income Disregard (§§ 5.617, 960.255).* Will the proposed changes to the earned income disregard reduce the administrative burden associated with implementing the EID? If not, what other or additional specific changes would facilitate administration of the EID?

3. *Streamlined Annual Reexamination for Families on Fixed Incomes (§§ 5.657, 960.257, 982.516).* In order to utilize these provisions, PHAs and MFH owners will be required to determine annually that family incomes consist solely of fixed-income sources. Consistent with the goal of streamlining, by what means could PHAs and MFH owners assure that such families do not have other sources of income?

4. *Utility Reimbursements (§§ 960.253, 982.514).* Will the proposed changes to the required frequency of utility reimbursement provide regulatory relief to PHAs? If not, then what changes would provide such relief?

5. *Start of Assisted Tenancy (§ 982.309).* HUD is concerned that this proposed change may have the unintended consequence of limiting tenant choice. Does the provision provide enough of a benefit to PHAs to merit inclusion in this streamlining regulation?

6. *Biennial Inspections and the Use of Alternate Inspection Method (§ 982.405).* Where an inspection conducted under an alternative method results in a finding that a property is out of compliance with the standard particular to that method, should HUD still require PHAs to inspect units using HQS, or should HUD allow PHAs to rely upon remedial actions taken to bring the property into compliance with the standards under the alternative inspection protocol? In the latter instance, if HUD were to adopt such a policy, what should HUD require of PHAs to demonstrate that an initially noncompliant property was subsequently brought into compliance with the standards under an alternative inspection method?

7. *Inspection of Mixed-Finance Properties (§ 982.405).* Should HUD broaden the applicability of this provision beyond PBV-assisted properties with LIHTC or HOME financing or an FHA-insured mortgage? If so, to what specific type(s) of mixed-finance properties should it apply, and why?

8. *General.* Are there other opportunities to align requirements across programs? Please be specific.

IV. Findings and Certifications

Information Collection Requirements

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2577–0220 and 0169. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule reduces administrative burdens on PHAs and MFH owners in many aspects of administering assisted housing. All PHAs and MFH owners, regardless of size, will benefit from the burden reduction proposed by this rule. These revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's belief that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.103, 14.123, 14.135, 14.149, 14.157, 14.181, 14.195, 14.23514.241, 14.326, 14.850, 14.871, and 14.872.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

24 CFR Part 574

Community facilities, Grant programs-housing and community development, Grant programs-social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements

24 CFR Part 960

Aged, Grant programs-housing and community development, Individuals with disabilities, Pets, Public housing.

24 CFR Part 966

Grant programs-housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs-housing and community development, Grant programs-Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements

24 CFR Part 990

Accounting, Grant programs-housing and community development, Public housing, Reporting and recordkeeping requirements

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 5, 574, 960, 966, 982, 983, and 990 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

■ 2. Amend § 5.216 as follows:

■ a. Designate the second paragraph (g)(1)(ii) as paragraph (g)(1)(iii);

■ b. Revise paragraph (h)(1);

■ c. In paragraph (h)(2), remove the phrase ''paragraph (h)(1)'' and add in its place ''paragraph (g)(1)''; and

■ d. Add paragraph (h)(3).

The revision and addition read as follows:

§ 5.216 Disclosure and verification of Social Security and Employer Identification Numbers.

* * * * *

(h) * * *

(1) Except as provided in paragraphs (h)(2) and (3) of this section, if the processing entity determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide the documentation referred to in paragraph (g)(1) of this section to verify the SSN of each member of the household.

* * * * *

(3) If a child under the age of 6 years was added to the assistance applicant household within the 6-month period prior to the household's date of admission, the assistance applicant may become a participant, so long as the documentation required in paragraph (g)(1) of this section is provided to the processing entity within 90 calendar days from the date of admission into the program. The processing entity shall grant an extension of one additional 90-day period if the processing entity determines that, in its discretion, the assistance applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the assistance applicant. If the applicant family fails to produce the documentation required in paragraph (g)(1) of this section within the required time period, the processing entity shall follow the provisions of § 5.218.

* * * * *

■ 3. Amend § 5.520 as follows:

■ a. Revise paragraph (c)(1) introductory text;

■ b. Revise paragraph (c)(2) introductory text;

■ c. Revise paragraph (d); and

■ d. Add paragraph (e).

The revisions and addition read as follows:

§ 5.520 Proration of assistance.

* * * * *

(c) * * *

(1) *Section 8 assistance other than assistance provided for a tenancy under the Section 8 Housing Choice Voucher Program.* For Section 8 assistance other than assistance for a tenancy under the voucher program, the PHA must prorate the family's assistance as follows:

* * * * *

(2) *Assistance for a Section 8 voucher tenancy.* For a tenancy under the voucher program, the PHA must prorate the family's assistance as follows:

* * * * *

(d) *Method of prorating assistance for Public Housing covered programs.* (1) The PHA shall prorate the family's assistance as follows:

(i) *Step 1.* Determine the total tenant payment in accordance with § 5.628. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) *Step 2.* Subtract the total tenant payment from the PHA-established flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible (''family maximum subsidy'').

(iii) *Step 3.* Divide the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status (''eligible family member''). The subsidy per eligible family member is the ''member maximum subsidy''.

(iv) *Step 4.* Multiply the member maximum subsidy by the number of family members who have citizenship or eligible immigration status (''eligible family members'').

(2) The product of steps 1 through 4 of paragraphs (d)(1)(i) through (iv) of this section is the amount of subsidy for which the family is eligible (''eligible subsidy''). The family's rent is the PHA-established flat rent minus the amount of the eligible subsidy.

(e) *Method of prorating assistance when the mixed family's TTP is greater than the Public Housing flat rent.* When the mixed family's TTP is greater than the flat rent, the PHA must use the TTP as the mixed family TTP. The PHA subtracts from the mixed family TTP any established utility allowance, and the sum becomes the mixed family rent.

§ 5.601 [Amended]

■ 4. In § 5.601 in paragraph (e),, remove the phrase ''Housing Opportunities for Persons with AIDS (24 CFR part 574);''.

■ 5. In § 5.603, revise the definitions of ''Extremely low income family'' and ''Total tenant payment'' in paragraph (b) to read as follows:

§ 5.603 Definitions.

* * * * *

(b) * * *

Extremely low-income family. A family whose annual income does not exceed the higher of:

(1) The poverty guidelines established by the Department of Health and Human Services applicable to the family of the size involved (except in the case of families living in Puerto Rico or any other territory or possession of the United States); or

(2) 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the area median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

* * * * *

Total tenant payment. See § 5.628.

* * * * *

■ 6. Amend § 5.609 as follows:

■ a. Revise paragraph (a);

■ b. In paragraph (b)(9), add the phrase ''and any other required fees and charges'' after ''tuition'' in the first sentence; and

■ c. Add paragraphs (e) and (f).

The revision and additions read as follows:

§ 5.609 Annual income.

(a) *Annual income* means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member, either:

(i) Prior to admission or the annual reexamination effective date (*i.e.,* ''actual past income''); or

(ii) During the 12-month period following admission or the annual reexamination effective date (*i.e.,* ''projected income''); and

(2) Are not specifically excluded in paragraph (c) of this section.

* * * * *

(e) At the family's request, the PHA or owner must use projected income to calculate annual income.

(f) Absent a family's request to use projected income to calculate annual income:

(1) A PHA may choose to determine annual income by using actual past income in lieu of projected income for its public housing or Housing Choice Voucher program (or both), but it must apply the same definition of annual income for all families in the selected program.

(2) An owner may choose to determine annual income by using actual past income in lieu of projected income, but it must apply the same definition of annual income for all families in a single property.

■ 7. In § 5.617, revise paragraphs (a) and (c) to read as follows:

§ 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.

(a) *Applicable programs.* The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Continuum of Care Program (24 CFR part 578); and the Housing Choice Voucher Program (24 CFR part 982). For the Housing Opportunities for Persons With AIDS (HOPWA) program, refer to 24 CFR 574.305. For public housing program self-sufficiency incentives, refer to 24 CFR 960.255.

* * * * *

(c) *Disallowance of increase in annual income*—(1) *Initial 12-month exclusion.* During the consecutive 12-month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family 100 percent of any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) *Second 12-month exclusion.* During the second consecutive 12-month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family not less than 50 percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Duration of exclusions.* Any income exclusions under this paragraph (c) shall continue only as long as the family member who is a person with disabilities of a qualified family is continually employed, during the 24-month exclusionary period. If the family member becomes unemployed, the income exclusion shall stop and the family must re-qualify under the terms of paragraphs (a) and (b) of this section for the benefits under this section.

(4) *Conflicting exclusions.* If grant funds affected by this paragraph (c) are combined with grant funds that have conflicting earned income exclusions, the regulations pertaining to the program that provides the rental assistance shall govern.

* * * * *

■ 8. In § 5.657, add paragraph (d) to read as follows:

§ 5.657 Section 8 project-based assistance programs: Reexamination of family income and composition.

* * * * *

(d) *Reexaminations for families with fixed incomes.* For families with fixed incomes, an owner may elect to determine the family's annual income at reexamination by applying a verified cost of living adjustment for the source of income to the previously verified or adjusted income amount.

(1) ''Families with fixed income'' is defined as families whose income consists solely of the following:

(i) Social Security payments, including Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI); or

(ii) Federal, State, local and private pension plans.

(2) To verify a cost of living adjustment, an owner may use adjustments published publicly or that are made available to the owner by tenant-provided, third party-generated documents. If no verification is available, the owner must follow the

standard income verification process to calculate the change in income.

(3) An owner that adopts the streamlined reexamination procedures in this paragraph must use projected income to determine a family's annual income and may not adopt the option to determine annual income using actual past income (§ 5.609(a)(1)(i)).

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 9. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

■ 10. Add § 574.305 to read as follows:

§ 574.305 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.

(a) *Applicability.* The disallowance of increase in annual income provided by this section is applicable only to the HOPWA program.

(b) *Definitions.* The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Person with disabilities. See 24 CFR 5.403.

Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in HOPWA-assisted housing:

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the grantee or project sponsor in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least $500.

(c) *Disallowance of increase in annual income.* (1) Initial twelve-month exclusion. During the cumulative twelve-month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the grantee or project sponsor must exclude from annual income (as defined at 24 CFR 5.609) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) *Second twelve-month exclusion and phase-in.* During the second cumulative twelve-month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the grantee or project sponsor must exclude from annual income of a qualified family fifty percent of any increase in income of a family member who is a person with disabilities as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Maximum four-year disallowance.* The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (2) of this section is limited to a lifetime 48-month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) of this section and a maximum of twelve months for disallowance under paragraph (c)(2) of this section, during the 48-month period starting from the initial exclusion under paragraph (c)(1) of this section.

(d) *Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

§ 574.310 [Amended]

■ 11. In § 574.310, remove the citation ''24 CFR 5.617'' and add in its place ''§ 574.305'' in paragraph (d)(1).

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

■ 12. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

■ 13. In § 960.102, revise paragraph (a) to read as follows:

§ 960.102 Definitions.

(a) Definitions found elsewhere:

(1) *General definitions.* The following terms are defined in 24 CFR part 5, subpart A: 1937 Act, drug, drug-related criminal activity, elderly person, federally assisted housing, guest, household, HUD, MSA, premises, public housing, public housing agency (PHA), Section 8, violent criminal activity.

(2) *Definitions under the 1937 Act.* The following terms are defined in 24 CFR part 5, subpart D: annual contributions contract (ACC), applicant, elderly family, family, person with disabilities.

(3) *Definitions and explanations concerning income and rent.* The following terms are defined or explained in 24 CFR part 5, subpart F: Annual income (see 24 CFR 5.609); economic self-sufficiency program, extremely low income family, low income family, tenant rent, total tenant payment (see 24 CFR 5.613), utility allowance.

* * * * *

■ 14. Amend § 960.253 as follows:

■ a. Revise paragraph (b);

■ b. In paragraph (c)(1), remove the phrase ''PHA's rent policies'' and add in its place ''PHA's policies'';

■ c. Remove the last sentence of paragraph (c)(3) and add paragraph (c)(4);

■ d. Revise paragraphs (d) and (e);

■ e. Redesignate paragraph (f) as paragraph (g); and

■ f. Add a new paragraph (f).

The revisions and addition read as follows:

§ 960.253 Choice of rent.

* * * * *

(b) *Flat rent.* (1) The flat rent is based on the rental value of the unit, and is subject to the following requirements:

(i) Not less than once every five PHA fiscal years, the PHA must use a reasonable method to determine the rental value for a unit.

(ii) The PHA must establish a flat rent that is based upon the requirements of paragraph (b)(1)(i), but the flat rent may not be less than 80 percent of the applicable Fair Market Rent (FMR) as determined under 24 CFR part 888, subpart A.

(iii) For units where utilities are tenant-paid, the PHA must adjust the flat rent amount downward by the amount of a utility allowance for which the family might otherwise be eligible under 24 CFR part 965, subpart E.

(iv) The PHA must revise, if necessary the flat rent amount for a unit no later than 90 days after HUD issues new FMRs.

(2) If a new flat rent, adjusted to meet the 80 percent of FMR threshold, would cause a family's rent to increase by more than 35 percent, the family's rent increase must be phased in at 35 percent annually until such time that the family chooses to pay the income-based rent or the family is paying the flat rent established pursuant to this paragraph.

(3) The PHA must maintain records that document the method used to determine flat rents, and also show how flat rents are determined by the PHA in accordance with this method, and document flat rents offered to families under this method.

(c) * * *

(4) The PHA may elect to establish policies regarding the frequency of utility reimbursement payments for payments made to the family.

(i) The PHA will have the option of making utility reimbursement payments quarterly, for reimbursements totaling $20 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA must reimburse the family for a prorated share of the applicable reimbursement.

(ii) If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier.

(d) *Ceiling rent.* A PHA using ceiling rents authorized and established before October 1, 1999, may continue to use ceiling rents, provided such ceiling rents are set at the level required for flat rents under this section. PHAs must follow the requirements for calculating and adjusting flat rents in paragraph (b) of this section when calculating and adjusting ceiling rents.

(e) *Information for families.* For the family to make an informed choice about its rent options, the PHA must provide sufficient information for an informed choice. Such information must include at least the following written information:

(1) The PHA's policies on switching type of rent in circumstances of financial hardship; and

(2) The dollar amounts of tenant rent for the family under each option, following the procedures in paragraph (f) of this section.

(f) *Reexamination of family income and revisions of flat rental amounts.* The PHA must revise the flat rental amount, as necessary, based on the findings of the PHA's rental value analysis and changes to the FMR. Families must be offered the choice between a flat rental amount and a previously calculated income-based rent according to the following:

(1) For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income and composition at least once every three years.

(2) At initial occupancy, or in any year in which a participating family is paying the income-based rent, the PHA must:

(i) Conduct a full examination of family income and composition, following the provisions in § 960.257;

(ii) Inform the family of the flat rental amount and the income-based rental amount determined by the examination of family income and composition;

(iii) Inform the family of the PHA's policies on switching rent types in circumstances of financial hardship; and

(iv) Apply the family's rent decision at the next lease renewal.

(3) In any year in which a family chooses the flat rent option but the PHA chooses not to conduct a full examination of family income and composition for the annual rent option under the authority of paragraph (f)(1) of this section, the PHA must:

(i) Use income information from the examination of family income and composition from the first annual rent option;

(ii) Inform the family of the updated flat rental amount and the rental amount determined by the most recent examination of family income and composition;

(iii) Inform the family of the PHA's policies on switching rent types in circumstances of financial hardship; and

(iv) Apply the family's rent decision at the next lease renewal.

* * * * *

■ 15. In § 960.255, revise paragraph (c) to read as follows:

§ 960.255 Self-sufficiency incentives—Disallowance of increase in annual income.

* * * * *

(c) *Disallowance of increase in annual income*—(1) *Initial 12-month exclusion.* During the consecutive 12-month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income (as defined in 24 CFR 5.609) of a qualified family 100 percent of any increase in income of the family member as a result of employment over prior income of that family member.

(2) *Second 12-month exclusion.* During the second consecutive 12-month period after the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income of a qualified family not less than 50 percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Duration of exclusions.* Any income exclusions under this paragraph (c) shall continue only as long as a member of a qualified family is continually employed. If the family member becomes unemployed, the income exclusion shall stop and the family must re-qualify for the benefits under this section, at which point such family shall be eligible for all benefits under this paragraph (c).

* * * * *

■ 16. In § 960.257 revise the section heading and paragraphs (a) and (b) to read as follows:

§ 960.257 Family income and composition: Annual and interim reexaminations.

(a) *When PHA is required to conduct reexamination.* (1) For families who pay an income-based rent, the PHA must conduct a reexamination of family income and composition at least annually and must make appropriate adjustments to the rent after consultation with the family and upon verification of the information.

(2) For families who choose flat rents, the PHA must conduct a reexamination of family income and composition at least once every three years, in accordance with the procedures in § 960.253(f).

(3) For all families who include nonexempt individuals, as defined in § 960.601, the PHA must determine compliance once each 12 months with community service and self-sufficiency requirements in subpart F of this part.

(4) The PHA may use the results of these reexaminations to require the family to move to an appropriate size unit.

(b) *Interim reexaminations.* (1) A family may request an interim reexamination of family income or composition because of any changes since the last determination. The PHA must make the interim reexamination

within a reasonable time after the family request.

(2) The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition. The PHA must make the interim reexamination of family income or composition within a reasonable time after the family request.

(3) For families with fixed incomes, a PHA may elect to recalculate a family's annual income at an interim reexamination by applying a verified cost of living adjustment for the source of income to the previously verified or adjusted income amount.

(i) ''Families with fixed income'' is defined as families whose income consists solely of the following:

(A) Social Security payments, including Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI); or

(B) Federal, State, local and private pension plans.

(ii) To verify a cost of living adjustment, a PHA may use adjustments published publicly or that are made available to the PHA by tenant-provided, third party-generated documents. If no verification is available, the PHA must follow the standard income verification process to calculate the change in income.

(iii) A PHA that adopts the streamlined reexamination procedures in this paragraph (b)(3) of this section must use projected income to determine a family's annual income and may not adopt the option to determine annual income using actual past income (24 CFR 5.609(a)(1)(i)).

* * * * *

■ 17. In § 960.259, revise paragraph (c)(1) introductory text, and add paragraph (c)(2) to read as follows:

§ 960.259 Family information and verification.

* * * * *

(c) * * *

(1) The PHA must obtain and document in the family file third-party verification of the following factors, or must document in the file why third-party verification was not available:

* * * * *

(2) For a family with net assets equal to or less than $5,000, a PHA may accept a family's declaration that it has net assets equal to or less than $5,000, without taking additional steps to verify the accuracy of the declaration. The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.

■ 18. In § 960.605, revise paragraphs (c)(3) through (5) to read as follows:

§ 960.605 How PHA administers service requirements.

* * * * *

(c) * * *

(3) The PHA must review family compliance with service requirements and must verify such compliance annually at least 30 days before the end of the 12-month lease term. If qualifying activities are administered by an organization other than the PHA, the PHA may obtain verification of family compliance from such third parties or may accept a signed certification from the family member that he or she has performed such qualifying activities.

(4) The PHA must retain reasonable documentation of service requirement performance or exemption in a participant family's files.

(5) The PHA must comply with non-discrimination and equal opportunity requirements listed at 24 CFR 5.105(a) and affirmatively further fair housing in all their activities in accordance with the AFFH Certification as described in 24 CFR 91.225(a)(1).

■ 19. In § 960.607, revise paragraph (a) to read as follows:

§ 960.607 Assuring resident compliance.

(a) *Acceptable documentation demonstrating compliance.* (1) If qualifying activities are administered by an organization other than the PHA, a family member who is required to fulfill a service requirement must provide one of the following:

(i) A signed certification to the PHA by such other organization that the family member has performed such qualifying activities; or

(ii) A signed self-certification to the PHA by the family member that he or she has performed such qualifying activities.

(2) The signed self-certification must include the following:

(i) A statement that the tenant contributed at least 8 hours per month of community service not including political activities within the community in which the adult resides; or participated in an economic self-sufficiency program (as that term is defined in paragraph (g) of this section) for at least 8 hours per month;

(ii) The name, address, and a contact person at the community service provider; or the name, address and contact person for the economic self-sufficiency program;

(iii) The date(s) during which the tenant completed the community service activity, or participated in the economic self-sufficiency program;

(iv) A description of the activity completed; and

(v) A certification that the tenant's statement is true.

* * * * *

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

■ 20. The authority citation for part 966 continues to read as follows:

Authority: 42 U.S.C. 1437d and 3535(d).

■ 21. Amend § 966.52 by adding a second sentence at the end of paragraph (a); and adding paragraph (e), to read as follows:

§ 966.52 Requirements.

(a) * * * A PHA may establish an expedited grievance procedure as defined in § 966.53.

* * * * *

(e) The PHA must not only meet the minimal procedural due process requirements contained in this subpart but also satisfy any additional requirements required by local, state, or federal law.

■ 22. In § 966.53, revise paragraphs (b), (d), and (e) to read as follows:

§ 966.53 Definitions.

* * * * *

(b) *Complainant* means any tenant whose grievance is presented to the PHA or at the project management office.

* * * * *

(d) *Expedited grievance* means a procedure established by the PHA for any grievance concerning a termination of tenancy or eviction that involves: (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA; or

(2) Any drug-related or violent criminal activity on or off such premises.

(e) *Hearing officer* means an impartial person or persons selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training.

* * * * *

§ 966.54 [Amended]

■ 23. Amend § 966.54 by removing the second and third sentences.

§ 966.55 [Removed]

■ 24. Remove § 966.55.

■ 25. Amend § 966.56 as follows:

■ a. Revise paragraph (a);

■ b. In paragraph (b)(2), remove the comma;

■ c. Remove paragraphs (c), (f), and (g);
■ d. Redesignate paragraphs (d), (e), and (h) as paragraphs (c), (d), and (e), respectively;
■ e. Revise redesignated paragraph (c); and
■ f. In redesignated paragraph (e), add paragraph (e)(3).

The revisions and addition read as follows:

§ 966.56 Procedures governing the hearing.

(a) The hearing shall be scheduled promptly for a time and place reasonably convenient to both the complainant and the PHA and held before a hearing officer. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the appropriate official.

* * * * *

(c) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for no more than five business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the PHA shall be notified of the determination by the hearing officer A determination that the complainant has waived the complainant's right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

* * * * *

(e) * * *

(3) Materials must be provided in other languages prevalent in the Community in accordance with HUD' Final Guidance on LEP published in the **Federal Register** on January 22, 2007.

■ 26. Revise § 966.57 to read as follows:

§ 966.57 Decision of the hearing officer.

(a) The hearing officer shall prepare a written decision, including the reasons for the PHA's decision within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the PHA. The PHA shall retain a copy of the decision in the tenant's folder.

(b) The decision of the hearing officer shall be binding on the PHA unless the PHA Board of Commissioners determines that:

(1) The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA regulations, which adversely affects the complainant's rights, duties, welfare or status;

(2) The decision of the hearing officer is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA.

(c) A decision by the hearing officer or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 27. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 28. In § 982.309 add paragraph (a)(5) to read as follows:

§ 982.309 Term of assisted tenancy.

(a) * * *

(5) The PHA may adopt policies limiting the effective date of the lease to a certain day or days of the month, such as the first day of the month. Assistance paid upon family move-out must be in accordance with § 982.311(d).

* * * * *

■ 29. In § 982.402 add a sentence at the end of (d)(2) to read as follows:

§ 982.402 Subsidy Standards.

* * * * *

(d) * * *

(2) * * * However, utility allowances must follow § 982.517(d).

■ 30. Amend § 982.405 as follows:
■ a. In paragraph (a), remove the word ''annually'' and add in its place ''biennially'';
■ b. Revise paragraph (e); and
■ c. Add paragraph (f).

The revision and addition read as follows:

§ 982.405 PHA initial and periodic unit inspection.

* * * * *

(e) The PHA may not charge the family for inspection or reinspection of the unit. The PHA may not charge the owner for the initial inspection of the unit or a regularly scheduled inspection of the unit. The PHA may establish a reasonable fee to owners for reinspections if the reinspection reveals that deficiencies cited in the previous inspection that the owner is responsible for repairing pursuant to § 982.404(a) were not corrected. The owner may not pass this fee along to the family.

(f) If a participant family or government official reports a condition that is life-threatening (*i.e.,* the PHA would require the owner to make the repair within no more than 24 hours in accordance with § 982.404(a)(3)), then the PHA must inspect the housing unit within 24 hours of when the PHA received the notification. If the reported condition is not life-threatening (*i.e.,* the PHA would require the owner to make the repair within no more than 30 calendar days), then the PHA must inspect the unit within 15 days of when the PHA received the notification. In the event of extraordinary circumstances, such as if a unit is within a Presidentially declared disaster area, HUD may waive the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

§ 982.406 [Redesignated as § 982.407]

■ 31. Redesignate § 982.406 as § 982.407.

■ 32. Add a new § 982.406 to read as follows:

§ 982.406 Use of Alternative Inspections.

(a) *In general.* (1) A PHA may comply with the biennial inspection requirement in § 982.405(a) by relying on an inspection conducted for another housing assistance program.

(2) Units in properties that are mixed-finance properties assisted with project-based vouchers may be inspected at least triennially pursuant to 24 CFR 983.103(g).

(b) *Administrative plans.* A PHA relying on an alternative inspection to fulfill the biennial inspection requirement for a particular unit must identify the alternative inspection method being used in the PHA's administrative plan. Such a change may be a significant amendment to the plan, in which case the PHA must follow its plan amendment and public notice requirements before using the alternative inspection method.

(c) *Eligible inspection methods.* (1) PHAs may rely upon inspections of housing assisted under the HOME Investment Partnerships (HOME) program or housing financed under the Department of the Treasury's Low-Income Housing Tax Credit (LIHTC) program, or inspections performed by HUD with no action other than amending their administrative plans.

(2) If a PHA wishes to rely on an inspection method other than a method listed in paragraph (c)(1) of this section, then, prior to amending its administrative plan, the PHA must submit to the Real Estate Assessment Center (REAC) a certification affirming, under penalty of perjury, that the

method ''provides the same or greater protection to occupants of dwelling units'' as would HQS. A PHA must also assure that it will be able to obtain the results of such alternative inspection; a PHA that is unable to obtain the results of an alternative inspection may not rely upon the inspection method to comply with the biennial inspection requirement in § 982.405(a).

(3) A PHA that submits a certification under paragraph (c)(2) of this section must monitor changes to the standards and requirements applicable to such method so that it is made aware of any weakening of the method that would cause the alternative inspection to no longer meet or exceed HQS, in which case the PHA may no longer rely upon the alternative inspection method to comply with the biennial inspection requirement.

(d) *Rules for passing alternative methods.* (1) In order to utilize an alternative inspection method, a property must meet the standards or requirements regarding housing quality or safety applicable to properties assisted under the program using the alternative inspection method. To make the determination of whether such standards or requirements are met, the PHA must adhere to the following procedures:

(i) If a property is inspected under an alternative inspection method, and the property receives a ''pass'' score, then the PHA may rely on that inspection to demonstrate compliance with the biennial inspection requirement.

(ii) If a property is inspected under an alternative inspection method, and the property receives a ''fail'' score, then the PHA may not rely on that inspection to demonstrate compliance with the biennial inspection requirement.

(iii) If a property is inspected under an alternative inspection method that does not employ a pass/fail determination—for example, in the case of a program where deficiencies are simply noted—then the PHA must review the list of deficiencies to determine whether any cited deficiency would have resulted in a ''fail'' score under HQS. If no such deficiency exists, then the PHA may rely on the inspection to demonstrate compliance with the biennial inspection requirements; if such a deficiency does exist, then the PHA may not rely on the inspection to demonstrate such compliance.

(2) Under any circumstance described above in which a PHA is prohibited from relying on an alternative inspection method, the PHA must, in a reasonable period of time, conduct an HQS inspection of any units in the property occupied by voucher program participants and follow HQS procedures to remedy any noted deficiencies.

(f) *Records retention.* As with all other inspection reports, and as required by § 982.158(f)(4), reports for inspections conducted pursuant to an alternative inspection method must be obtained by the PHA. Such reports must be available for HUD inspection for at least three years from the date of the latest inspection.

■ 33. Amend § 982.503 as follows:

■ a. Add paragraph (b)(1)(iii);

■ b. Remove the first word in paragraph (b)(2) and in its place add ''Except as described in § 982.503(b)(1)(iii), the'';

■ c. In paragraph (c)(2), remove the paragraph heading, remove paragraph (c)(2)(ii), and redesignate paragraphs (c)(2)(i)(A) and (B) as paragraphs (c)(2)(i) and (ii), respectively.

The addition reads as follows:

§ 982.503 Voucher tenancy: Payment standard amount and schedule.

* * * * *

(b) * * *

(1) * * *

(iii) The PHA may establish an exception payment standard up to 120 percent if required as a reasonable accommodation for a family that includes a person with a disability. Any unit approved under an exception payment standard must still meet the reasonable rent requirements found at § 982.507.

* * * * *

§ 982.505 [Amended]

■ 34. In § 982.505:

■ a. In the section heading, remove ''Voucher tenancy:''; and

■ b. In paragraph (d), remove the phrase ''within the basic range'' and add in its place ''between 90 and 120 percent of the FMR''.

■ 35. In § 982.514, add paragraph (c) to read as follows:

§ 982.514 Distribution of housing assistance payment.

* * * * *

(c) The PHA may elect to establish policies regarding the frequency of utility reimbursement payments for payments made to the family.

(i) The PHA will have the option of making utility reimbursement payments quarterly, for reimbursements totaling $20 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA would be required to reimburse the family for a prorated share of the applicable reimbursement.

(ii) If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

■ 36. Amend § 982.516 as follows:

■ a. Add a hyphen between ''third'' and ''party'' in paragraph (a)(2) introductory text and add paragraph (a)(3);

■ b. Remove paragraph (e);

■ c. Redesignate paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively;

■ d. Add a new paragraph (b);

■ e. In redesignated paragraph (c), revise the paragraph heading; and

■ f. Revise redesignated paragraph (e)(2).

The revisions and addition read as follows:

§ 982.516 Family income and composition: Annual and interim examinations.

(a) * * *

(3) For a family with net assets equal to or less than $5,000, a PHA may accept a family's declaration that it has net assets equal to or less than $5,000, without taking additional steps to verify the accuracy of the declaration. The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income

(b) *Families with fixed income.* For families with fixed incomes, a PHA may elect to recalculate a family's annual income by applying a verified cost of living adjustment for the source of income to the previously verified or adjusted income amount.

(1) ''Families with fixed income'' is defined as families whose income consists solely of the following:

(i) Social Security payments, including Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI); or

(ii) Federal, State, local and private pension plans.

(2) To verify a cost of living adjustment, a PHA may use adjustments published publicly or that are made available to the PHA by tenant-provided, third party-generated documents. If no verification is available, the PHA must follow the standard income verification process to calculate the change in income.

(3) A PHA that adopts the streamlined reexamination procedures in this paragraph (b) of this section must use projected income to determine a family's annual income and may not adopt the option to determine annual income using actual past income (24 CFR 5.609(a)(1)(i)).

(c) *Interim reexaminations.* * * *

* * * * *

(e) * * *

(2) At the effective date of a regular or interim reexamination, the PHA must

make appropriate adjustments in the housing assistance payment in accordance with § 982.505.

* * * * *

■ 37. Amend § 982.517 as follows:

■ a. Capitalize the first word in paragraph (b)(2)(i);

■ b. Revise paragraph (b)(3);

■ c. In paragraph (c)(1), capitalize the first word and remove the word ''PHAs'' and add in its place the word ''has'';

■ d. Redesignate paragraph (c)(2) as paragraph (c)(3) and add a new paragraph (c)(2); and

■ e. Revise paragraph (d).

The revisions read as follows:

§ 982.517 Utility allowance schedule.

* * * * *

(b) * * *

(3) The cost of each utility and housing service category must be stated separately. For each of these categories, the utility allowance schedule must take into consideration unit size (by number of bedrooms) and unit type (*e.g.,* apartment, row-house, town house, single-family detached, and manufactured housing). At the PHA's discretion, ''unit type'' may consider solely whether the unit is ''attached'' or ''detached.''

* * * * *

(c) * * *

(2) In the event that the utility allowance to be used in calculating the housing assistance payment provided on behalf of a participant decreases based solely on a PHA opting to determine unit type based solely on whether a unit is ''attached'' or ''detached,'' the PHA must provide at least 60 days notice to the participant prior to the revised utility allowance taking effect.

* * * * *

(d) *Use of utility allowance schedule.* (1) The PHA must use the appropriate utility allowance for the lesser of the size of dwelling unit actually leased by the family or the family unit size as determined under the PHA subsidy standards. In cases where the unit size leased exceeds the family unit size as determined under the PHA subsidy standards as a result of a reasonable accommodation, the PHA must use the appropriate utility allowance for the size of the dwelling unit actually leased by the family.

(2) At reexamination, the PHA must use the PHA current utility allowance schedule, provided the PHA is able to provide a family with at least 60 days' notice prior to such reexamination. A PHA may comply with this 60-day notice requirement by means of an interim reexamination.

* * * * *

PART 983—PROJECT–BASED VOUCHER (PBV) PROGRAM

■ 38. The Authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 983.2 [Amended]

■ 39. In § 983.2 amend paragraph (c)(4) by removing the citation ''§ 982.406'' and adding in its place ''§ 982.407''.

■ 40. In § 983.103, revise paragraph (d) and add paragraph (g) to read as follows:

§ 983.103 Inspecting Units.

* * * * *

(d) *Biennial inspections.* (1) At least biennially during the term of the HAP contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections pursuant to paragraph (c) of this section are not counted toward meeting this inspection requirement.

(2) If more than 20 percent of the biennial sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

(3) A PHA may also use the procedures applicable to HCV units in 24 CFR 982.406.

* * * * *

(g) *Mixed-Finance Properties.* In the case of a property assisted with project-based vouchers (authorized at 42 U.S.C. 1437f(o)(13)) that is subject to inspection under the LIHTC or HOME program or as a result of an FHA-insured mortgage, the PHA may rely upon inspections conducted at least triennially to demonstrate compliance with the inspection requirement of 24 CFR 982.405(a).

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

■ 41. The Authority citation for part 990 continues to read as follows:

Authority: 42 U.S.C. 1437g; 42 U.S.C. 3535(d).

■ 42. In § 990.150 revise paragraph (a) to read as follows:

§ 990.150 Limited vacancies.

(a) *Operating subsidy for a limited number of vacancies.* HUD shall pay operating subsidy for a limited number of vacant units under an ACC. The limited number of vacant units shall be equal to or less than 3 percent of the unit months on a project-by-project basis based on the definition of a project under subpart H of this part (provided that the number of eligible unit months shall not exceed 100 percent of the unit months for a project), beginning July 1, 2014.

* * * * *

Dated: December 22, 2014.

Jemine A. Bryon,

Acting Assistant Secretary for Public and Indian Housing.

Biniam T. Gebre,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2014–30504 Filed 1–5–15; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 81

[EPA–R09–OAR–2014–0869; FRL–9921–35–Region–9]

Approval of Tribal Implementation Plan and Designation of Air Quality Planning Area; Pechanga Band of Luiseño Mission Indians

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise the boundaries of the Southern California air quality planning areas to designate the reservation of the Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation, California as a separate air quality planning area for the 1997 8-hour ozone National Ambient Air Quality Standard. The EPA is also proposing to approve the Tribe's tribal implementation plan for maintaining the 1997 ozone standard within the Pechanga Reservation through 2025 because it meets the Clean Air Act's and the EPA's requirements for maintenance plans. Lastly, based in part on the proposed approval of the maintenance plan, EPA is proposing to grant a request from the Tribe to redesignate the Pechanga Reservation ozone nonattainment area to attainment for the 1997 8-hour ozone standard because the area meets the statutory requirements for redesignation under the Clean Air Act.

DATES: Written comments must be received on or before February 5, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2014–0869, by one of the following methods:

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

2. *Email:* israels.ken@epa.gov.

3. *Fax:* 415–947–3579.

4. *Mail or deliver:* Ken Israels (Mailcode AIR–8), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the *http://www.regulations.gov* or email. *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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.

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

FOR FURTHER INFORMATION CONTACT: Ken Israels, Grants and Program Integration Office (AIR–8), U.S. Environmental Protection Agency, Region IX, (415) 947–4102, *israels.ken@epa.gov.*

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

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I. Background

A. Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation

The Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation (''Pechanga Tribe or ''Tribe'') is a federally recognized tribe whose reservation (Pechanga Reservation'' or ''reservation'') straddles the boundary between western Riverside County and northern San Diego County where Temecula Valley meets the complex topography that forms the boundary between these two counties. See figure 1–1 of the Tribe's ''Ozone Redesignation Request and Maintenance Plan for Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation Nonattainment Area (May 2014)'' for an illustration of the boundaries of the Pechanga Reservation.

The Pechanga Reservation consists of 6,700 acres located in the northwestern portion of the Cleveland National Forest, ranging between 1,100 and 2,600 feet in elevation and is home to approximately 800 full-time residents.[1] Most of the Pechanga Reservation is located north of the Riverside County-San Diego County boundary in Riverside County, just south of the City of Temecula, but a small portion of the reservation is located south of the boundary in San Diego County. The Pechanga Reservation has one major stationary source of emissions, the Pechanga Casino and Resort, within the reservation boundaries.[2] Other sources of emissions include local traffic to and from the casino and resort, parking structures, a golf course, a gas station, and a recreational vehicle (RV) park.

In 2013, the EPA determined that the Pechanga Tribe is eligible for treatment in the same manner as a state (also referred to as ''TAS'') for purposes of CAA sections 105, 107(d), 126, and 505(a)(2).[3] More recently, the EPA determined that the Tribe is eligible for TAS for purposes of CAA sections 110 and 175A and the submitted maintenance plan.[4] As such, the Pechanga Tribe is authorized to request EPA to redesignate an area under section 107(d) and is authorized to submit a section 175A maintenance plan for review and approval or disapproval under section 110(k). EPA reviews such a maintenance plan in accordance with the same provisions for review set forth in CAA section 110 for section 175A maintenance plans submitted by a state. See CAA section 110(o).

B. National Ambient Air Quality Standards

The Clean Air Act (CAA or ''Act'') requires the EPA to establish National Ambient Air Quality Standards (NAAQS or ''standards'') for pollutants that ''may reasonably be anticipated to endanger public health and welfare'' and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety and the secondary standard is designed to protect public welfare and the environment. The EPA has set NAAQS for six common air pollutants, referred to as ''criteria'' pollutants: Ozone,

[1] See EPA's 2008 8-hour ozone standard designations Technical Support Document (TSD) found at *http://www.epa.gov/groundlevelozone/designations/2008standards/documents/R9_CA_TSD_FINAL.pdf*

[2] In this context, given the designation and classification of the area for ozone, ''major source'' refers to a stationary source with a potential to emit greater than 10 tons per year of either ozone precursor (*i.e.,* volatile organic compounds or oxides of nitrogen).

[3] Letter from Jared Blumenfeld, Regional Administrator, EPA Region IX, to Mark Macarro, Tribal Chairman, Pechanga Tribe, dated July 23, 2013.

[4] Letter from Jared Blumenfeld, Regional Administrator, EPA Region IX, to Mark Macarro, Tribal Chairman, Pechanga Tribe, dated December 4, 2014.

carbon monoxide, nitrogen dioxide, sulfur dioxide, particulate matter, and lead.

In 1979, the EPA promulgated the first ozone [5] standard of 0.12 parts per million (ppm), averaged over a 1-hour period (''1-hour ozone standard''), to replace an earlier photochemical oxidant standard. In 1997, the EPA revised the ozone standard to 0.08 ppm, 8-hour average (''1997 ozone standard''), and then, in 2008, lowered the 8-hour ozone standard to 0.075 ppm (''2008 ozone standard''). This proposed action primarily relates to the designations and classifications of the Pechanga Reservation for the 1997 ozone standard, but, as explained below, would have implications for the 1-hour ozone standard as well.

C. Air Quality Implementation Plans, Area Designations and Classifications

Under section 110 of the CAA, states must adopt and submit state implementation plans (SIPs) to implement, maintain, and enforce the NAAQS. SIPs do not as a general matter apply within Indian reservations, but eligible tribes may (but are not required to) choose to adopt and submit tribal implementation plans (TIPs) that serve the same types of functions in areas under tribal jurisdiction as SIPs serve within areas subject to state jurisdiction. Where necessary or appropriate to protect air quality, EPA must establish without unreasonable delay Federal implementation plans (FIPs) where a tribe does not do so. See 40 CFR 49.11.

Under the 1977 amendments to the CAA, EPA designated all areas of the country as attainment, nonattainment, or unclassifiable for each of the NAAQS. *See* 43 FR 8962 (March 3, 1978). These designations were generally based on monitored air quality values compared to the applicable standard. Under the 1990 amendments to the CAA, ozone nonattainment areas were further classified as ''Marginal,'' ''Moderate,'' ''Serious,'' ''Severe'' or ''Extreme'' depending upon the severity of the ozone problem.[6]

States with nonattainment areas are subject to the requirements to adopt and submit SIP revisions that, among other things, impose stringent requirements on new or modified major stationary sources (referred to as major source Nonattainment New Source Review (''NNSR'')) and provide for attainment of the applicable ozone standard by the applicable attainment date. Areas with higher ozone classifications are given more time to attain the applicable ozone standard than areas with lower ozone classifications, but they are subject to a greater number, and more stringent, requirements, including those related to major source NNSR.

Historically, the Pechanga Reservation was included in the air quality planning area referred to as the Los Angeles-South Coast Air Basin Area (''South Coast'').[7] Under the 1990 CAA amendments, the South Coast was classified as an ''Extreme'' ozone nonattainment area for the 1-hour ozone standard. See 56 FR 56694 (November 6, 1991).

In 2004, the EPA promulgated area designations and classifications for the 1997 ozone standard. The EPA designated the South Coast as a ''Severe-17'' nonattainment area.[8] See 69 FR 23858 (April 30, 2004). In 2005, EPA revoked the 1-hour ozone standard, but under EPA's implementation rules governing the transition from the 1-hour ozone standard to the 1997 ozone standard (see 40 CFR 51.905), certain requirements based on an ozone nonattainment area's classification for the 1-hour ozone standard, continue to apply within areas that are designated as nonattainment for the 1997 ozone standard, such as the South Coast. The requirements that apply to an area designated as nonattainment for the 1997 ozone standard by virtue of the area's classification under the 1-hour ozone standard are referred to as ''anti-backsliding'' measures. The ''anti-backsliding'' measures are no longer applicable when the area is redesignated to attainment for the 1997 ozone NAAQS.

In 2009, we proposed to grant the State of California's request to reclassify the portion of the South Coast subject to state jurisdiction from ''Severe-17'' to ''Extreme'' for the 1997 ozone standard, and to reclassify Indian country [9] within the South Coast consistent with the state's request. See 74 FR 43654 (August 27, 2009). We finalized the reclassification action in 2010 as proposed, with the exception of the reservations of two specific tribes, for which we deferred final action. See 75 FR 24409 (May 5, 2010).[10] The Pechanga Reservation was one of the two areas within the South Coast for which we deferred taking final reclassification action. If we finalize this action as proposed, then we will withdraw our proposed reclassification of the Pechanga Reservation to ''Extreme'' for the 1997 ozone standard as moot.

In 2008, a federal land transfer pursuant to an Act of Congress modified the boundaries of the Pechanga Reservation to increase the previous reservation area by approximately 1,100 acres, including 119 acres in San Diego County. The San Diego County portion of the Pechanga Reservation is located within the ''San Diego County (part)'' ozone area for the 1997 ozone standard. In 2013, the EPA granted the State of California's request to redesignate the San Diego County 1997 8-hour ozone area, which, as noted above, includes the portion of the Pechanga Reservation in San Diego County, to attainment for that standard. See 78 FR 33230 (June 4, 2013). That portion of the Pechanga Reservation is thus already designated as attainment for the 1997 8-hour ozone standard.

Lastly, in 2012, the EPA designated the Pechanga Reservation (both the Riverside and San Diego County portions) as a separate nonattainment area for the 2008 ozone standard and classified the area as ''Moderate'' for that standard. See 77 FR 30088 (May 21, 2012).

[5] Ground-level ozone is a gas that is formed by the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the atmosphere in the presence of sunlight. These precursor emissions are emitted by many types of pollution sources, including power plants and industrial emissions sources, on-road and off-road motor vehicles and engines, and smaller sources, collectively referred to as area sources.

[6] Area designations and classifications are codified in 40 CFR part 81; area designations and classifications for California are codified at 40 CFR 81.305.

[7] The South Coast includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. See 40 CFR 81.305.

[8] With respect to the 1997 8-hour ozone standard, areas given the ''Severe'' ozone classification were split, based on the 8-hour ozone design value at the time of designation, between those for which the applicable attainment date is no later than 15 years from designation (''Severe-15'') and those for which the applicable attainment date is no later than 17 years from designation (''Severe-17''). See 40 CFR 51.903, table 1.

[9] ''Indian country'' as defined at 18 U.S.C. 1151 refers to: ''(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.''

[10] We deferred final action to complete our review of boundary change requests we had received from the two tribes. With respect to the Pechanga Tribe, this proposed boundary change constitutes the EPA's response to its request.

D. Pechanga Tribe's 2009 Petition for Boundary Change and 2014 Submittal of Maintenance Plan and Redesignation Request

On June 23, 2009, the Pechanga Tribe submitted a petition to the EPA to create a separate ozone nonattainment area for the Pechanga Indian Reservation, or, alternatively, to move the northern boundary of the San Diego County air quality planning area for the 1997 ozone standard to include the entire extent of the reservation, thus removing it from the South Coast.[11] As noted above, we have already designated the Pechanga Reservation as a separate nonattainment area for the 2008 ozone NAAQS. In section II of this document, we evaluate the Tribe's 2009 request with respect to the 1997 ozone standard, and are proposing an action that, if finalized, will constitute our complete response to the Tribe's 2009 petition.

On May 9, 2014, citing the Pechanga Tribe's June 23, 2009 petition to establish a separate Pechanga ozone nonattainment area, the Pechanga Tribe submitted a request to the EPA to redesignate the Pechanga ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS. With the redesignation request, the Pechanga Tribe included a document titled ''*Ozone Redesignation Request and Maintenance Plan for Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation Nonattainment Area''* (''Pechanga Ozone Maintenance Plan''). Since then, the Pechanga Tribe has applied for, and been granted, TAS status for CAA sections 110 and 175A for the purpose of submitting and implementing a maintenance plan for the 1997 ozone standard, and on November 4, 2014, the Pechanga Tribe re-submitted the Pechanga Ozone Maintenance Plan for approval to EPA as a TIP. As described in detail in section IV of this document, we are proposing to grant the Pechanga Tribe's redesignation request and to approve the Pechanga Ozone Maintenance Plan.

II. Boundary Change Request

A. Legal Authority

Section 107(d)(3)(D) provides that a state may submit to the EPA a revised designation of any area or portion thereof within the State. Such revised designations are referred to as ''redesignations.'' A boundary change is one type of redesignation, and a change in status (*e.g.*, from ''nonattainment'' to ''attainment'') is another type of redesignation. In this document, we refer to our proposed change in boundaries as a ''boundary change'' instead of a ''redesignation'' to reduce confusion with the other type of redesignation (*i.e.*, change in status) that is also proposed herein.

The EPA has granted the Pechanga Tribe TAS status for CAA section 107(d) and thus we have reviewed the Tribe's June 23, 2009 boundary change request as a request under section 107(d)(3)(D).[12] We review such requests under CAA section 107(d)(3)(D) using the same criteria we would use if the EPA were initiating the boundary change under CAA section 107(d)(3)(A), *i.e.*, ''on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.'' In contrast, redesignations involving changes in status, specifically from ''nonattainment'' to ''attainment'' are governed by the criteria in section 107(d)(3)(E), which are discussed in more detail in section III of this document.

For the reasons set forth below, we are proposing to revise the boundaries of the South Coast and San Diego air quality planning areas to establish a separate air quality planning area for the Pechanga Reservation for the 1997 8-hour ozone standard.

B. Proposed Boundary Change Making the Pechanga Reservation a Separate Nonattainment Area for the 1997 8-Hour Ozone Standard

As noted above, EPA reviews requests, such as the Pechanga Tribe's June 23, 2009 request, for a boundary change ''on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.'' In the context of requests from tribes for boundary changes, we have developed more specific guidance consistent with the general statutory considerations in CAA section 107(d)(3)(A). The specific guidance is titled, ''Policy for Establishing Separate Air Quality Designations for Areas in Indian Country'' (''Tribal Designation Policy'').[13] The Tribal Designation Policy identifies the specific air quality data, planning and control considerations, and other air quality-related considerations that the EPA deems appropriate in the context of reviewing requests from a tribe for a change in the boundaries of the air quality planning area in which the tribe is located.

Where the EPA receives a request for a boundary change from a tribe seeking to have its Indian country designated as a separate area, the policy indicates that the EPA will make decisions regarding these requests on a case-by-case basis after consultation with the tribe. As a matter of policy, the EPA believes that it is important for tribes to submit the following information when requesting a boundary change: A formal request from an authorized tribal official; documentation of Indian country boundaries to which the air quality designation request applies; concurrence with EPA's intent to include the identified tribal lands in the 40 CFR part 81 table should the EPA separately designate the area; and a multi-factor analysis to support the request. *See* Tribal Designation Policy, pages 3 and 4.

The Tribal Designation Policy states that the EPA intends to make decisions regarding a tribe's request for a separate air quality designation after all necessary consultation with the tribe and, as appropriate, with the involvement of other affected entities, and after evaluating whether there is sufficient information to support such a designation. Boundary change requests for a separate air quality designation should include an analysis of a number of factors (referred to as a ''multi-factor analysis,'') including air quality data, emissions-related data (including source emissions data, traffic and commuting patterns, population density and degree of urbanization), meteorology, geography/topography, and jurisdictional boundaries.[14]

The Pechanga Tribe's boundary change request, submitted by the Tribe's Chairman on June 23, 2009, included a multi-factor analysis addressing air quality data, emissions data, meteorology, geography/topography, and jurisdictional boundaries. As such, although submitted prior to release of the Tribal Designation Policy, the Pechanga Tribe's request for a boundary change to create a separate ozone

[11] See letter from Mark Macarro, Tribal Chairman, Pechanga Tribe, to Deborah Jordan, Director, Air Division, EPA Region IX, dated June 23, 2009.

[12] We recognize that the Pechanga Tribe did not have TAS status at the time of the June 23, 2009 submittal, but we believe that our action on the June 23, 2009 submittal at this time should reflect the subsequent grant of the Tribe's application for TAS status for section 107(d) in 2013.

[13] See memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to EPA Regional Air Directors, Regions I–X, dated December 20, 2011, titled ''Policy for Establishing Separate Air Quality Designations for Areas of Indian Country.'' A copy of the Tribal Designation Policy can be found at *http://www.epa.gov/ozonedesignations/guidance.htm*.

[14] The Tribal Designation Policy also states that, in addition to information related to the identified factors, tribes may submit any other information that they believe is important for the EPA to consider.

nonattainment area represents the type of formal, official request and supporting information called for in the policy. Moreover, the Tribe's June 23, 2009 submittal was supplemented by the Tribe with more recent information in the Pechanga Ozone Maintenance Plan.

Air Quality Data: For this factor, as discussed below, we considered 8-hour ozone design values for air quality monitors in and near the Pechanga Reservation, based on the 2011–2013 period (*i.e.*, the 2013 design value). A monitor's design value is the metric or statistic that indicates whether that monitor attains a specific air quality standard. The 1997 ozone NAAQS is met at a monitor when the annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years, is 0.08 ppm or less. See 40 CFR 50.10. A design value is only valid if minimum data completeness criteria are met. See 40 CFR part 50, appendix I. Monitors that are eligible for providing design value data include monitors that are sited in accordance with 40 CFR part 58, appendix D (section 4.1), are federal reference method (FRM) or federal equivalent method (FEM) monitors, and meet the requirements of 40 CFR part 58, appendix A.

The Pechanga Tribe began operation of an FEM ozone monitor on the reservation in June 2008, but the data does not meet the completeness criteria for the 2011–2013 period. However, there is another FEM ozone monitoring site in the vicinity of the reservation. The monitoring site, referred to as the ''Temecula'' site, is operated by the South Coast Air Quality Management District (SCAQMD) at a location approximately 10 miles north of the reservation, and as explained further in section IV.A of this document, the data from the Temecula site is considered representative of ozone conditions at the Pechanga Reservation and is complete for 2011–2013.

The 2013 design value based on data from the Temecula site is 0.077 ppm, which, given the representativeness of the Temecula data, means that current air quality at the Pechanga Reservation meets the 1997 ozone standard of 0.08 ppm.[15] In contrast, ozone concentrations are higher farther north in Riverside County and lower farther south in San Diego County. For instance, the next closest ozone monitoring site in Riverside County is the Lake Elsinore site, which is about 20 miles northwest of the reservation and which has a design value for 2011–2013 of 0.086 ppm, and which violates the 1997 ozone standard. The next closest ozone monitoring site in San Diego County is the Escondido site, which is about 20 miles south of the reservation and which has a design value for the same period of 0.069 ppm. Thus, in this portion of southern Riverside County and northern San Diego County, ozone concentrations generally decrease from north to south, but vary less moving east and west from the reservation.[16]

Emissions-Related Data: For this factor, we reviewed documentation provided in Pechanga's June 23, 2009 boundary change request and more recent information submitted with the Pechanga Ozone Maintenance Plan, as well as the Tribe's application for a ''part 71'' (*i.e.*, title V) permit for the Pechanga Resort and Casino, and related annual emissions reports.[17] Based on information contained in the cited references, we estimate that current actual emissions from sources operating on the Pechanga Reservation are approximately 5.8 tons per year (tpy) of VOC and 10.7 tpy of NO_X. Sources that contribute to this total include stationary sources operating at the casino, such as a gas turbine, boilers, emergency generators, and a fire water pump; and emergency generators operating at the government center, the fire station, the gasoline station/mini-mart, and at various wells. Also contributing to the total are area sources such as consumer product use and gasoline loading, storage, and dispensing at the gasoline station/mini-mart. Lastly, the inventory includes emissions from on-road and nonroad motor vehicle use on the reservation.

In contrast, current ozone precursor emissions within the South Coast nonattainment area are approximately 230,000 tpy of VOC and 190,000 tpy of NO_X.[18] To the south, current ozone precursor emissions within the San Diego maintenance area are approximately 46,000 tpy of VOC and 42,000 tpy of NO_X.[19] In terms of percentages, Pechanga-related emissions are approximately 0.003 percent and 0.006 percent of South Coast emissions of VOC and NO_X, respectively, and are approximately 0.01 percent and 0.03 percent of San Diego County emissions of VOC and NO_X, respectively.

With respect to traffic and commuting patterns, operations at the Pechanga Resort and Casino generate vehicle trips in the region from patrons and employees, but no transportation corridors pass through the reservation. Interstate 15 and State Route 79 pass a couple of miles west and north, respectively, of the developed portions of the reservation. As far as population density and degree of urbanization, we note that, with the exception of the immediate vicinity of the resort and casino, the Pechanga Reservation is largely undeveloped and sparsely populated in comparison with highly developed land to the north in Temecula Valley. In fact, the degree of urbanization at the Pechanga Reservation is similar to the sparsely-populated region to the south in northern San Diego County.

Meteorology: EPA evaluated available meteorological data to help determine how meteorological conditions, such as weather, transport patterns and stagnation conditions, would affect the fate and transport of precursor emissions contributing to ozone formation. Pechanga is located about 25 miles inland and experiences similar complex meteorology and transport patterns as inland parts of western Riverside County and western San Diego County. Transport of ozone and its precursors is prevalent from the South Coast to San Diego County under several different meteorological regimes one of which transports emissions from metropolitan Los Angeles to San Diego County along the Interstate 15 corridor.[20] Given the location of the Pechanga Reservation near the Interstate 15 corridor and along the boundary between the Riverside County portion of the South Coast and San Diego County, the transport of ozone and its precursors from metropolitan Los Angeles also influences air quality at the reservation and is the primary cause of historic ozone violations at the reservation.

[15] In fact, the Pechanga data are consistently less than or equal to the Temecula and Lake Elsinore data for the 2011–2013 timeframe.

[16] See pages II–2–28 through II–2–37 in Appendix II (''Current Air Quality'') of the South Coast Air Quality Management District's 2012 Air Quality Management Plan (February 2013) for figures illustrating the spatial distribution of elevated ozone concentrations in the South Coast.

[17] The Pechanga Resort and Casino is considered a ''major'' source for the purposes of title V of the Act based on the facility's potential to emit NO_X emissions at levels greater than the applicable major source NSR threshold.

[18] Year 2012 emissions for the South Coast Air Basin are from CARB's Almanac Emissions Projection Data (Published in 2013).

[19] Year 2012 emissions for San Diego County are from CARB's Almanac Emissions Projection Data (Published in 2013).

[20] Bigler-Engler, V, 1995: Analysis of an Ozone Episode during the San Diego Air Quality Study: The Significance of Transport Aloft. *Journal of Applied Meteorology*, 34, 1863–1875). Luria, M, 2005: Local and Transported pollution of San Diego, California. *Atmospheric Environment*, 39, 6765–6776. Boucouvala, D, 2003: Analysis of transport patterns during an SCOS97–NARSTO episode. *Atmospheric Environment*, 37 Supplement No. 2, S73–S94. Meteorological and Photochemical Modeling for the San Diego County 2007, 8 Hour Ozone State Implementation Plan.

Geography/Topography: The Pechanga Reservation consists of 6,700 acres located in northwestern portion of the Cleveland National Forest, ranging between 1,100 and 2,600 feet in elevation. The reservation lies primarily in Riverside County along the boundary separating Riverside and San Diego counties, but a small portion of the reservation extends across the county-line into San Diego County. The terrain along the Riverside-San Diego county boundary is complex, but there are no significant topographic barriers to air flow, suggesting that the Pechanga Reservation may experience similar air quality to the surrounding air quality planning areas.

Jurisdictional Boundaries: For ozone planning purposes, the Pechanga Reservation is currently split for the 1-hour ozone and 1997 ozone standards between the South Coast and the San Diego County air quality planning areas, but is a separate air quality planning area for the 2008 ozone NAAQS. With respect to air pollution control, the South Coast, with the exception of the Pechanga Reservation and certain other areas of Indian country, lies within the jurisdiction of the SCAQMD, and San Diego County, also with the exception of the Pechanga Reservation and certain other areas of Indian country, lies within the jurisdiction of the San Diego County Air Pollution Control District (SDCAPCD). The EPA has jurisdiction under the CAA over air pollution sources at the Pechanga Reservation although the Tribe may develop and implement its own air program, and displace EPA's program, or portion thereof, if it chooses to, upon EPA approval.

Evaluation of Factors: Air quality data, meteorology and topography indicate that the Pechanga Reservation experiences similar complex meteorology and transport patterns as inland parts of western Riverside and San Diego counties. Transport of ozone and its precursors to the Pechanga Reservation is prevalent from the South Coast. Considering the three factors of air quality data, meteorology, and topography, EPA could reasonably include the Pechanga Reservation in either the South Coast air quality planning area to the north, or the San Diego County air quality planning area to the south. Alternatively, the EPA could establish a separate nonattainment area for the Pechanga Reservation as it did for the 2008 ozone standard.[21]

However, taking into account the minimal emissions associated with activities on the Pechanga Reservation and corresponding minimal contribution from Pechanga-related emissions sources to regional ozone violations, we believe that in these circumstances it is appropriate and consistent with the principles for designations of Indian country set forth in the Tribal Designation Policy to assign particular weight to the jurisdictional boundaries factor. Moreover, the Tribe has invested in the development of its own air program, including operation of an ozone monitoring station, and has expressed interest in development of its own permitting program. Establishment of the Pechanga Reservation as a separate planning area for the 1997 ozone standard would facilitate the Tribe's development of its own air program by aligning the area designations for the two current ozone standards for which EPA has promulgated area designations.

Therefore, we propose to revise the boundaries of the South Coast and San Diego 1997 ozone air quality planning areas by removing the respective portions of the reservation included in those areas and designating the Pechanga Reservation as a separate nonattainment area for the 1997 ozone standard. This newly-established air quality planning area would retain its ozone nonattainment classification as ''Severe-17'' for the 1997 ozone standard unless the EPA finalizes the action, proposed in section IV of this document, to redesignate this area to ''attainment'' for the 1997 ozone standard. Our technical support document (TSD) provides additional information concerning our rationale for this proposed revisions to Southern California ozone air quality planning area boundaries.

III. Requirements for Redesignation

In this section, we identify the procedural and substantive requirements for redesignation for the Pechanga-specific ozone nonattainment area we are proposing to establish in section II, and in section IV, we provide our evaluation of this proposed Pechanga-specific ozone nonattainment area for redesignation to attainment for the 1997 ozone standard.

A. Procedural Requirements

One of the prerequisites for redesignation is approval of a maintenance plan meeting the requirements under CAA section 175A. See CAA section 107(d)(3)(E)(iv). Such a maintenance plan constitutes a SIP when submitted by a state or a TIP when submitted by a tribe, and the CAA and EPA's regulations include procedural requirements for such submittals. Specifically, section 110(a) of the Act requires tribes to provide reasonable notice and public hearing prior to adoption of TIPs or TIP revisions. EPA regulations at 40 CFR 51.102 contain additional specifications for public review of TIPs or TIP revisions including notice to the public by prominent advertisement in the affected area; an opportunity for a public hearing; and a minimum 30-day comment period and provisions for making the plan available for public inspection.

On September 10, 2014, the Pechanga Tribe published a notice of the beginning of a public review period for the public draft Pechanga Ozone Maintenance Plan in The Press-Enterprise, a newspaper of general circulation in Riverside County. The notice also indicated where the public draft maintenance plan would be available for review and that a public hearing would be held on October 15, 2014, if requested. No request for a public hearing was made, and no comments were submitted. On October 21, 2014, the Tribe adopted the Pechanga Ozone Maintenance Plan, and on November 4, 2014, the Pechanga tribal council officially submitted the Pechanga Ozone Maintenance Plan to EPA as the Tribe's TIP.

As such, we find that the submittal of the Pechanga Ozone Maintenance Plan as a TIP satisfies the procedural requirements of section 110(a) of the Act and 40 CFR 51.102.

B. Substantive Requirements

The CAA establishes the requirements for redesignation of a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that the following criteria are met: (1) The EPA determines that the area has attained the applicable NAAQS; (2) the EPA has fully approved the applicable implementation plan for the area under section 110(k); (3) the EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable federal air pollution control regulations, and other permanent and enforceable reductions; (4) the EPA has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) the state or eligible tribe containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

The EPA provided guidance on redesignations in a document titled,

[21] See 77 FR 30088, dated May 21, 2012.

''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published in the **Federal Register** on April 16, 1992 (57 FR 13498), and supplemented on April 28, 1992 (57 FR 18070) (referred to herein as the ''General Preamble''). Another relevant EPA guidance document includes ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, September 4, 1992 (referred to herein as the ''Calcagni memo'').

For the reasons set forth below, we propose to approve the Pechanga Tribe's request for redesignation of the Pechanga Reservation, proposed herein as a separate air quality planning area, to attainment for the 1997 ozone standard based on our conclusion that all of the criteria under CAA section 107(d)(3)(E) have been satisfied.

IV. Evaluation of the Pechanga Tribe's Redesignation Request

A. Determination That the Area Has Attained the Applicable NAAQS

CAA section 107(d)(3)(E)(i) requires that we determine that the area has attained the NAAQS. The EPA generally makes the determination of whether an area's air quality meets the ozone standard based upon the most recent three years of complete, certified, and quality-assured data gathered at established State and Local Air Monitoring Stations (SLAMS) in the nonattainment area and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to AQS. Monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, the EPA relies primarily on data in AQS when determining the attainment status of areas. *See* 40 CFR 50.10; 40 CFR part 50, appendix I; 40 CFR part 53; 40 CFR part 58, appendices A, C, D and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix I.

Under EPA regulations at 40 CFR part 50, the 1997 ozone standard is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. See 40 CFR 50.10; 40 CFR part 50, appendix I. This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm (based on the rounding convention in 40 CFR part 50, appendix I) at each monitoring site within the area, then the area is attaining the NAAQS. The data completeness requirement is met when the three-year average percent of days with valid ambient monitoring data is at least 90 percent of the days during the designated ozone monitoring season, and no single year has less than 75 percent data completeness as determined in appendix I of 40 CFR part 50.

The Pechanga Tribe operates an ozone monitor at the reservation. In 2013, EPA conducted a technical systems audit and, as with any audit, EPA made a number of findings and recommendations to ensure compliance with EPA's monitoring regulations in 40 CFR part 58.[22] The Pechanga Tribe submits the ozone data that it collects to AQS; however, we are basing this proposed determination of attainment not on the data collected at the Pechanga monitor, but rather on the data from a monitoring site located adjacent to Skinner Reservoir, which is approximately 10 miles north of the Pechanga Reservation and which is operated by the SCAQMD (the ''Temecula'' monitoring site). We are doing so because the data from the Pechanga monitor over the past three calendar years does not meet our completeness criteria, and because the ozone data collected at SCAQMD's Temecula site is complete and is representative of ozone conditions at the reservation.[23]

With respect to its monitoring network, the SCAQMD submits monitoring network plan reports to EPA on an annual basis. These reports discuss the status of the air monitoring network, as required under 40 CFR part 58. The EPA reviews these annual network plans for compliance with the applicable reporting requirements in 40 CFR 58.10. With respect to ozone, we have found that SCAQMD's annual network plans meet the applicable requirements under 40 CFR part 58.[24] Furthermore, we concluded in our Technical System Audit Report (*Technical System Audit Report South Coast Air Quality Management District, 2013*) that SCAQMD's ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for all of the criteria pollutants. Also, the SCAQMD annually certifies that the data it submits to AQS are complete and quality-assured.[25]

Both the Pechanga site and SCAQMD's Temecula site monitor ozone concentrations on a continuous basis using Federal Equivalent Method (FEM) monitors. The spatial scale of the Pechanga site is ''neighborhood'', while the Temecula site is ''urban'' scale. The site types are ''general/background'' (Pechanga) and ''population exposure'' (Temecula).[26]

As noted above, we reviewed the data from the Pechanga monitoring site and found it to be incomplete for the 2011–2013 period; however, the data that is available for that period provides us with the basis for a comparison with Temecula site data to determine representativeness of the latter for establishing current ozone conditions at the reservation. Table 1 summarizes the site-specific annual fourth-highest daily maximum 8-hour ozone concentrations and 3-year ozone design values for the Pechanga site and SCAQMD's Temecula site for the period of 2011–2013.

[22] See letter from Deborah Jordan, Director, EPA Region IX Air Division, to Mark Macarro, Chairman, Pechanga Band of Luiseño Mission Indians, January 22, 2014, and attachments.

[23] For 2011–2013, the Temecula monitor achieved only 89 percent completeness, which is less than the required three-year completeness requirement of 90 percent. However, the EPA Region IX staff conducted a missing data analysis for the Temecula station in accordance with the requirements of 40 CFR part 50 Appendix I, Section 2.3(b) and concluded that it is appropriate to count the missing days towards meeting the minimum data completeness requirements because of concentrations measured at nearby monitors. Once the missing days are included, the EPA finds the ozone data from the Temecula station to be complete and valid for NAAQS comparison purposes. See the EPA staff memorandum to file titled ''Temecula Missing Data Analysis for 2011–2013,'' October 6, 2014.

[24] See, *e.g.,* letter from Meredith Kurpius, Manager, Air Quality Analysis Office, EPA Region IX, to Dr. Matt Miyasato, Deputy Executive Officer, SCAQMD, dated September 30, 2014.

[25] *See, e.g.,* letter from Matt Miyasato, Ph.D., Deputy Executive Officer, SCAQMD, to Jared Blumenfeld, Regional Administration, EPA Region IX, dated June 27, 2014.

[26] See *AQS Monitor Description Report, May 16, 2014.*

TABLE 1—FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AT TEMECULA AND PECHANGA MONITORS, 2011–2013, PPM

Monitor	Site code	2011	2012	2013	2011–2013 design value
Temecula	06–065–0016	0.082	0.077	0.074	0.077
Pechanga	06–065–0009	[a] 0.071	0.075	0.074	NC

[a] Annual value does not meet completeness criteria.
NC = Not calculated because of incomplete data.
Source: AQS Data Summary Report, dated May 16, 2014.

As shown in table 1, a comparison of the 2012 and 2013 data from the Temecula site and the Pechanga site demonstrates that the former site is representative of conditions at the latter.[27] The summary of data in table 1 also shows that the design value for the 2011–2013 period was less than 0.084 ppm at the Temecula site. Therefore, we are proposing to determine, based on complete, certified, and quality-assured data for 2011–2013 from the Temecula monitoring site, that the proposed Pechanga Reservation ozone nonattainment area has attained the 1997 ozone standard. Our review of preliminary 2014 data from both the Temecula and Pechanga sites indicates that the data remains consistent with continued attainment.[28]

B. The Area Must Have a Fully Approved Implementation Plan Meeting Requirements Applicable for Purposes of Redesignation Under Section 110 and Part D

Section 107(d)(3)(E)(ii) and (v) require the EPA to determine that the area has a fully approved applicable implementation plan under section 110(k) that meets all applicable requirements under section 110 and part D for the purposes of redesignation.In this context, the term ''applicable implementation plan'' refers to a TIP or a regulation promulgated by EPA under the Tribal Authority Rule (TAR) in 40 CFR part 49.[29]

1. Basic Implementation Plan Requirements Under CAA Section 110

Section 110(a)(1) requires implementation plans to provide for the implementation, maintenance, and enforcement of the NAAQS. Section 110(a)(2) of title I of the CAA delineates the general requirements for such an implementation plan, including enforceable emissions limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations.

Section 110(a)(2)(D) requires that implementation plans contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provisions, the EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. The EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport implementation plan submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, the EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, the EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with the existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated rules requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion of this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

Furthermore, while the Act requires states to prepare implementation plans that meet all of the requirements of section 110 of the Act, including those requirements that the EPA would consider applicable for the purposes of redesignation, under EPA's TAR, specific plan submittal and implementation deadlines for NAAQS-related requirements, including such deadlines in section 110(a)(1) do not apply. 40 CFR 49.4(a). Thus, an Indian tribe may choose not to adopt a TIP or may adopt TIP provisions that address only some elements of section 110, provided those elements are ''reasonably severable,'' from other elements not included in the TIP.[30] The EPA may regulate emission sources that the Indian tribe chooses not to include in a TIP if the EPA determines such regulation is necessary or appropriate to adequately protect air quality.[31]

In this instance, the Pechanga Tribe has not chosen to adopt a TIP that addresses any of the section 110 implementation plan elements and is not required to do so. The EPA has, however, previously determined that it is ''necessary or appropriate'' to establish regulations governing review and permitting of new or modified

[27] In fact, the Pechanga data are consistently less than or equal to the Temecula and Lake Elsinore data for the 2011–2013 timeframe. See our technical support document for additional information related to the representativeness of the Temecula monitoring data as it relates to Pechanga air quality.

[28] See AQS Quicklook Report, dated November 6, 2014. At the Temecula station, available data for 2014 only includes the first quarter of the year (January through March). Based on that first quarter, the fourth-highest 8-hour ozone concentration so far in 2014 is 0.065 ppm. At the Pechanga station, two quarters of preliminary data for 2014 are available (*i.e.,* January through June), and the fourth-highest 8-hour concentration at that station so far in 2014 is 0.079 ppm.

[29] See CAA section 302(q).

[30] 40 CFR 49.7(c).

[31] 40 CFR 49.11(a).

stationary sources in Indian country (*i.e.,* ''New Source Review'' or NSR). These regulations apply in most Indian reservations, including the Pechanga Reservation, unless the EPA approves a tribal NSR implementation plan in which case the tribal NSR implementation plan replaces the EPA's NSR rules that would otherwise apply. The EPA's NSR rules apply within the Pechanga Reservation and satisfy the section 110 element found in CAA section 110(a)(2)(C) regarding regulation of new or modified stationary sources. The EPA has not determined that any other section 110 plan element is ''necessary or appropriate'' for the Pechanga Reservation, therefore, we find that the only requirement under CAA section 110 applicable to the Pechanga air quality planning area is CAA section 110(a)(2)(C). Given that the EPA's NSR rules addressing CAA section 110(a)(2)(C) are promulgated in final form, we propose to find that the proposed Pechanga Reservation air quality planning area meets the general implementation plan requirements under section 110 of the CAA, to the extent those requirements are applicable for the purposes of redesignation.

2. Part D Requirements

The CAA contains two sets of provisions, subparts 1 and 2, that address planning and emission control requirements for ozone nonattainment areas. Both of these subparts are found in title I, part D of the CAA; sections 171–179 and sections 181–185, respectively. Subpart 1 contains general, less specific requirements for all nonattainment areas of any pollutant, including ozone, governed by a NAAQS. Subpart 2 contains additional, specific requirements for ozone nonattainment areas classified under subpart 2.

The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and 176 of the CAA. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

With respect to the requirements under subpart 2, we note that, as discussed in more detail above, the Pechanga Reservation is subject to the requirements under subpart 2 of part D of the CAA for areas classified as ''Severe-17'' for the 1997 ozone standard. *See* 75 FR 24409 (May 5, 2010). Additionally, under EPA's anti-backsliding rules governing the transition from the now-revoked 1-hour ozone standard to the 1997 8-hour ozone standard, the applicable requirements under the area's classification under the 1-hour ozone standard continue to apply. In the case of the Pechanga Reservation, the ''applicable requirements'' for the 1-hour ozone standard are those that apply within ''Extreme'' ozone nonattainment areas because the Pechanga Reservation (*i.e.,* the Riverside County portion of the reservation) was included in the South Coast ''Extreme'' 1-hour ozone nonattainment area.

Under its longstanding interpretation of the CAA, the EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the only part D provisions, which are ''applicable'' and which must be approved in order for EPA to redesignate an area, are those which came due prior to the submittal of a complete redesignation request. See the Calcagni memo; EPA memorandum titled ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' from Michael Shapiro, Acting Assistant Administrator for Air and Radiation, dated September 17, 1993; 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan); 68 FR 25418, 25424–25427 (May 12, 2003) (redesignation of St. Louis, Missouri); and *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation).

Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet all requirements ''applicable'' to the area under section 110 and part D. Section 107(d)(3)(E)(ii) similarly provides that the EPA must have fully approved the ''applicable'' SIP for the area seeking redesignation. These two sections read together support the EPA's interpretation of ''applicable'' as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for the EPA to act on redesignation request in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If ''applicable requirements'' were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require the EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the Act for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements unrelated to redesignation that come due after the state submits its complete redesignation request, and while the EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

With regard to Indian tribes, the EPA notes that under the CAA and the TAR, tribes may, but are not required to, submit implementation plans to EPA for approval. The EPA has expressly exempted tribes from all plan submittal and implementation deadlines for NAAQS-related requirements. 40 CFR 49.4(a) (specific plan submittal and implementation deadlines listed as CAA provisions for which it is not appropriate to treat tribes in the same manner as states). The EPA, however, has authority under the TAR to implement such plan provisions as are necessary or appropriate to protect air quality where tribes do not do so. 40 CFR 49.11. Thus, tribes are not required to submit plans addressing part D requirements, and under the EPA's longstanding interpretation of section 107(d)(3)(E), there are no part D requirements that are applicable for the purposes of redesignation unless the EPA has deemed any such part D element to be ''necessary or appropriate'' under the TAR. In this case, the only part D element that EPA has deemed to be ''necessary or appropriate'' is the NSR program for major sources and major modifications in nonattainment areas generally,

including the Pechanga Reservation, and EPA has promulgated the corresponding ''major source'' nonattainment NSR regulations at 40 CFR 49.166 through 49.173. No other part D requirements are applicable for the purposes of evaluating the Pechanga Tribe's redesignation request because no such requirement was due prior to submission of the Tribe's redesignation request. Therefore, we find that the Pechanga area is subject to a major source nonattainment program promulgated by the EPA in 40 CFR part 49 to meet part D requirements on the Pechanga Reservation, and that no other part D requirements are applicable for the purposes of evaluating the Pechanga Tribe's redesignation request because no such requirement has become due for the reservation. As such, we believe that the area has satisfied the redesignation criteria of CAA section 107(d)(3)(E)(v).

C. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) precludes redesignation of a nonattainment area to attainment unless the EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable federal air pollution control regulations and other permanent and enforceable regulations. Attainment resulting from temporary reductions in emissions rates (*e.g.,* reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.

In 2004, the EPA included the Pechanga Reservation in the South Coast ''Severe-17'' nonattainment area for the 1997 8-hour ozone standard. See 69 FR 23858 (April 30, 2004), at 23882–23884, and footnote ''a'' to the California ozone table at page 23890. Our 2004 designations for the 1997 8-hour ozone standard were generally based on data from years 2001–2003. At that time, neither SCAQMD's Temecula monitoring site nor the Pechanga monitoring site was operational, and the closest SCAQMD monitor to the Pechanga Reservation was located at SCAQMD's Lake Elsinore ozone monitoring site. The Lake Elsinore site is approximately 20 miles northwest of the Pechanga Reservation, and in 2002, the design value there was 0.104 ppm. Ozone concentrations at the Pechanga Reservation are less than those monitored at Lake Elsinore, and thus, the design value at the Pechanga Reservation, if it had been monitored, would likely have been less than 0.104 ppm back in 2002. As discussed in section IV.A of this document, ambient ozone concentrations at the Pechanga Reservation have now achieved the 1997 ozone standard based on a design value for the 2011–2013 period of 0.077 ppm.

The improvement in ozone conditions at the Pechanga Reservation does not reflect emissions changes at Pechanga Reservation itself given the nature and magnitude of the few emitting sources at the reservation. Instead, the improvement reflects reductions in emissions of ozone precursors from sources, including stationary, mobile and area sources, in the South Coast. Reductions in South Coast emissions sources result in less ozone and ozone precursors being transported to the Pechanga Reservation from the north.

The SCAQMD's *Final 2007 Air Quality Management Plan (June 2007)* (''2007 South Coast AQMP'') includes emissions estimates for the South Coast for a base year (2002) and a number of future years, including 2011 and 2014. We have used the estimates in the 2007 South Coast AQMP to develop 2012 emissions estimates for the South Coast, and based on a comparison between our estimates for 2012 and SCAQMD's estimates for 2002, we find that emissions of VOC and NO_X in the South Coast have decreased by approximately 34 percent over that time period.

The significant reductions in VOC and NO_X emissions that occurred from 2002 to 2012 in the South Coast largely reflect the impact of mobile source regulations and programs. More specifically, approximately 80 percent of the reduction in VOCs, and approximately 95 percent of the reduction in NO_X, is due to reductions from emissions from on-road and nonroad vehicles. In California, both the California Air Resources Board (CARB) and the EPA regulate on-road and nonroad vehicles. As a general matter, the CARB establishes emissions standards and other related requirements for new on-road motor vehicles sold in California, and the EPA establishes such requirements for cars sold outside California.

To enforce CARB motor vehicle standards, the CARB must first apply to the EPA for a waiver under CAA section 209(b). Once issued, the waiver provides the CARB with the authority to enforce the standards within California. The EPA has issued many such waivers [*e.g.,* 68 FR 19811 (April 22, 2003)(EPA waiver for CARB's LEV II regulations)] over the years to the CARB for its on-road motor vehicle standards. During most of the 2002–2012 period, CARB's low-emission vehicle (LEV) II standards applied to new on-road vehicles sold in California, and the phased replacement of older more polluting vehicles with newer vehicles meeting LEV II standards explains much of the reduction in emissions in the South Coast from on-road vehicles during this period. We consider CARB's on-road motor vehicle regulations such as the LEV II standards for which the EPA has issued waivers under CAA section 209(b) as providing ''other permanent and enforceable reductions'' for the purposes of the redesignation criterion in CAA section 107(d)(3)(E)(iii). Also, vehicles sold outside of California also affect air quality within the state, and with respect to those vehicles, the EPA's increasingly stringent motor vehicle standards achieved emission reductions of ozone precursors over the 2002–2012 period.

CAA section 209(e) establishes a process, similar to the waiver process described above for new motor vehicles under section 209(b), under which the CARB must seek authorization from the EPA to enforce emissions standards and other related requirements for nonroad vehicles. Over the years, the EPA has issued many such authorizations providing the CARB with the authority to enforce its nonroad vehicle standards in California. See, *e.g.,* 71 FR 29623 (May 23, 2006) (EPA authorization of CARB's large off-road spark ignition engine standards); 71 FR 75536 (December 15, 2006) (EPA authorization of CARB's small off-road engine regulations). Over the 2002–2012 period, CARB's nonroad vehicle standards achieved significant emissions reductions from the nonroad vehicle source category throughout California. Like CARB's on-road motor vehicle standards, we also consider CARB's nonroad vehicle standards for which the EPA has issued authorizations as providing ''other permanent and enforceable reductions'' for the purposes of the redesignation criterion in CAA section 107(d)(3)(E)(iii). Also, the EPA established emission standards and related requirements for certain classes of equipment for which states, including California, are preempted, such as locomotives and certain types of agricultural and construction equipment. See CAA section 209(e)(1). Such EPA standards also achieved emissions reductions in the South Coast during the 2002–2012 period and incrementally contributed to the

improvement of ozone conditions at the Pechanga Reservation.

In addition to vehicle standards, California has also established more stringent gasoline and diesel fuel requirements, more stringent vapor recovery requirements, and more stringent vehicle inspection and maintenance requirements that have reduced emissions of ozone precursors in the South Coast. As a general matter, such requirements are not subject to the waiver or authorization process in CAA section 209. Instead, the CARB submits the regulations establishing such requirements to the EPA as a revision to the California SIP. Once approved by the EPA, such regulations become federally enforceable. The EPA most recently approved California clean fuels (gasoline and diesel) at 75 FR 26653 (May 12, 2010); enhanced vapor recovery at 78 FR 21542 (April 11, 2013) (SCAQMD Rule 461 requiring CARB-certified equipment) and 64 FR 39037 (July 21, 1999) (SCAQMD Rule 462 requiring CARB-certified equipment); and I/M at 75 FR 38023 (July 1, 2010). Though such state regulations do not apply on the Pechanga Reservation, these requirements have provided significant emissions reductions in areas upwind of the Pechanga Reservation during the 2002–2012 period and are considered as ''other permanent and enforceable reductions'' for the purposes of the redesignation criterion in CAA section 107(d)(3)(E)(iii).

Given the regulatory initiatives implemented during the 2002–2012 period and summarized above, we find that the improvement in air quality since 2002 may reasonably be attributed to the initiatives and is not a result of an economic downturn or unusual or extreme weather patterns. We do recognize that a significant economic slowdown occurred nationally starting in 2008, but we note that the downward trend in VOC and NO_X emissions had already been established before that time.[32]

We also considered temperature data for the 1994–2013 period.[33] The data indicate that the 2011–2013 attainment period was slightly warmer than the long-term average. In addition, there were ten previous three-year periods since 1993 that were at least as cool or cooler than the 2011–2013 period, but that also had 8-hour ozone design values above the 1997 ozone standard. Thus, the temperature records support the conclusion that attainment did not result from unusually favorable meteorology during 2011–2013.

Based on the above analysis, we find that the improvement in air quality at the Pechanga Reservation is the result of permanent and enforceable emissions reductions from applicable federal air pollutant control regulations, particularly those associated with on-road and nonroad vehicles, and other permanent and enforceable reductions from upwind sources resulting from CARB and SCAQMD regulations, particularly CARB regulations establishing increasingly stringent standards for new on-road and nonroad vehicles, tighter specifications for gasoline and diesel fuel, enhanced vapor recovery, and vehicle I/M programs. As such, we propose to find that the criterion for redesignation set forth at CAA section 107(d)(3)(E)(iii) is satisfied.

D. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. We interpret this section of the Act to require, in general, the following core elements: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan. See Calcagni memo, pages 8 through 13. Under CAA section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the EPA approves a redesignation to attainment.

To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency provisions, that the EPA deems necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area to attainment. Based on our review and evaluation of the plan, as detailed below, we are proposing to approve the Pechanga Ozone Maintenance Plan because we believe that it meets the requirements of CAA section 175A.

1. Attainment Inventory

A maintenance plan for the 1997 8-hour ozone standard must include an inventory of emissions of ozone precursors (VOC and NO_X) in the area to identify a level of emissions that are sufficient to attain the 1997 ozone standard. This inventory must be consistent with the EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The inventory must also be comprehensive, including emissions from stationary, area, nonroad mobile, and on-road mobile sources, and must be based on actual ''ozone season data'' (*i.e.,* summertime) emissions.

The Pechanga Tribe selected year 2012 as the year for the attainment inventory in the Pechanga Ozone Maintenance Plan. The attainment inventory will generally be the actual inventory during the time period the area attained the standard. Thus, the Pechanga Tribe's selection of 2012 for the attainment inventory is acceptable.

The Pechanga Ozone Maintenance Plan estimates current (2012) summer day emissions of 0.013 tons per day (tpd) of VOC and 0.029 tpd of NO_X. These estimates are consistent with the EPA's own estimates discussed in section II.B of this document of 5.8 tons per year of VOC (*i.e.,* 0.016 tpd annual average) and 10.7 tpy of NO_X (*i.e.,* 0.029 tpd annual average) given the differences between seasonal values and annual values. More important, however, from the standpoint of establishing an emissions level consistent with attainment of the 1997 8-hour ozone standard at the Pechanga Reservation, is the summer-day average emissions in 2012 within the South Coast given the importance of transport to ozone conditions at the reservation. The Pechanga Ozone Maintenance Plan includes estimates for 2012 South Coast summer-day average emissions of approximately 500 tpd of VOC and 490 tpd of NO_X. The Tribe's source for this information is the latest emissions data available from CARB's Web site.

The EPA also estimated 2012 South Coast emissions, but relied on a different data source: The 2012 South Coast Final Air Quality Management Plan (2012 South Coast AQMP). We relied on the 2012 South Coast AQMP because we recently approved the ozone portion of that plan, 79 FR 52526 (September 3, 2014), and in so doing, found the emissions inventories to be comprehensive, to reflect appropriate emissions calculation methods and the latest planning assumptions. See 79 FR 29712, at 29717 (May 23, 2014) (proposed approval of ozone portion of 2012 South Coast AQMP). Based on interpolation of emissions estimates for 2008 and 2014 contained in the 2012 South Coast AQMP, we calculate 2012 South Coast summer-day average emissions to be approximately 540 tpd of VOC and 560 tpy of NO_X, which are

[32] Between 2002 and 2005, VOC and NO_X emissions in the South Coast decreased approximately 27 percent and 21 percent respectively, based on baseline emissions estimates in appendix II to the South Coast 2007 AQMP.

[33] See table 4–2 of the Pechanga Ozone Maintenance Plan.

reasonably consistent with the corresponding estimates included in the Pechanga Ozone Maintenance Plan.

2. Maintenance Demonstration

CAA section 175A(a) requires that the maintenance plan ''provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation.'' Generally, a state may demonstrate maintenance of the 1997 ozone standard by either showing that future emissions will not exceed the level of the attainment year inventory or by modeling to show that the future mix of sources and emissions rates will not cause a violation of the NAAQS. For areas that are required under the Act to submit modeled attainment demonstrations, the maintenance demonstration should use the same type of modeling. See Calcagni memo, page 9. The Pechanga Reservation 8-hour area was not required to submit a modeled attainment demonstration, and thus, the Pechanga Ozone Maintenance Plan may demonstrate maintenance based on a comparison of existing and future emissions of ozone precursors.[34]

In addition to the 2012 attainment inventory described above, the Pechanga Ozone Maintenance Plan also includes emissions inventories for 2015, 2020, and 2025. With respect to reservation-specific sources, the Pechanga Ozone Maintenance Plan projects that emissions will remain relatively constant from emissions sources at the reservation over the maintenance period (*i.e.,* through 2025). Relying on CARB emissions data, the Pechanga Ozone Maintenance Plan predicts that South Coast emissions will decrease over the period 2012–2025. The EPA has also calculated South Coast emissions for future years 2015, 2020, and 2025 but relied upon the emissions inventories in the 2012 South Coast AQMP (and interpolation methods) to do so.[35] These various emissions estimates are summarized in table 2 below.

TABLE 2—OZONE PRECURSOR EMISSIONS ESTIMATES FOR PECHANGA RESERVATION AND SOUTH COAST, 2012, 2015, 2020 AND 2025

[Summer-day average, tons per day]

Ozone precursor	2012	2015	2020	2025
Pechanga Reservation (Based on data as shown in Maintenance Plan):				
VOC	0.013	0.013	0.012	0.011
NO_X	0.029	0.029	0.028	0.028
South Coast (Based on CARB data as shown in Maintenance Plan rounded to the nearest 10 tons):				
VOC	500	460	420	410
NO_X	490	430	340	280
South Coast (Based on 2012 South Coast AQMP data rounded to the nearest 10 tons):				
VOC	540	480	450	440
NO_X	560	470	370	310

As shown in table 2, Pechanga Reservation and South Coast emissions of ozone precursors are expected to decrease from attainment year (2012) levels through the maintenance period (*i.e.,* through 2025) and thereby adequately demonstrate maintenance of the 1997 8-hour ozone standard at the Pechanga Reservation through at least a 10-year period beyond redesignation.

3. Monitoring Network

Continued ambient monitoring of an area is generally required over the maintenance period. As discussed elsewhere in this document, ozone is currently monitored by the SCAQMD and the Pechanga Tribe at two sites within or near the Pechanga Reservation. While this determination of attainment is based on data from SCAQMD's Temecula monitoring site, the ozone monitor operated by the Tribe is the one that we expect to be used to verify maintenance of the 1997 8-hour ozone standard through the maintenance period. In the Pechanga Ozone Maintenance Plan, the Tribe commits to continue operating the ambient ozone monitoring network, quality assuring the resulting monitoring data, and entering all data into the AQS in accordance with federal requirements and guidelines to verify continued attainment of the 1997 8-hour ozone NAAQS. See page 36 of the Pechanga Ozone Maintenance Plan. We find the Tribe's commitment for continued ambient ozone monitoring as set forth in its maintenance plan to be acceptable.

4. Verification of Continued Attainment

The EPA and the Pechanga Tribe have the legal authority to implement and enforce the requirements of the Pechanga Ozone Maintenance Plan.[36] This includes the authority to adopt, implement and enforce any emission control contingency measures determined to be necessary to correct violations of the 1997 8-hour ozone standard. To verify continued attainment, as noted above, the Tribe commits to the continued operation of an ozone monitoring network in accordance with federal requirements and guidelines to verify continued attainment of the 1997 ozone standard. The Pechanga Tribe also commits to annually reviewing ozone monitoring data from the three most recent, consecutive years to verify continued attainment of the 1997 ozone standard through the maintenance period. See page 36 of the Pechanga Ozone Maintenance Plan.

Generally, we expect states or tribes with maintenance areas to verify

[34] A maintenance demonstration need not be based on ozone modeling. See *Wall* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, at pages 53099–53100 (October 19, 2001), and 68 FR 25413, pages 25430–25432 (May 12, 2003).

[35] The South Coast 2012 AQMP future-year estimates were derived using the emissions from the 2008 base year; expected controls after implementation of SCAQMD rules adopted by June 2012, and CARB rules adopted as of August 2011; and activity growth in various source categories between the base and future years. See page 3–20 of the 2012 South Coast AQMP.

[36] As noted previously, the EPA recently determined that the Tribe is eligible for treatment in the same manner as a state (''TAS'') for purposes of CAA sections 110 and 175A and the submitted maintenance plan. In so doing, the EPA determined that the Tribe can reasonably be expected to be capable of carrying out the functions of the maintenance plan. 40 CFR 49.6(d).

continued attainment by other means as well, such as preparing updated emissions inventories for the area to allow for a comparison with the inventories prepared for the maintenance plan. However, in this instance, maintenance of the standard does not depend upon emissions generated by sources within the area proposed for redesignation, but rather upon the emissions generated upwind. Therefore, we find acceptable the Tribe's monitoring-only-based approach to verification of continued attainment.

5. Contingency Provisions

Section 175A(d) of the Act requires that maintenance plans include contingency provisions, as the EPA deems necessary, to promptly correct any violations of the NAAQS that occur after redesignation of the area to attainment. Such provisions must include a requirement that the state will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area.

Under section 175A(d), contingency measures identified in the contingency plan do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP or TIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event. The maintenance plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific timeline for action by the state or tribe. As a necessary part of the plan, the state or tribe should also identify specific indicators or triggers, which will be used to determine when the contingency measures need to be implemented.

As required by section 175A of the CAA, the Pechanga Tribe has adopted a contingency plan to address possible future ozone air quality problems. See section 5.7 of the Pechanga Ozone Maintenance Plan. The Tribe's contingency plan includes both a specific contingency measure that has already been adopted and is being implemented early [37] and a mechanism to trigger the adoption of additional measures as needed.

Given that emissions generated on the reservation have little or no effect on ozone conditions at the reservation itself, the Pechanga Ozone Maintenance Plan reasonably looks to emissions-reduction strategies to be implemented upwind of the reservation, and one such program, CARB's Advanced Clean Cars Program (ACCP), is the specific contingency measure cited in the maintenance plan. Because CARB regulations, including the ACCP, do not apply on the reservation, the ACCP does not qualify as a contingency measure for the Pechanga Ozone Maintenance Plan. However, as described below, we find that the ACCP will provide additional emissions reductions in the South Coast and thereby provide sufficient protection of ozone conditions at the reservation to justify the lack of specific contingency measures to be implemented by the Tribe in the wake of a monitored ozone violation at the reservation.

The ACCP, adopted by CARB in 2012, will progressively tighten emissions control requirements for new motor vehicles sold in California from model years 2015 through 2025.[38] While the emission benefits from the ACCP are not expected to be fully realized until the 2035–2040 timeframe, the CARB estimates that statewide emissions of VOC and NO_X will be reduced by 3 percent and 12 percent, respectively, by 2025 due to the ACCP. As such, the ACCP will provide additional emissions reductions in the South Coast through the maintenance period and thereby decrease the chance that a monitored violation will occur at the Pechanga Reservation. Moreover, the additional emissions reductions from the ACCP are surplus to those included in the baseline emissions estimates upon which the maintenance demonstration relies.

The Pechanga Tribe also commits to annually review ozone monitoring data from the three most recent, consecutive years to verify continued attainment of the 1997 ozone standard through the maintenance period. In the event of a monitored violation of the 1997 8-hour ozone standard, the Tribe commits to work with the EPA to identify, adopt, and implement any additional necessary and appropriate measure(s) needed to promptly correct the violation.

Based upon our review of the plan, as summarized above, we conclude that the contingency provisions of the Pechanga Ozone Maintenance Plan comply with section 175A(d) of the Act.

V. Summary of Proposed Action and Request for Public Comment

Under CAA sections 107(d)(3), the EPA is proposing to revise the boundaries of the South Coast and San Diego County air quality planning areas for the 1997 ozone standard to designate the Pechanga Reservation as a separate nonattainment area for the 1997 ozone standard. We are proposing to do so based on our conclusion that factors such as air quality data, meteorology, and topography do not definitively support inclusion of the reservation in either the South Coast or the San Diego County air quality planning areas, that emissions sources at the Pechanga Reservation contribute minimally to regional ozone concentrations, and that the jurisdictional boundaries factor should be given particular weight under these circumstances. If finalized as proposed, the Pechanga air quality planning area for the 1997 ozone standards would have the same boundaries as the Pechanga nonattainment area for the 2008 ozone standard. Unless the EPA finalizes its redesignation of the area to attainment for the 1997 ozone standard, also proposed herein, the area would retain its current classification of ''Severe-17'' for the 1997 ozone standard.

Under CAA sections 110(k), 110(o), and 301(d), the EPA is also proposing to approve the Pechanga Ozone Maintenance Plan, submitted by the Tribe on November 4, 2014, as the Tribe's TIP for maintaining the 1997 ozone standard within the Pechanga Reservation for ten years beyond redesignation, because it meets the requirements for maintenance plans under CAA section 175A.

Lastly, under CAA section 107(d)(3), and based in part on the proposed approval of the Pechanga Ozone Maintenance Plan, the EPA is proposing to grant a request from the Tribe to redesignate the newly-established Pechanga Reservation ozone air quality planning area to attainment for the 1997 ozone standard because the request meets the statutory requirements for redesignation under the Clean Air Act.

If finalized as proposed, the requirements that had applied to the Pechanga Reservation by virtue of its inclusion in the South Coast ''Extreme'' ozone nonattainment area for the 1-hour ozone standard would no longer apply, nor would the requirements that had applied to the reservation by virtue of its designation as ''Severe-17'' for the 1997 ozone standard. The requirements that would no longer apply include, among others, the NNSR major source threshold of 10 tpy for ozone precursor

[37] The Tribe followed the August 13, 1993 EPA guidance memorandum titled ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas.''

[38] On January 9, 2013, EPA approved CARB's request for a waiver of preemption under section 209(b) for its ACCP regulations. See 78 FR 2112.

emissions in ''Extreme'' ozone nonattainment areas. New or modified stationary sources proposed at the Pechanga Reservation would remain subject to major source nonattainment NNSR, however, by virtue of the reservation's classification as a ''Moderate'' ozone nonattainment area for the 2008 ozone standard. The NNSR major source threshold in ''Moderate'' ozone nonattainment areas is 100 tpy.

In addition, if finalized as proposed, the EPA would withdraw our proposal to reclassify the Pechanga Reservation as ''Extreme'' for the 1997 8-hour ozone NAAQS at 74 FR 43654 (August 27, 2009). In so doing, we would resolve the action that we deferred in 2010 [75 FR 24409 (May 5, 2010)] when we reclassified the rest of the South Coast, as then defined and with the exception of two reservations, as ''Extreme'' for that standard.

In concluding that it is appropriate to propose approval of the tribe's requests for boundary changes and designation to attainment for the 1997 ozone NAAQS, the EPA relies heavily on the obvious fact that this is a request from a federally recognized tribal government. The tribe has been determined previously to qualify for TAS, and the lands under consideration here are subject to EPA's Tribal Designations Policy. EPA finds that the tribe has met all applicable requirements of that policy.

EPA also relies on the facts that there are valid monitoring data showing that current air quality at the Pechanga Reservation meets the 1997 ozone standard and that the emissions from tribal lands here are extremely small and do not contribute in any meaningful way to any nearby ozone nonattainment area. Finally, the EPA notes that this action to establish a separate air quality planning area, if finalized, would simplify implementation of the ozone standards by eliminating the presence of two different planning areas for the same criteria pollutant, ozone. This separate treatment of the Pechanga Reservation is consistent with EPA's prior actions to reclassify the South Coast ozone nonattainment area in 2010, and to establish a separate ozone nonattainment area for the 2008 ozone standard in 2012. In summary, the proposed changes in the boundaries and the status of this area are supported by several unique factors described in this notice that are unlikely to be present in other nonattainment areas.

The EPA is soliciting public comments on the issues discussed in this document and will accept comments for the next 30 days. These comments will be considered before taking final action.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an Indian reservation air quality planning area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by the TIP. Redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, under circumstances where a tribe is determined as eligible for TAS for the purposes of section 110 with respect to a given TIP, the Administrator is required to approve a TIP 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 TIP submissions, the EPA's role is to approve tribal choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions merely propose to approve a tribal plan and redesignation request as meeting Federal requirements and do not impose additional requirements beyond those imposed by tribal law. For these reasons, these proposed actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, given the nature of these proposed actions, we presume that the proposed actions would have ''tribal implications'' as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), with respect to the Pechanga Tribe. However, the proposed actions would not impose substantial direct compliance costs or preempt tribal law. Moreover, these proposed actions respond directly to specific requests submitted by the affected tribe and follow from extensive coordination and consultation between representatives of the Pechanga Tribe and the EPA about these and other related matters.

List of Subjects

40 CFR Part 49

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

40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, National parks, Ozone, Wilderness areas.

Dated: December 23, 2014.

Alexis Strauss,

Acting Regional Administrator, EPA Region 9.

[FR Doc. 2014–30830 Filed 1–5–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0708; FRL–9921–34–Region 9]

Clean Data Determination for 1997 $PM_{2.5}$ Standards; California—South Coast; Applicability of Clean Air Act Requirements; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the existing public comment period for a proposal published in the **Federal Register** on December 9, 2014. In that action, pursuant to the Clean Air Act, EPA proposed to determine that the Los Angeles-South Coast Air Basin (South Coast) air quality planning area in California has attained the 1997 annual and 24-hour fine particle ($PM_{2.5}$) National Ambient Air Quality Standards. This proposed determination is based upon complete (or otherwise validated), quality-assured, and certified ambient air monitoring data showing that the area has monitored attainment of the 1997 annual and 24-hour $PM_{2.5}$ standards based on the 2011–2013 monitoring period. If the EPA finalizes this determination of attainment, the requirements for the area to submit certain State implementation plan revisions shall be suspended for so long as the area continues to attain the 1997 annual and 24-hour $PM_{2.5}$ standards. One commentor requested an extension of the comment period for this proposed rulemaking. EPA is now extending the public comment period for fourteen days.

DATES: The comment period for the proposed rule published on December 9, 2014 (79 FR 72999) is extended. Comments must be received on or before January 22, 2015.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0708, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: tax.wienke@epa.gov.*
- *Mail or deliver:* Wienke Tax, Air Planning Office, U.S. Environmental Protection Agency, Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901.

Instructions: All comments 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. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, and 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, your email address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically on the *http://www.regulations.gov* Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office, U.S. Environmental Protection Agency, Region 9, Mail Code AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901, 415–947–4192, *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a proposed rule in the **Federal Register** on December 9, 2014 (79 FR 72999). EPA is extending the existing public comment period for that proposal. In that action, pursuant to the Clean Air Act, EPA proposed to determine that the Los Angeles-South Coast Air Basin (South Coast) air quality planning area in California has attained the 1997 annual and 24-hour fine particle ($PM_{2.5}$) National Ambient Air Quality Standards. This proposed determination is based upon complete (or otherwise validated), quality-assured, and certified ambient air monitoring data showing that the area has monitored attainment of the 1997 annual and 24-hour $PM_{2.5}$ standards based on the 2011–2013 monitoring period. If the EPA finalizes this determination of attainment, the requirements for the area to submit certain State implementation plan revisions shall be suspended for so long as the area continues to attain the 1997 annual and 24-hour $PM_{2.5}$ standards. One commentor requested an extension of the comment period for this proposed rulemaking. EPA is now extending the public comment period for fourteen days for the December 9, 2014, proposed clean data determination for the 1997 $PM_{2.5}$ standards for the South Coast area, California.

Dated: December 18, 2014.

Jared Blumenfeld,

Regional Administrator, EPA Region 9.

[FR Doc. 2014–30951 Filed 1–5–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[PS Docket No. 14–174, GN Docket No. 13–5, RM–11358, WC Docket No. 05–25, RM–10593; FCC 14–185]

Ensuring Customer Premises Equipment Backup Power; Technology Transitions; Copper Retirement; and Discontinuance of Service

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) initiates a rulemaking seeking public comment on: Ensuring reliable back-up power for consumers of IP-based voice and data services across networks that provide residential fixed service that substitutes for and improves upon the kind of traditional telephony used by people to dial 911; protecting consumers by ensuring they are informed about their choices and the services provided to them when carriers retire legacy facilities (*e.g.,* copper networks) and seek to discontinue legacy services (*e.g.,* basic voice services); and protecting competition where it exists today, so that the mere change of a network facility or discontinuance of a legacy service does not deprive small- and medium-sized businesses, schools, libraries, and other enterprises of the ability to choose the kinds of innovative services that best suit their needs. The proposed rules and the comment process that follows will help the Commission ensure that the fundamental values of competition, consumer protection, public safety, and national security are not lost merely because technology changes.

DATES: Submit comments on or before February 5, 2015. Submit reply comments on or before March 9, 2015.

ADDRESSES: You may submit comments, identified by PS Docket No. 14–174, GN Docket No. 13–5, RM–11358, WC Docket No. 05–25, RM–10593, by any of the following methods:

- Federal Communications Commission's Web site: *http://*

fjallfoss.fcc.gov/ecfs2/. Follow the instructions for submitting comments.

• People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michele Levy Berlove, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1477 or by email at *Michele.Berlove@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in PS Docket No. 14–174, GN Docket No. 13–5, RM–11358, WC Docket No. 05–25, RM–10593; FCC 14–185, adopted on November 21, 2014 and released on November 25, 2014. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is available on the Commission's Web site at *http://www.fcc.gov/.*

Synopsis

1. In the Notice of Proposed Rulemaking (*NPRM*), we seek to ensure preservation of the fundamental values of competition, consumer protection, public safety, and national security during the transition of legacy networks and services to networks and services based on new technologies. We advance these goals by proposing and seeking comment on revisions to our rules and policies concerning continuity of power, copper retirement, and service discontinuances governed by Section 214 of the Communications Act of 1934, as amended (the Act).

I. Introduction

2. The Commission has recognized that our communications infrastructure is undergoing key technology transitions, for example: (1) The transition of switched voiced services from legacy TDM and Signaling System No. 7 (SS7) networks to Session Initiation Protocol (SIP)/IP networks; (2) the transition of TDM-based switched voice services to interconnected VoIP services that rely on SIP/IP networks, and relatedly the advent of Voice over LTE (VoLTE) services that will soon be widely available on LTE wireless networks, and (3) the change in the physical layer of last-mile technology, in particular from twisted pairs of copper wire to fiber optics cable, co-axial cable, and wireless technologies. The network investment that is leading to these technology transitions has many benefits. Modernizing communications networks can dramatically reduce network costs and lead to the development of new and innovative services, devices, and applications, and can also result in improvements to existing product offerings and lower prices. To date, these new technologies generally have enabled the creation of additional choices for customers of voice, video, and broadband services. In many cases, retail customers may return to a legacy, copper-based service if the new services fail to meet their needs or expectations. However, as the Commission unanimously recognized in the January *Technology Transitions Order:*

> [I]n the natural course of progress, we expect there will come a tipping point, a point where the adoption of new communications technologies reaches a critical mass and most providers wish to cease offering legacy services. This is a reflection of technological innovation and in that respect is a good thing. But it also removes a choice from the marketplace: The choice that has been the source of the enduring values for generations and the service that Congress beyond question marked as essential to all Americans. From this perspective, we stand today at the precipice of a very different technology transition—the turning off of the legacy suite of services that has served our nation well.

The Commission in January went on to affirm that our ''mission and statutory responsibility are to ensure that the core statutory values endure as we embrace modernized communications networks.''

3. Many consumers have embraced new technologies. However, we recognize that many consumers continue to rely on the features and functionalities of the legacy wireline networks, and the Commission must ensure that it can carry out its statutory mission as networks reach the ''tipping point'' in the transition away from legacy facilities and services. Currently, consumers may expect certain familiar data-based services, such as credit card readers, home alarms, and medical alert monitors to function in a particular way. Consumers of wireline telephony may also expect their plug-in phones to work during a power outage without any action on their part. However, networks other than copper and services not based on TDM may not support these functionalities, or not in the ways that consumers have come to expect. Moreover, competitive LECs have come to rely on the incumbent LEC legacy facilities to provide broadband services to small- and medium-sized businesses and other enterprise customers. And some parties argue that certain copper retirements and transitions from TDM preclude their access to affordable last-mile facilities and ability to serve these retail customers. As new facilities and services are introduced and adopted, the tipping point draws closer. The time to act is now to prevent harm to consumers, competition, public safety, and national security that cannot be undone.

II. Background

A. CPE Backup Power

4. Consumers receiving voice telephone service over legacy copper networks have traditionally relied on power provided from the central office to sustain service during power outages. (Loops provided over Digital Loop Carrier (DLC) are an exception. For DLC loops, backup power (if provided) is provided by the DLC remote terminal. Remote terminals, however, are less likely to provide backup power than central offices.) Moreover, even in a prolonged outage lasting days or weeks, central offices typically have backup power capabilities that can ensure continuous voice service over copper to residences for the duration of the outage. Hence, consumers have been able to count on the continued availability of telephone service in harsh weather conditions and other emergencies when they are most vulnerable.

5. The availability of CPE backup power at the residence is therefore an important issue for consumers that may be faced with retirement of the copper networks in their communities. Carriers planning to retire their copper networks can potentially use a variety of physical media on which to transmit their services, including fiber, coaxial cable, or wireless. None of these network alternatives, however, will typically function in a power outage without a backup power source for customer CPE. As consumers transition from legacy copper loops to new technologies, it is important they continue to have reasonable CPE backup power alternatives to support minimally essential residential communications,

particularly access to emergency communications, during power outages.

6. CPE backup power is not solely a copper retirement issue, however. Millions of consumers in communities where legacy copper networks continue to operate already rely on other networks that do not provision line power to the customer premises. For these consumers as well, CPE backup power is a significant issue that must be addressed to ensure continuity of communications. We therefore examine ways to promote access to CPE backup power for residential voice services across different technologies by proposing a framework that would establish reasonable expectations for when providers should bear responsibility for the provision of CPE backup power during a power outage.

B. Copper Retirement

7. Considering the technology transitions currently underway, we find that the time is right to review our current regulations governing copper retirement. We do not believe that our copper retirement process sufficiently protects our core values given the increase in frequency and volume of copper retirements and the concurrently growing impact on consumers and competition. This document thus proposes revising our copper retirement process to better protect consumers and ensure that transitions to fiber do not undermine competition while at the same time maintaining the incentives for incumbent LECs to deploy fiber.

8. We recognize the many benefits of fiber-based service and the desirability for incumbent LECs of not having to operate both copper and fiber networks indefinitely, including the potential for more bandwidth and increased reliability in difficult weather conditions. We emphasize that we support and encourage fiber deployments, and are committed to maintaining the incentives for providers to deploy fiber. The National Broadband Plan recognized that requiring incumbent LECs to maintain two networks—one copper and one fiber—''would be costly, possibly inefficient and reduce the incentive for incumbents to deploy fiber facilities.'' The Commission's task is to protect consumers and promote competition while taking account of the need of incumbent LECs to manage their networks effectively and efficiently.

9. *Current Regulations.* Our current regulations governing copper retirement by incumbent LECs were issued a decade ago, when fiber loop deployment was still in its infancy and large-scale retirement of copper networks was far in the future. Currently, incumbent LECs that intend to retire loops or subloops that are being replaced with FTTH or Fiber-to-the-Curb (FTTC) loops must provide notice via our network change disclosure process. Interconnecting carriers can seek to delay but cannot prevent retirement, nor do our rules contemplate that we approve or deny planned copper retirements for which incumbent LECs provide notice under part 51. (In the *Triennial Review Order,* the Commission declined to impose any ''affirmative regulatory approval'' prior to the retirement of copper loop facilities.) This reflects the Commission's decision a decade ago to decline to require affirmative regulatory approval before an incumbent LEC can retire any copper loop facilities and its finding that ''such a requirement is not necessary at this time because our existing rules, with minor modifications, serve as adequate safeguards.'' Our existing rules do not impose specific consumer notice or consumer education requirements on carriers retiring copper facilities.

10. *Increasing Scope and Frequency of Retirements.* Incumbent LECs are steadily transitioning wire centers from copper facilities to fiber and all-IP networks. Indeed, the Commission has posted over 20 Public Notices for incumbent LEC proposed copper retirements since January 2014, and we expect the notice of copper retirements to increase in volume and geographic scope.

11. *Consumer Protection Concerns.* Our record reflects concern that incumbent LEC decisions related to copper retirement can have a significant impact on consumers, yet our Part 51 rules are silent on this important issue. For instance, Public Knowledge and other consumer advocacy groups summarized and submitted multiple filings asking state public service commissions to pause copper retirements and to investigate service-related issues with existing copper networks. These consumer advocates allege that ''customers are being involuntarily moved to fiber or IP-based service (or some combination thereof), even if those new technologies fail to serve all of the user's needs or will be more expensive.'' These groups also allege that in some cases incumbent LECs are failing to maintain their copper networks in an effort to push consumers off of copper and onto fiber or other technologies. Further, they claim that some incumbent LECs are misleading subscribers into believing that they may no longer continue to receive legacy service (*e.g.,* legacy voice-only service, known as POTS) or, at a minimum, that those carriers are failing to advise subscribers that their legacy service remains available over new network facilities. Incumbent LECs dispute these allegations. For example, with respect to the claim consumers are forced off of legacy services during copper retirements, Verizon asserts that where it retires copper facilities, customers migrated to fiber ''receive the same POTS service at the same price, unless they choose to upgrade.'' Consumer advocates also assert that an important step in protecting consumers is to ensure that they have a voice in the retirement process.

12. *Competitive Concerns.* We are committed to preserving the core statutory value of competition during the technology transitions that are underway. Competitive LECs have expressed concern over copper retirements, alleging, among other things, that incumbent LECs are retiring copper—and thereby wasting a valuable resource—merely to preclude potential broadband competitors from providing service. Competitive carriers use copper facilities to provide alternative broadband services to small- and medium-sized businesses. As reflected in the various filings with the Commission, competitive LECs claim that the increased pace of copper retirement will lead to reduced availability of Ethernet-over-Copper services to small and medium businesses. Because of their concerns, certain competitive LECs have requested that the Commission permit incumbent LECs to retire or otherwise remove copper only in a narrow range of circumstances. Competitive LECs also recommended revisions to our copper retirement process. Specifically, in 2007, BridgeCom et al. and XO et al. filed petitions for rulemaking to modify the Commission's copper retirement regulations. In its petition, BridgeCom recommends applying copper retirement rules to the feeder portion of the copper loop and subloops. XO recommends stronger notice requirements, such as requiring incumbent LECs to publish notice of a proposed copper retirement at least 12 months before implementation. These competitive LECs also request that the Commission allow states to adopt copper loop requirements stronger than the Commission's rules.

13. In response, incumbent LECs argue there is no evidence that copper retirement has hurt competition for broadband. They also state that forcing incumbent LECs to maintain redundant copper facilities prevents them from efficiently upgrading their networks, and discourages incumbent LEC and

competitive LEC network investments in fiber. They claim consumers will ultimately be harmed by diminished investment in broadband technologies if incumbent LECs are forced to retain copper facilities.

14. *Benefits of Copper.* Construction of fiber and transitions to next-generation networks carry clear benefits, but this does not mean that copper networks are without value. In particular, the Commission recognizes the importance of copper facilities as a means for competitors to provide advanced telecommunications capability to businesses, schools, libraries, hospitals, other enterprise customers, and consumers with disabilities. Competitive LECs provide voice and broadband service to enterprise customers by leasing copper loops and connecting those loops to their own Digital Subscriber Line (DSL) or EoC equipment that is generally collocated in the incumbent LEC's central office. Competitive LECs can provide broadband with EoC at speeds from 3 to 30 Mbps, and in some areas can reach 200 Mbps. Companies are testing technologies over copper that will provide speeds of 10 Gbps. Further, the use of competitive carriers' own equipment over leased copper enables these carriers to design their own set of integrated broadband, voice, and even video services. Another important feature of copper is that it carries an independent source of power that preserves service during emergencies when the electric power grid fails. Finally, copper is already deployed and financed by ratepayers and subsidies.

C. Section 214 Discontinuance

15. Pursuant to our Section 214(a) discontinuance process, telecommunications carriers—other than CMRS providers—and interconnected Voice over Internet Protocol (VoIP) providers must obtain Commission authority to discontinue interstate or foreign service to a community or part of a community. (For convenience, in certain circumstances, this document uses ''discontinue'' (or ''discontinued,'' etc.) as a shorthand that encompasses the statutory terms ''discontinue, reduce, or impair'' unless the context indicates otherwise.) The discontinuance rules are designed to ensure that customers are fully informed of any proposed change that will reduce or end service, to ensure appropriate oversight by the Commission of such changes, and to provide an orderly transition of service, as appropriate. This process allows the Commission to minimize harm to customers and to satisfy its obligation under the Act to protect the public interest. (The Commission normally will authorize proposed discontinuances of service unless it is shown that customers or other end users would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity would be otherwise adversely affected. Where there is question as to whether a service has reasonable substitutes or whether the present or future public convenience and necessity will be adversely affected, the Commission will scrutinize the discontinuance application, consistent with its statutory obligations.) The Commission has discretion in determining whether to grant a provider authority to discontinue, reduce, or impair service pursuant to Section 214. To be clear, the fact that a carrier is statutorily obligated to seek discontinuance approval does not mean the carrier will be prevented from discontinuing the service. Rather, it means that the request must go through a public review process to ensure that the public interest—encompassing consumer protection, competition, public safety, and other statutory responsibilities—is protected.

16. In this document, we focus on three key issues in the context of service discontinuances: (1) Ensuring that consumers receive adequate substitutes for discontinued services; (2) further defining the scope of our Section 214(a) authority, focusing in particular on the context of wholesale services; and (3) ensuring competitive availability of wholesale inputs following discontinuance of incumbent LECs' TDM services on which competitive LECs currently rely.

17. *Adequacy of Substitutes for Retail Services.* In evaluating a Section 214 discontinuance application, the Commission generally considers a number of factors, including the existence, availability, and adequacy of alternatives. Through these factors, the Commission ensures that the removal of a choice from the marketplace occurs in a manner that respects consumer expectations and needs. In an era of ubiquitous legacy services, identifying an adequate like-for-like substitute was comparatively easy. Today, that is not the case. Building on this theme, Public Knowledge states that ''[b]efore policymakers can state with confidence that any new technology is comparable to or better than existing network technology, [they] must know the metrics by which to compare the two. The Commission should therefore establish the metrics by which it will evaluate new technologies, when, for example, a carrier files an application to change or retire its network under § 214(a).''

18. *Network Security and Reliability.* Improved network security reduces risk to all interconnected service providers, their customers, and the nation as a whole. Careful attention to network security becomes particularly important when networks are in transition, and it is relevant to whether proposed or available alternative services provide the same reliability and resiliency that consumers have come to expect from their home voice service.

19. *Wholesale Access to Last-Mile Services.* In the *Technology Transitions Order,* the Commission noted the importance of maintaining wholesale access to protect the enduring value of competition embodied in our communications laws during and after the technology transitions. One of the primary goals of this document is to begin the process of ensuring that there is competition in serving every level of the enterprise market, from very small businesses to large enterprises. As explained in the *National Broadband Plan,* ''[b]ecause of the economies of scale, scope, and density that characterize telecommunications networks . . . it is not economically or practically feasible for competitors to build facilities in all geographic areas.'' This is especially true in those cases where the potential return on investment from serving the needs of lower demand users, such as residences and small businesses, does not justify the cost of overbuilding an incumbent. Faced with these economic realities, competitive LECs continue to rely significantly on wholesale access to the last-mile facilities of incumbent LECs, and have expressed concern about the future of wholesale access to last-mile facilities and services as we undergo the technology transitions. (Some competitive LECs point out that the Commission based its decisions to grant forbearance from dominant carrier regulation on the availability of regulated ''TDM-based, DS1 and DS3 special access services . . . in addition to section 251 UNEs.'') Even incumbent LECs wanting to serve customers with operations outside of their service territory—as would happen with a retail business with multiple locations—depend on wholesale inputs and for that purpose have their own competitive LEC subsidiaries.

20. COMPTEL has proposed a framework to guide the IP transition because ''failure to adopt and enforce technology-neutral wholesale policies threatens the ability of competitive carriers to obtain last-mile access . . . and thus jeopardizes competition in the

business broadband market.'' As Chairman Wheeler noted recently, competitive providers ''deliver important competitive alternatives to business and enterprise customers. This in turn helps those enterprises provide better, more affordable goods and services to members of the general public.'' For example, competitive LECs can provide broadband with EoC to small- and medium-sized businesses at speeds that reach 200 Mbps. Moreover, in its 2009 petition, Cbeyond sought expedited rulemaking concerning access by competitive providers to incumbent LEC fiber loops. Cbeyond claimed that with access to high capacity fiber and hybrid loops, competitors can ''aggressively market the next-generation applications that are the key to small businesses.'' Competitive LECs continue to serve an important part of the Nation's enterprise market, and ''as competitive LECs offer competitive service, it creates an incentive for incumbents to invest more in their networks and offer better services to win their share of business customers.''

21. In the *Triennial Review Order,* the Commission emphasized the importance of incentivizing investment for the deployment of new technologies. In doing so, the Commission limited unbundling requirements imposed on incumbent LECs' mass-market fiber loop deployments to remove disincentives to the deployment of advanced telecommunications. This decision did not, however, eliminate the requirement to provide special access services that serve as critical inputs to competition—nor did it eliminate the requirement to unbundle DS1 and DS3 capacity loops. Today, with significant fiber deployment and the current technological transition already underway, we must ensure the customers of both incumbent and competitive LECs who currently depend on legacy services continue to have appropriate access to either adequate legacy or IP-based service alternatives. The Commission's discretion to grant a provider authority under Section 214 to discontinue special access service provides a mechanism to address these concerns. In applying Section 214, the Commission must fully understand the impact on competition and innovation of either granting or denying the application.

III. Discussion

A. Continuity of Power for CPE

22. Retirement of copper networks highlights a broader challenge facing consumers of any service that depends upon access to a residential power supply. The ability to communicate during power outages remains critical, particularly during prolonged outages caused by catastrophic storms or other major disasters. In such situations, consumers have a heightened need to be able to communicate with public safety officers, first responders and other response workers in order to convey or receive lifesaving information. This need is felt not only by consumers being migrated from copper to fiber and other networks, but also those who have already made that transition by subscribing to facilities-based VoIP services or other IP-based solutions. Moreover, not only is backup power for services delivered over fiber or other non-copper media typically limited, but individual communications providers use different technologies and apply different policies to the powering of end user devices, resulting in the potential for consumer confusion.

23. As technology transitions, it is important that lines of responsibility for provisioning CPE backup power are clearly delineated and understood by providers and consumers alike, so that performance can meet expectations and continuity of communications can be ensured. Establishing clear expectations for both providers and customers as to their responsibilities throughout the course of an outage should minimize the potential for lapses in service to occur due to consumer confusion or undue reliance on the provider. Accordingly, as part of our efforts to promote smooth technology transitions, we consider the adoption of baseline requirements for ensuring continuity of power for CPE during commercial power outages. In the discussion below, we seek comment on a framework for establishing reasonable expectations regarding provisioning CPE backup power in the event of an outage.

24. As a threshold matter, we seek comment on the communications services we should include within the scope of any CPE backup power requirements we may adopt. We observe that CPE backup power is not an issue that needed to be addressed with respect to legacy networks that provided line power to consumers, because consumers could rely on the availability of continuous power sufficient to operate basic telephone CPE indefinitely. However, it is an issue that must be addressed in the context of providing CPE backup power for VoIP and potentially other residential IP-based services (as well as legacy services delivered over fiber), because CPE for these services typically will require a backup power source. We therefore propose that any potential requirements would apply to facilities-based fixed voice services, such as interconnected VoIP, that are not line-powered by the provider. For this purpose, how should the Commission define a ''fixed'' wireless service? Does it depend upon whether the service is primarily used from a fixed location and/or marketed for that purpose? Is taking a functional approach to defining ''fixed'' wireless service appropriate, and if so how would that apply to services on the market today? How do we account for power outages affecting other CPE, such as cordless phones, or the network itself?

25. While consumers generally may use residential communications services for a wide range of communications needs, power during an outage is a valuable and limited resource. We therefore intend that any backup power requirements we propose today afford sufficient power for minimally essential communications, including 911 calls and the receipt of emergency alerts and warnings. We seek comment on what services should be considered ''minimally essential'' for purposes of continuity of power. While voice services historically have been the primary means of contacting 911, there are circumstances where other modes of communication, such as texting, may be more effective or energy-efficient; additionally, Next Generation 911 will begin to introduce images, video and other new data streams into Public Safety Answering Points (PSAPs). In addition, we seek comment on the extent to which backup power can be prioritized or otherwise conserved for such minimally essential communications needs. For example, can service providers offer mechanisms for lowering power usage and conserving battery power, such as a default turnoff of all communication services when the device is operating on battery, so that the device does not drain backup power while a consumer is away from home or otherwise not using the device? Can CPE be configured to only power on to receive emergency alerts? If it is technically difficult to distinguish incoming emergency alert calls from other incoming calls, should only 911 calls be supported? What measures can providers take to rapidly load shed non-essential communications functions to extend the duration of available backup power to support minimally essential functions? In this regard, we seek comment on the extent to which it is reasonable to place an obligation on the provider (versus place an expectation on the consumer) to take measures to conserve backup power for minimally

essential communications. How should consumer preferences and community public safety interests inform our policymaking?

26. In the discussion that follows, we seek comment on a framework to establish expectations for when providers must take steps to maintain continuity of power for CPE. (In the event we were to adopt a requirement that providers must provision CPE backup power, we expect that providers would be entitled to commercially reasonable compensation in exchange for providing this service.) In the past, consumers have relied upon service providers for backup power for their residential landline phones. Is it reasonable for providers to continue to bear primary responsibility for CPE backup power, and if so, to what extent? We propose that providers should assume responsibility for provisioning backup power that is capable of powering their customers' CPE during the first eight hours of an outage. (In this context, unless otherwise stated, we use the term ''backup power'' to refer to the availability of standby backup power, not actual talk time.) Eight hours appears to be consistent with certain VoIP deployment models already in practice, though some providers have deployed backup power devices that are capable of providing power for up to twenty-four hours. (We note that CSRIC's report indicates that while backup time across different use cases may vary, several current deployments support up to eight hours of standby battery backup. Providing consumers with eight hours of backup power would accommodate circumstances where the power goes out in the middle of the work day or in the middle of the night, when consumers may be away from home or asleep and therefore would not reasonably be able to take measures on their own to ensure continuity of communications. On the other hand, a longer time period—such as the twenty-four hours afforded by Verizon's devices—could provide consumers with sufficient time to attend to other time-sensitive matters that may arise during the course of a natural disaster or other emergency. We seek comment on these options.

27. To the extent we place the responsibility on providers to provide CPE backup power, we seek comment regarding solutions that are currently available to providers to meet this responsibility. To the extent such solutions are available, could they be widely deployed at a reasonable cost? If not, what technical hurdles or other issues must be addressed? The Communications Security, Reliability and Interoperability Council (CSRIC) recently issued recommendations for advancing the state of the art in CPE powering. Could power-over-Ethernet (PoE) be used to power devices that lack a backup power supply but are connected to devices that are running on battery power? CSRIC notes that PoE ''is an established standard commonly used in hotels and other commercial applications,'' and ''could provide an easy to implement approach'' in certain circumstances. Could solar power, fuel cells, or other alternative energy sources be used to maintain a continuous CPE power supply that operates independently of the commercial power grid?

28. We also seek comment on how the provider would meet its responsibility to provide backup power for a specific duration of time. Would it be sufficient for the provider to initially install backup power technology at the customer's residence, while leaving the consumer responsible for any associated maintenance of the power supply? How are providers currently supporting CPE backup power today across different services and technology platforms? How long does the backup power currently offered by providers last, and for what services? In what form is the backup power provided? Should the provider have any responsibility to monitor battery status and determine whether the battery has degraded and if so, how could this responsibility be carried out? Should that responsibility change if the consumer self-installs the CPE, versus having the provider professionally install the CPE? Should consumers be able to opt out of backup power? Could providers install CPE backup power sources that are located external to the customer's residence and thus able to be monitored and maintained remotely? Are there other methods that could be used to ensure the availability of CPE backup power immediately after a power outage? Our proposals are stated in terms of standby time, but is talk time the appropriate metric?

29. We next seek comment on the extent to which consumers could self-provision CPE backup power. Under our proposal, after the first eight hours of an outage, the burden to maintain continuity of power for CPE no longer would be on the provider under our rules, but would be allowed to would fall on the consumer. (Where we refer to the ''burden'' or the like falling or shifting to the consumer, we mean the practical need to provide for backup power and do not propose imposing any legal duty or obligation on consumers.) We seek comment on whether this is a reasonable expectation. Also, to the extent consumers self-provision CPE backup power, we seek comment on how best to ensure they equipped to do so. We believe that expecting consumers to self-provision CPE backup power after certain amount of time may be reasonable to the extent that consumers would have ready access, through standard commercial outlets, to replacement batteries or other backup power technology. We seek comment on the commercial availability of such technologies. We note that CSRIC has recommended that providers make affordable options for battery backup of CPE available to consumers. For customers who choose battery backup, should service providers be required to offer spare batteries, at reasonable cost, to replace batteries when battery life falls below the eight-hour threshold or otherwise during times of extended power outages? Should providers be expected to standardize CPE power supplies and connector interfaces across network devices and CPE, so that a common battery backup unit can be used in the home with multiple devices? (For example, service providers may require their equipment developers to provision CPE that uses a power source of a type that consumers can easily replace, *e.g.,* D-cell batteries. CSRIC states that ''[i]mprovements in battery technology are . . . allowing [D-cell batteries] to approach the backup times of lead acid batteries on single charge discharges.'') Are such efforts already under way? We seek comment on the use of D-cell batteries and on the costs and benefits of requiring consumers to purchase a sufficient number of D-cell batteries to provide continuing backup power. Another option may be Lithium-Ion external battery packs, which are widely used to provide reserve power to mobile phones and tablets, using a standardized so-called USB micro-B connector on the mobile device. We seek comment on the variety of options available, today and in the foreseeable future, as well as the technical trade-offs inherent in the different options.

30. We believe that a comprehensive consumer education plan would be critical to consumers' ability to successfully self-provision CPE backup power. Are service providers already offering consumers necessary information regarding backup power options and on how to install and maintain backup power technologies? Are providers offering consumers a sufficient explanation of a device's emergency use capabilities, battery backup units, and how to access detailed information about battery

backup? We seek comment on whether we should require providers to develop and implement consumer education plans regarding the availability of CPE backup power. We also seek comment on when providers should make such information available. For example, when would it be sufficient for service providers to make this information available—at the point-of-sale, at the initial set up of CPE, or at some other point in the process? Should providers also provide detailed CPE backup power information immediately prior to a predicted extreme weather event or other anticipated emergency? We seek comment generally on additional ways in which providers may facilitate consumers' ability to self-provision CPE backup power.

31. Finally, we seek comment on strategies for maintaining continuity of power for CPE during extended periods of commercial power failure. Power outages of such extended duration are comparatively rare, but they are likely to present additional challenges. During prolonged outages, standard commercial supply chains that consumers would typically rely on for replacement batteries and other backup power technologies may be disrupted. We seek comment on how service providers can best assist consumers to obtain access to backup power resources during long-term power outages. What experiences have service providers had in these situations? We note the increasing popularity and proliferation of mobile cell phone charging stations among retail businesses. Such charging stations have repeatedly proven their usefulness in emergencies where carriers have provided disaster relief vehicles for customers of any wireless carrier to place calls, charge a variety of phones, and connect to the Internet via Wi-Fi. (We are also aware of efforts to provide fixed solar powered charging stations for people to charge their cell phones and laptop computers in several cities. We note that some of the charging stations used outside of the United States work very much like vending machines.) Would such solutions be feasible in more rural areas, or in areas with terrain that might be less accessible in the event of severe weather? Is it feasible to establish similar charging stations for CPE or their battery components that support other IP-based services?

32. We also seek detailed information regarding the costs and benefits of the CPE backup power requirements proposed in this document. What would be the costs and benefits of industry compliance with mandates such as these? (We observe that the proposed rules would permit providers to charge commercially reasonable fees for any provision of backup power required under the rules.) What are the costs of developing affordable backup power solutions for any CPE that currently lack them? With respect to backup power provided by batteries, we seek cost information for the entire battery lifecycle, including the costs of procuring, maintaining, and disposing of the batteries. We also seek comment on whether requiring providers to supply customers (or groups of customers) with initial backup power capability would introduce economies of scale. In addition, we seek comment on the costs to the consumer of self-provisioning CPE power during outages that exceed the initial window during which the backup power obligation is on the provider, and whether these costs are more or less than they otherwise would be in the absence of any backup power requirements. In assessing the costs and benefits, how should we account for consumer usage patterns? Many consumers have already transitioned to fiber; what has been their experience, particularly with long duration or frequent power outages, and how should that inform our policymaking? Likewise, many consumers have mobile devices and many of those consumers have only wireless phones. How should that factor into our analysis?

33. In the same vein, how can we minimize the costs of compliance while maximizing the benefits? Would it be sufficient if every provider of facilities-based non-line-powered fixed voice services were to make available at least one piece of CPE that can be powered for at least 8 hours using commercially available batteries (such as D-cells)? (We note that some providers have deployed devices that are capable of providing back-up power for twenty-four hours.)

34. We next seek comment on the Commission's legal authority to adopt any of the proposals described above. Congress created the Commission, in part, ''for the purpose of promoting safety of life and property through the use of wire and radio communications.'' As communications technologies increasingly operate on commercial power at the customer's premises rather than power from a central office delivered over copper lines, the Commission must ensure that technology transitions do not diminish access to critical communications services, especially 911. Congress has directed the Commission to ''designate 911 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance,'' and to ''promote and enhance public safety by facilitating the rapid deployment of IP-enabled 911 and E–911 services.'' The Commission is also charged with promulgating ''regulations, technical standards, protocols, and procedures as are necessary to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network, where achievable and technically feasible.'' We seek comment on whether requiring sufficient backup power to maintain 911 connectivity during power outages would be well within ''[t]he broad public safety and 911 authority Congress has granted the FCC.''

35. Moreover, section 201(b) the Communications Act requires the practices of common carriers to be ''just and reasonable,'' and authorizes the Commission to ''prescribe rules and regulations as may be necessary in the public interest to carry out the provisions'' of the Act. Section 214(d) of the Act authorizes the Commission to require a common carrier ''to provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier.'' And Section 214(a) empowers the Commission to attach conditions to the discontinuance of common carrier services to part or all of a community. The Commission also has general licensing authority under section 301 of the Act, as well as authority under Section 303(b) to ''[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class'' would provide an additional basis for Commission action. To the extent that our proposals apply to telecommunications carriers or fixed wireless service providers, we tentatively conclude that these provisions provide additional sources of authority for the proposals contained herein. We seek comment on this tentative conclusion.

36. Finally, in light of these statutory mandates, we seek comment on whether minimum backup power requirements to promote continuity of 911 and other communications services would be within Commission's general jurisdictional grant under Title I of the Act and ''reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities.'' We also seek comment on any other sources of legal authority for the proposals set forth above.

37. Alternatively, should the Commission take steps, short of adopting rules, to promote the

development and implementation of consumer CPE backup power solutions? The CSRIC report observes that, due to the wide variety of backup power options and interfaces offered by individual service providers and CPE vendors, ''some level of standardization is needed of . . . power systems and interfaces, if VoIP services are to meet the reliability that consumers expect in the United States.'' Should the Commission take steps to promote the standardization of systems and interfaces that CSRIC recommends, *e.g.,* in cooperation with industry standards bodies such as CableLabs or the Broadband Forum? Should the Commission charge CSRIC or another of its advisory bodies with addressing this issue? Do the best practices that CSRIC recommends in its recent report provide an adequate framework for ensuring that VoIP CPE maintain continuity of power in the event of commercial power failure? Should the Commission monitor whether the CSRIC best practices or any additional measures are being followed, and if so, how should it measure the effectiveness of these practices? While CSRIC's recommendations specifically pertained to VoIP CPE, to what extent can CSRIC's best practices be adapted to apply more broadly? What additional measures, beyond CSRIC's recommendations, should providers undertake to ensure continuity of service during extended power outages?

38. We also seek comment on whether market-based incentives alone could deliver backup power solutions that meet consumer needs and expectations. To what extent do providers compete on the basis of their ability to provide reliable and continuous service during commercial power outages? Do providers have incentives to educate their customers on the potential loss of service that occurs during power outages, and to help them make informed decisions about the backup power options available to them? Is there evidence that backup capabilities for CPE have improved and will continue to improve?

39. Finally, we seek comment on any alternative approaches to providing continuity of communications for consumers, in the event of a power outage. In particular, we invite proposals that would address our concerns without the need to adopt regulatory requirements.

B. Copper Retirement

40. We believe that the increasing frequency and scope of copper retirements call into question key assumptions that underpinned our existing copper retirement rules, and therefore changes are necessary to ensure that our copper retirement process protects retail customers and facilitates competition. In this document, we propose steps to maintain the vitality of our core values of consumer protection, competition, public safety, and national security through the forthcoming technology transitions. In particular, we propose revisions to our copper retirement rules that we believe will align the goals of consumer protection and competition with ongoing incentives to deploy advanced facilities and services. First, we propose defining ''retirement'' of copper—a term not currently defined in our rules—to include removing and disabling of copper loops, subloops, and the feeder portion of loops. Next, we seek comment on how to address allegations that in some cases incumbent LECs are not adequately maintaining their copper facilities that are not yet retired. We then explain why we do not intend to establish an approval requirement for copper retirement. We also propose and seek comment on improvements to our copper retirement process to better promote competition and protect consumers. This document then seeks comment on whether and how we should take action to promote the sale or auction of copper prior to retirement. Finally, it seeks comment on the adoption of best practices that can help address the need for reliable backup power.

1. Definition of ''Copper Retirement''

41. Although the Commission's rules provide that incumbent LECs must comply with network change requirements before they retire any copper loops or subloops, the rules do not define ''copper retirement,'' either with regard to the facilities or the actions involved. We believe that it is necessary to propose a definition of copper retirement to provide parties with guidance on when a network change notification must be filed.

42. *Copper Facilities to Be Included.* We propose that copper facilities included within the concept of ''retirement'' should include copper loops, subloops, and the feeder portion of the loop. Including copper loops and subloops is consistent with our existing rules. However, our current rules do not encompass the feeder portion of loops. In its 2007 Petition for Rulemaking, BridgeCom requested that the Commission initiate a rulemaking proceeding to extend the copper retirement network change disclosure rules to the feeder portion of loops, noting that ''if the feeder portion of the loop is unavailable for unbundled access, the practical difficulty of obtaining access to the remaining portion of the loop forecloses competitive access to the customer.'' We tentatively agree, and we propose including the feeder portion of the loop within our definition of copper retirement. We seek comment on this proposal. Are there any reasons that we should not include copper feeder along with copper loops and subloops? Are there any other copper facilities that should be included?

43. *Actions That Constitute Retirement.* We seek comment on defining ''copper retirement'' as the ''removing or disabling of'' copper loops, subloops, and the feeder portion of loops. Should ''removing'' constitute the physical removal of copper? Should ''disabling'' mean rendering the copper inoperable? Should ''disabling'' constitute retirement only if it is intended to be long-term or permanent? Should ''removing'' or ''disabling'' be defined in different ways? Should we add additional forms of retirement to this definition, and if so what should they be? Should we employ different terminology than that proposed here?

44. *''De Facto'' Retirement and Adequate Maintenance of Facilities.* As stated above, there are numerous allegations that in some cases incumbent LECs are failing to maintain their copper networks that have not undergone the Commission's existing copper retirement procedures. Public Knowledge et al. express concern that consumers are losing access to basic phone service, and that ''[d]enying basic phone service to people who have relied on the network for decades violates the network compact that has successfully guided our communications policy for one hundred years.'' First, to establish whether there is a factual basis for new rules in this area, are incumbent LECs in some circumstances neglecting copper to the point where it is no longer reliably usable? We seek specific examples and facts concerning the consequences to consumers, competition, and public safety. Next, we seek comment on whether and how we should revise our rules to address inadequate maintenance. If we find that new rules are necessary, one option would be to define retirement to include *de facto* retirement, *i.e.,* failure to maintain copper that is the functional equivalent of removal or disabling. We seek comment on this approach. In particular, how would the Commission determine if an incumbent LEC's treatment of its copper facilities fits the definition? For example, should the

Commission consider service complaints? What would be the advantages and disadvantages of this approach to both consumers and competition? We seek comment on potential consequences or enforcement if copper facilities are allowed to degrade in quality to the point of *de facto* retirement without notice to customers? Is there an objective standard, such as industry standards, by which we can determine if copper is *de facto* retired? Are there any other legal or regulatory considerations with creating a *de facto* retirement standard?

45. Historically, the States, localities, and Tribal Nations have played a vital role in overseeing carriers' service quality and network maintenance. Public Knowledge et al., however, suggest that some non-federal governmental entities may be less able to provide such oversight because some state legislatures ''have removed state-level authorities' ability to ensure customers continue to have meaningful access to the basic communications service they have always relied on at affordable prices.'' We seek comment on the extent to which the States, localities, and Tribal Nations are able to address the consumer protection concerns raised by some incumbent LECs' alleged failure to maintain copper facilities, and how that ability has changed over time. How should the trends in the regulatory capabilities of States, localities, and Tribal Nations inform our actions in this proceeding? We emphasize that in this document, we do not seek to revisit or alter the Commission's determination in the *Triennial Review Order* to preserve state authority with respect to requirements for copper retirement.

2. Revision of Copper Retirement Processes To Promote Competition and Protect Consumers

46. We tentatively conclude that the foreseeable and increasing impact that copper retirement is having on competition and consumers warrants revisions to our network change disclosure rules to allow for greater transparency, opportunities for participation, and consumer protection. We discuss specific proposals and questions in this regard below. In connection with our proposed revisions to the copper retirement process, we propose streamlining our rules by creating a new § 51.332 in which we will consolidate network change notification requirements specific to copper retirement. We seek comment on this proposal.

47. Because we expect that an approval requirement would undesirably harm incentives for fiber deployment and because we do not wish to impose a technological mandate, we decline requests to revise our network change notification rules to require incumbent LECs to obtain our approval for copper retirement, as some have suggested. In other words, we believe that copper retirement should remain a notice-based process. We note in this regard that we anticipate that our separate proposal to ensure continued access to wholesale services following TDM discontinuances would address many of the concerns that have led certain competitive LECs to advocate an approval requirement.

a. Competition: Expansion of Notice Requirements

48. As incumbent LECs continue with their technology transitions, competitive providers have become concerned that the incumbent LECs are retiring copper networks in a manner that will harm their ability to compete. To ensure that competitive LECs are fully informed about the impact that copper retirements will have on their businesses, we propose revising our rules to require incumbent LECs to provide interconnecting competitors with additional information about the potential impacts of proposed copper retirements. Specifically, we propose requiring that incumbent LECs provide a description of the expected impact of the planned changes, including but not limited to any changes in prices, terms, or conditions that will accompany the planned changes. (We emphasize that we do not seek through this proposal to provide an exemption from the statutory requirement pursuant to Section 214(a) to obtain authorization to discontinue, reduce, or impair service to a community or part of a community.) We further propose clarifying that incumbent LECs must provide direct notification of planned copper retirements to each telephone exchange service provider that interconnects with the incumbent LEC's network and must file a certificate of service to the Commission confirming the provision of such notice regardless of the timing of the retirement. (The short term notice provisions of our network change notification rules, which apply ''[i]f an incumbent LEC wishes to provide less than six months notice of planned network changes,'' require the incumbent LEC to file a certification with the Commission stating that ''at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each telephone exchange service provider that directly interconnects with the incumbent LEC's network.'' Our network change notification rules state that ''[i]ncumbent LEC notice of intent to [retire copper] shall be subject to the short term notice provisions of this section . . . .'' we have not addressed the question of whether under our current rules an incumbent LEC must comply with the short term notice provisions for a copper retirement if it wishes to provide six months or more of advanced notice.) We seek comment on these proposals. Commenters may wish to address questions such as:

- Will the additional information be useful to competitive providers?
- Is there any reason why incumbent LECs should not be required to provide this additional information?
- Would providing this additional information impose an unreasonable burden on incumbent LECs?
- Is there any additional information that interconnecting telephone exchange service providers might need in order to make an informed decision?
- Would a narrower scope of information achieve the same goals as our proposal?
- How should the notification requirement apply in the event of a natural or manmade disaster?
- Should we require provision of this notification to information service providers that directly interconnect with the incumbent LEC's network and/or to any other entities?
- Should we take action to encourage incumbent LECs to meet with or more collaboratively communicate with entities to which they provide notice, and if so how?
- Would it be helpful for incumbent LECs to provide annual forecasts of expected copper retirements or other network changes; if so, to whom should they provide such forecasts?
- Should we act to ensure that the direct notifications proposed above—and/or network change notifications generally—are provided in a uniform format, and if so how can we best achieve that goal?

49. Competitive providers require adequate notice in order to plan for the elimination of copper-based facilities. Section 251(c)(5) requires ''reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.'' To what extent does our section 251(c)(5) authority support our proposals? Are the proposals above reasonable? To find that we have the necessary legal authority under section

251(c)(5), is it necessary to conclude that the information that is subject to our proposal is either ''necessary for the transmission and routing of services using that local exchange carrier's facilities or networks'' or that it would ''affect the interoperability of those facilities and networks'' and, if so, is one of those standards met? Are there other sources of legal authority that would support the proposals described above?

50. Under our current rules, incumbent LECs must give at least ninety days' advance notice of planned copper retirements. We seek comment on whether this amount of time is sufficient or whether it should be extended. If we do extend the time period, what is appropriate? Is 180 days appropriate? We note that the time period should provide sufficient notice for competitive LECs and for retail customers. We seek comment on whether a lengthier notice period would place too high a burden on incumbent LECs and/or whether the time period should be shortened.

b. Consumer Protection

51. Consumers and other retail customers need to understand what is and is not happening during a copper retirement, and they need to understand their choices about service. Since our current Part 51 rules make no provision at all for retail customers, we fear that this is not currently the case. As stated above, complaints have surfaced from multiple sources that in some cases incumbent LECs are moving customers of legacy services onto IP-based and triple play services during copper retirements, with no procedures in place for customer notice or choice. (Verizon has denied these allegations.) These allegations strengthen our belief that notice obligations should be extended to retail customers. Because copper retirement has the potential to reduce a retail customer's choice, we believe that it is appropriate to extend the notice obligations of our network change disclosure rules to retail customers. We also believe that it is important to give retail customers a voice in the copper retirement process. The Bureau already has created an email address for public comment on copper retirement, and this document seeks to expand retail customers' opportunities to participate in this important process. We also anticipate that notice to retail customers must differ from notice to providers. We therefore propose revising our network change disclosure rules to address the form, timing, and content of notice to retail customers, as well as to educate subscribers regarding copper retirements by which they may be affected, as detailed below. We seek comment on our legal authority to impose the requirements contemplated below.

(i) Notice to Retail Customers

52. *Recipients.* Retail customers who are directly impacted by copper retirement need to know about it, and it simply is not realistic to expect consumers and other retail customers to monitor individual pages on the Web sites of carriers or the Commission. (We do not limit this proposal to residential consumers. Rather, references to ''retail customers'' and ''subscribers'' include non-residential users such as business and anchor institutions.) We therefore propose requiring incumbent LECs to provide notice of copper retirements to their retail customers who will be affected by the copper retirement. Under the proposed rule, an incumbent LEC would be required to directly notify all retail customers affected by the planned network change through electronic or postal mail unless the Commission authorizes in advance, for good cause shown, another form of notice. We seek comment on this proposal. Does it strike the correct balance between the benefits to retail customers of notification and the costs of providing the notification? We also seek comment on the ways in which a retail customer might be ''affected'' by a planned copper retirement. We propose that affected customers who must receive notice are anyone who will need new or modified CPE or who will be negatively impacted by the planned network change. We seek comment on this proposal. Does this proposal capture the correct population? In what circumstances other than needing new or modified CPE is a customer negatively impacted by a planned copper retirement? How significant of a negative impact is necessary to trigger a notice requirement, and from whose perspective should the impact be evaluated? Should we adopt different or more limited criteria? Should our proposed notice requirement apply only to instances in which a technician would need to obtain access to the customer's premises? Should we deem any customer that will see a change in the electrical power arrangements for his or her service to be ''affected''? Are there other circumstances or situations in which a retail customer could be affected by a planned copper retirement in a way that would warrant requiring direct notification of the planned changes? Are there any reasons why retail customers should not be entitled to notice of copper retirements by which they are affected?

53. We note that in some cases, it is possible that copper retirements might have little or no practical impact on retail customers. For example, a copper retirement may not result in the need to replace or install CPE on a retail customer's premises, eliminate line power, or affect the functionality of or access to third-party devices or services. In such circumstances, retail subscribers may find notice to be unnecessary or confusing. However, retail customers are affected by certain planned network changes involving copper retirement, particularly those that require a technician to seek entry to a retail customer's premises home. In those circumstances, we believe that an incumbent LEC's retail customers should be part of the network change disclosure process, and in particular we propose that incumbent LECs should be required to provide such customers notice of an impending copper retirement. We seek comment on these issues.

54. *Form.* The form of notice should be both efficient for incumbent LECs to undertake and effective in educating retail customers about retirements. We propose allowing incumbent LECs to use written or electronic notice such as postal mail or email to provide notice to retail customers of a planned copper retirement. We seek comment on whether such types of notice adequately protect the interests of retail customers. For instance, in a 2002 order addressing notice procedures for solicitation of opt-in or opt-out approval regarding use of customer proprietary network information (CPNI), the Commission stated:

> [W]e recognize that consumers are deluged with unrequested or unwanted commercial email (''spam'') and could easily overlook a notice provided via email. Accordingly, we require carriers to follow certain precautions to ensure that such notices will not be mistaken as spam.

We seek comment on whether the notice procedures used in the CPNI context are appropriate for adaptation to the copper retirement context. What types of precautions should we require to ensure that retail customers have the information necessary to make informed decisions regarding their choices for telephone service? How can we ensure that notice to customers with disabilities is provided in accessible formats? With respect to notification via email, we seek comment on requiring that carriers establish a method by which retail customers may choose the option to receive communications via email and provide the email address to

which the incumbent LEC should send such communications. Would the fact that a customer has already agreed to receive monthly bills or other communications by email demonstrate that the customer can be expected to receive adequate notice of network changes by email? Should we require carriers to obtain express, verifiable, prior approval from retail customers before sending notices by email? We also propose requiring that carriers send direct written notification in instances when an email notice of a planned copper retirement is returned to the carrier as undeliverable. Would such procedures be adequate to ensure that subscribers receive notifications of planned copper retirements from incumbent LECs in a timely manner? Should we also permit oral notice or electronic notice other than by email, such as by telephone call or publication on an incumbent LEC's Web site? Would oral notification present opportunity for abuse or confusion? Should notice requirements differ depending upon the size of the carrier or other factors?

55. To ensure that sufficient information remains available to enable us to enforce our proposed rules, we propose requiring that incumbent LECs maintain records of customer notifications, in whatever form provided, for a minimum period of time. We seek comment on this proposal. If we impose such a requirement, what minimum retention period should we prescribe? In what circumstances, if any, would the burden imposed on incumbent LECs outweigh the Commission's need to have available to it records to evaluate a provider's compliance with our rules? What specific records should we require incumbent LECs to maintain, and in what format?

56. *Content.* We believe that retail customers are entitled to clarity regarding the services available to them. We therefore propose creating a requirement that the notices to subscribers affected by copper retirements state clearly and prominently that a retail customer ''will still be able to purchase the existing service(s) to which he or she subscribes with the same functionalities and features as the service he or she currently purchases'' if that statement is accurate; if this statement would be inaccurate, then we propose requiring the incumbent LEC to include a statement identifying any changes to the service(s) and the functionality and features thereof. We seek comment on this proposal. If the incumbent LEC cannot state accurately that the service(s) available to consumers will be unchanged, we would expect it to consider carefully whether it is required to file a discontinuance application pursuant to Section 63.71 of our rules. In that regard, we also seek comment on the allegations that in some cases, incumbent LECs are misleading retail customers into believing that they may no longer continue to receive legacy services (*e.g.,* POTS) or, at a minimum, that incumbent LECs are failing to advise retail customers that their legacy service remains available over fiber.

57. Further, to be effective, the notice must provide retail customers with the information that they need to understand the practical consequences of copper retirement. To ensure that the notice is sufficient to serve its intended purpose, we propose minimum requirements for the content of notices to subscribers. (As we noted in the 1998 CPNI Order, ''[p]rescribing minimum content requirements will reduce the potential for customer confusion and misunderstanding as well as the potential for carrier abuses.'') Specifically, we propose certain requirements similar to those required by § 64.2008 of our rules for use of CPNI and by § 63.71 of our rules for notice to affected customers of planned service discontinuances. Further, we propose requiring that the notice provide sufficient information and that it contain a clear statement of the customer's rights and the process by which the customer may comment on the planned copper retirement. We seek comment on these proposals.

58. We further seek comment on whether these proposed minimum customer notice requirements are adequate to protect consumer interests. Should there be additional requirements? Are any different or additional notice requirements necessary for certain populations, such as those who are not proficient in English or consumers with disabilities? Do these requirements place too onerous a burden on incumbent LECs? We also seek comment on whether the incumbent LEC should be required to make additional efforts to contact retail customers who do not contact the incumbent LEC to schedule a service call in instances when an incumbent LEC technician must visit the customers' premises to complete work to effectuate the copper retirement.

59. *Timing.* Retail customers will need an opportunity to educate themselves regarding the implications of the planned copper retirement. We propose requiring that incumbent LECs give subscribers the same amount of notice that they give to interconnected providers, which we believe provides sufficient time for subscribers to become educated about the proposal. We seek comment on this proposal and, in the alternative, on what the appropriate notice period should be. We also propose allowing retail customers 30 days in which to comment on a proposed copper retirement from the date the Bureau releases its Public Notice. This matches the amount of time that interconnecting carriers have to comment, and we believe it strikes the correct balance between providing retail customers with sufficient time to comment and ensuring certainty in our retirement process. We seek comment on this proposal.

60. *Statutory Authority.* To what extent does our section 251(c)(5) authority support our proposals? Is there any reason that retail customers should not be understood as persons entitled to receipt of ''public notice''? Are the proposals above ''reasonable''? To find that we have the necessary legal authority under section 251(c)(5), is it necessary to conclude that the information that is subject to our proposal is either ''necessary for the transmission and routing of services using that local exchange carrier's facilities or networks'' or that it would ''affect the interoperability of those facilities and networks,'' and if so is one of those standards met? Are there other sources of legal authority that would support the proposals above? In addition, we seek comment on whether our proposals advance important government interests and on whether any other less restrictive approaches would accomplish our consumer protection goals.

61. *Section 68.110(b).* Section 68.110(b) of our rules provides that:

> A provider of wireline telecommunications may make changes in its communications facilities, equipment, operations or procedures, where such action is reasonably required in the operation of its business and is not inconsistent with the rules and regulations in this part. If such changes can be reasonably expected to render any customer's terminal equipment incompatible with the communications facilities of the provider of wireline telecommunications, or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance, the customer shall be given adequate notice in writing, to allow the customer an opportunity to maintain uninterrupted service.

What can we learn from § 68.110(b) in the context of our present customer notice proposal? Has this provision benefitted customers? To what extent does this provision authorize or otherwise relate to or overlap with our proposed customer notice? Is the

overlap, if any, beneficial in ensuring customer understanding of the impact of various technology transitions, or does it render any portion of our proposal superfluous? Should § 68.110(b) serve as a model for customer notice requirements in the copper retirement context, and if so how?

(ii) Upselling and Consumer Education

62. As noted above, Public Knowledge and NASUCA have expressed concerns that incumbent LECs may take advantage of copper retirements to ''upsell'' subscribers—*i.e.,* try to convince customers to purchase more profitable bundles of services in interactions that ostensibly are intended to prepare the customer for a change in *facilities* only (*e.g.,* copper to fiber). We seek comment on whether this practice occurs or is reasonably foreseeable, the circumstances in which it occurs or would be reasonably foreseeable, and whether and how it harms or would harm consumers. Does upselling in such circumstances increase the likelihood of customer confusion? We are concerned by a number of consumer allegations that copper retirements have resulted in changes to their service may stem from aggressive or confusing upselling.

63. We therefore propose requiring incumbent LECs to supply a neutral statement of the various choices that the LEC makes available to retail customers affected by the planned network change. We seek comment on this proposal. We anticipate that it would enable consumers to make informed choices and to have the tools to determine for themselves what services to purchase. Should we require that this information be provided as a part of the consumer notice discussed above or separately from that notice? Should we require that this information be communicated in writing, or should oral communication be permissible? How can we ensure that such information is accessible to people with disabilities?

64. What kinds of services should we require the incumbent LEC to identify? Should it be required to identify services reasonably comparable to those to which the retail customer presently subscribes, or should a different standard apply? For voice services, should it be required to identify both facilities-based interconnected VoIP and TDM-based services? Should it ever be required to identify non-facilities-based services? Should it specifically be required to identify services designed for people with disabilities? We seek comment on whether the proposal would serve this purpose, whether it would address concerns about upselling, and whether it has any other benefits. We also seek comment on its drawbacks. In addition, we seek comment on whether this proposal advances important government interests and on whether any other less restrictive approaches would accomplish our consumer protection goals.

65. We further seek comment on whether we should require incumbent LECs to undertake additional measures beyond the notice described above to educate their retail customers regarding planned copper retirements by which they may be affected, and, if so, what measures should be required. The Commission required broadcasters to undertake consumer education initiatives in connection with the DTV transition in order ''to ensure that consumers will receive the information they need to make proper preparations for the digital transition of the stations on which they rely for television service.'' Is a similar education initiative necessary in the context of transitioning consumers away from legacy copper-based services? If so, what information should we require that consumers receive, how should it be conveyed, and to which consumers must this information be provided? We seek comment on the following possibilities:

- Direct mailing from the incumbent LEC to affected consumers containing clear explanations of any installation or modification of CPE;
- Minimum advance notice requirements for the scheduling of any service appointments and/or punctuality requirements for service appointments; and

We also seek comment on other possible consumer education requirements. Would the benefits of such requirements outweigh the burdens that they would impose on incumbent LECs? We seek comment on whether and how each consumer education requirement under consideration and any others suggested by commenters advance important government interests and whether other, less restrictive measures would accomplish the same goals. We also seek comment on our legal authority to impose any consumer education requirements.

66. In addition, we seek comment on appropriate enforcement remedies in the event of failure to comply with any new copper retirement customer notice, education, or upselling requirements. Would forfeiture be an appropriate remedy? Should we consider requiring refunds to customers?

c. Expansion of Right To Comment

67. Under our current network change disclosure rules, only information service providers and telecommunications service providers that directly interconnect with the incumbent LEC's network have the right to object to planned copper retirements, and they can only delay implementation for up to six months and seek technical assistance from the incumbent LEC. Since copper retirements may have significant impact on the public, members of the public should have the opportunity to comment publicly on such retirements. And industry participants should not be restricted unduly in the issues that they may draw to our attention. While the Bureau has provided the public at large with the opportunity to comment on network change disclosures via a special email address, we can do more to facilitate participation in this important process.

68. We anticipate that these comments will assist us in many circumstances. For instance, we expect that it would help call to our attention circumstances in which incumbent LECs are not complying with their obligations. (Consumers who have concerns about any particular situation also can contact our Consumer & Governmental Affairs Bureau to file complaints.'') Moreover, we will find value in hearing from the public about the potential benefits and/or harms that could come from the retirement of these copper facilities in our policymaking decisions going forward. Finally, we anticipate that we will be able to use the comments we receive to monitor for circumstances in which an incumbent LEC's proposed copper retirement is accompanied by or is the cause of a discontinuance, reduction, or impairment of service provided over that copper—but the incumbent LEC has failed to seek the necessary authority, contrary to the requirements of Section 214(a) and our rules thereunder. We therefore propose revising our rules to provide the public, including retail customers and industry participants, with the opportunity to comment publicly on planned network changes. We seek comment on this proposal.

d. Notice to States and the Department of Defense

69. We recognize that we are not the only governmental authority with important responsibilities with respect to technology transitions. In particular, States serve a vital function in safeguarding the values of the Network Compact. As we have recognized on multiple occasions, both ''State and federal enforcement tools are needed to protect consumers from fraudulent, deceptive, abusive, and unfair practices.'' Further, the Department of

Defense plays a key role in ensuring that telecommunications infrastructure remains secure and promotes public safety. We are cognizant that these authorities need information about transitions to fulfill their duties. Our rules implementing Section 214 already require applicants seeking discontinuance authority to provide copies of their applications to these entities, so our rules facilitate their ability to monitor some technology transitions. We believe that these authorities also need to remain informed about copper retirements so that they can fulfill their respective missions with respect to the ongoing technology transitions. We propose requiring that incumbent LECs provide notice of planned copper retirements to the public utility commission and to the Governor of the State(s) in which the network change is proposed, and also to the Secretary of Defense. We expect that ensuring that State authorities receive notice of copper retirements will assist them in fulfilling their vital consumer protection role. Similarly, we expect that federal defense authorities will find this information useful in fulfilling their mission of ensuring the security of the Nation's communications networks. We seek comment on this proposal, including its benefits and drawbacks. Further, we seek comment on whether the same requirements should apply to other forms of network change notifications. Is there any reason why State authorities or the Department of Defense might need to receive notice of network changes that do not involve copper retirement? Are there other governmental entities that should also receive this direct notice, such as the Federal Aviation Administration, Tribal entities or municipalities, or should we rely on the expectation that any such other entity relying on the network will receive notice in the same manner as other customers? We also seek comment on our authority under section 251(c)(5) and/or other statutory provisions to impose this requirement.

e. Certification

70. To enable effective enforcement of any new rules adopted pursuant to this document, we propose requiring incumbent LECs to certify their compliance. Certification requirements also serve to remind parties of their obligations. Our existing network change rules require incumbent LECs to file in certain circumstances a certificate of service and/or a certification, each confirming fulfillment of certain obligations under our rules. (That certification must include: (1) A statement identifying the proposed changes; (2) a statement that public notice has been given in compliance with applicable rules; and (3) a statement identifying the location of the change information and how it can be obtained.) Because we propose creating one comprehensive rule containing all requirements applicable to copper retirements, it will be most efficient for an incumbent LEC to provide us with a single certification confirming that it is has fulfilled its various responsibilities. We seek comment on this proposal.

71. Under our existing rules, certifications, which must be filed when the incumbent LEC provides public notice other than by filing with the Commission, must include a statement identifying: (1) The proposed changes; (2) that public notice has been given in compliance with applicable rules; and (3) the location of the change information and how it can be obtained. Furthermore, certificates of service under our existing rules must include: (1) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each telephone exchange service provider that directly interconnects with the incumbent LEC's network; and (2) the name and address of each such telephone exchange service provider upon which the notice was served. We believe that this information will provide important insights into copper retirements, so we propose requiring incumbent LECs engaged in a copper retirement to file a unified certification containing all of the above information.

72. If we adopt our proposals to require incumbent LECs engaged in copper retirement to provide notice to customers as well as State and Department of Defense officials, we believe that it would be necessary for incumbent LECs to also certify their compliance with these proposed requirements to enable us to confirm their compliance. We therefore propose requiring incumbent LECs' certifications to include, in addition to the information required above:

- A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served the required direct notice upon all affected retail customers;
- A copy of the written notice provided to affected retail customers; and
- A statement that the incumbent LEC notified and submitted a copy of its public notice to the public utility commission and to the Governor of the State in which the network change is proposed, and also to the Secretary of Defense.

73. We seek comment on these certification proposals, including on their benefits and drawbacks. Should we require incumbent LECs to include any additional information in the certifications that they file? Could we achieve our goals while requiring incumbent LECs to include less information in their certifications? What should be the deadline for filing a certification? Should we require either an officer of the incumbent LEC or an individual authorized by the incumbent LEC to sign the certification and attest to the truth and accuracy of the representations therein under penalty of perjury? We also seek comment on our authority under section 251(c)(5) and/or other statutory provisions to impose these certification requirements.

3. Sale of Copper Facilities That Would Otherwise Be Retired

74. One potential way to maintain valued parts of the copper network while allowing incumbent LECs to continue their technology transition plans would be for incumbent LECs to sell or auction copper facilities that they intend to retire, on reasonable terms and conditions. Incumbent LECs could offload unwanted copper while competitors or other entities could continue to use the facilities to provide copper-based services. Consumers would continue to reap the benefits of their collective investment in our Nation's copper networks by retaining more competitive alternatives than would otherwise be available.

75. Competitive LECs have demonstrated at least some interest in purchasing retired copper facilities. For example, in their petition for a copper retirement rulemaking, BridgeCom et al. request that the Commission consider requiring or authorizing incumbent LECs to sell or auction copper ''pursuant to some public and fair process.'' These competitive LECs claim a sale or auction would allow incumbent LECs to ''terminate ownership and most responsibility for unwanted loops while also preserving the potential benefits of use of spare copper loops for provision of competitive services.'' WorldNet, a competitive LEC serving small- and medium-sized business in Puerto Rico, also recommends requiring incumbent LECs to offer copper facilities for sale as a condition to retirement.

76. AT&T has stated as part of its technology transition proposal that it would consider selling retired copper facilities to competitive carriers that wish to use those facilities to provide service to their customers. In May, AT&T submitted a general proposal to

offer copper loops that are retired under the network change disclosure rules for sale on commercial terms to competitive carriers. Under AT&T's proposal, the parties would establish two agreements. The first agreement would be the general terms and conditions of the copper sale, including obligations of the purchaser. The terms state that the purchaser is responsible for any costs associated with re-terminating the cable at the frame and service area interface. In addition, the copper will be provided in ''as-is'' condition, and the purchaser is responsible for all maintenance and liabilities. This agreement also provides for a 90-day transition period and establishes the responsibilities of both parties during the transition. The second agreement provides for access to poles and/or conduit either by sale or lease. With respect to timing of the sale, AT&T's proposal provides for a 150-day process: 30-day notice period, 30-day proposal or bid review period, and 90-day negotiation period to complete the sale. (If the parties do not sign the agreement at the end of the 90 days, the offer is rescinded.)

77. We believe that sale of copper facilities could be a win-win proposition that permits incumbent LECs to manage their networks as they see fit while ensuring that copper remains available as a vehicle for competition. We therefore seek comment on whether and how we should take action to promote the sale or auction of copper prior to retirement. We intend to develop a record to gauge the level of interest by competitive providers or others to purchase retired copper facilities and address some of the issues involved in a sale or auction. We further intend to determine what role, if any, the Commission should play in any sale or auction of copper, including whether the Commission should establish rules requiring incumbent LECs to make a good faith effort to sell their copper networks before retiring the facilities.

78. *Interest in Purchase.* First, we seek to gauge the level of interest by competitive providers and others in purchasing copper facilities that incumbents intend to retire. Under what terms and in what circumstances would competitive providers or others be interested in purchasing copper facilities? Although we have noted above the importance of copper and expressions of interest in the purchase of such facilities, do stakeholders feel purchasing retired copper is a valid or plausible method to address the competitive concerns raised by incumbent LEC copper retirement? What are the benefits and drawbacks to continued use of copper where fiber has been built-out?

79. *Means of Facilitating Sale or Action.* We seek comment on how the Commission can most effectively facilitate sale or auction of copper facilities than an incumbent LEC intends to retire. We tentatively conclude that the Commission should pursue a voluntary approach, rather than impose a requirement for sale or auction of copper facilities, as proposed by parties such as WorldNet. To that end, we seek comment on whether and how the Commission could facilitate the voluntary sale or auction of copper. What would be the role of the Commission, if any? Are there any existing rules or procedures the Commission may use to encourage the sale or auction of copper? Are there any regulatory barriers to the sale or auction of copper the Commission should remove? Is there a role for state public service commissions in encouraging sale or auction of copper that an incumbent LEC intends to retire?

80. *Structure of Sale or Auction.* We seek comment on the ideal structure of any sale or auction, regardless of whether the sale or auction occurs voluntarily, as we propose, or pursuant to a regulatory requirement. We seek comment on AT&T's proposed structure, as well as on alternative sale and auction structures. If an auction mechanism were used, what form of auction would be most effective? How would a sale or auction work? For example, should a third-party be established to process the sale or act as clearinghouse for an auction? What are the advantages and disadvantages of each structure? Does one structure better promote the technology transition and our core values? To be effective, what is the minimum amount of time during which an incumbent LEC would need to offer the copper for sale or auction prior to retiring the network?

81. *Price and Terms of Sale or Auction.* We assume that price and terms of sale for copper facilities will be a driving factor in any transaction. We further assume that in any regulatory mechanism, incumbent LECs would be able to reject offers or bids that do not meet minimum thresholds on price and other terms. What would parties expect such minimum standards to be?

C. Section 214 Discontinuances

82. Our fundamental values and the Commission's statutory obligations are not lost or mooted merely because legacy services are discontinued. Therefore, it is critical for us to define carriers' responsibilities when discontinuing legacy services to ensure that we carry our values forward without regard to the particular technology used. In this document, we advance this goal in three ways. First, to ensure that we protect consumers, competition, and public safety, we seek comment on what constitutes an adequate substitute for a retail service being discontinued, reduced, or impaired. Second, we seek comment on better defining the scope of our Section 214(a) authority, focusing in particular on the context of wholesale services. Third, we recognize the critical importance of ensuring that technology transitions do no harm to the benefits of competitive access, particularly in the period prior to ultimate action in our special access proceeding. Accordingly, we tentatively conclude that we should require incumbent LECs that seek Section 214 authority to discontinue, reduce, or impair a legacy service used as a wholesale input by competitive providers to commit to providing equivalent wholesale access on equivalent rates, terms, and conditions. We also seek comment on the relationship between the duration of this requirement, which would take the form of a condition imposed on a grant of discontinuance authority for TDM services on which competitive carriers depend, and the ultimate outcome of our special access proceeding.

1. What Constitutes an Adequate Substitute for a Retail Service a Carrier Seeks To Discontinue, Reduce, or Impair?

83. We agree with Public Knowledge that the public and industry alike would benefit from establishment of criteria to evaluate replacement technologies when a carrier files an application to discontinue a retail service pursuant to Section 214(a). We focus this inquiry, in particular, on consumer products. Industry and the public will benefit from articulation of clear, technologically neutral principles that define what constitutes an adequate substitute for consumers for a discontinued retail service. We therefore seek comment on whether the Commission should update its rules to define what would constitute an adequate substitute for retail services that a carrier seeks to discontinue, reduce, or impair in connection with a technology transition (*e.g.,* TDM to IP, wireline to wireless). We will also look to any service-based experiments and other data collection activities that occur pursuant to the January *Technology Transitions Order* to inform these questions. We undertake this inquiry, in part, to ensure that the transition to IP-supported technologies

does not impair the security, integrity and reliability of our nation's communications infrastructure.

84. What factors should we consider in evaluating Section 214 filings concerning discontinuance of retail services? Should certain factors be given greater weight than others? In particular, how much weight should we give to the adequacy of available substitutes? In the context of AT&T's proposed service-based experiments, Public Knowledge identified ten attributes it believes require particular evaluation: ''(1) Network capacity, (2) Call quality, (3) Device interoperability, (4) Service for the deaf and disabled, (5) System availability, (6) PSAP and 9–1–1 service, (7) Cybersecurity, (8) Call persistence, (9) Call functionality, and (10) Wireline coverage.'' We seek comment on whether and how the Commission should consider these and/or other attributes and on the costs and benefits of articulating specific attributes. And we seek comment on what law enforcement capabilities the Commission should seek to preserve as the underlying communications technology changes. (We are committed to ensuring that law enforcement capabilities are maintained throughout the technology transitions.) We also seek comment on whether it should be necessary to meet all of the criteria to obtain streamlined treatment and/or approval or whether some criteria should be considered more important than others. And what should the Commission look for in evaluating each of the factors commenters may suggest? What enforcement remedies are appropriate for a carrier that obtains discontinuance authority predicated on meeting certain adequacy standards but fails to abide by those commitments? Should an applicant that seeks to discontinue a retail service be entitled to streamlined treatment and/or approval if a competitor offers a service that meets the criteria that we identify for an adequate substitute? What are the costs and benefits of this and other approaches to implementing criteria for adequacy of substitutes? We emphasize that we seek to develop technology-neutral criteria and do not wish to issue any technology mandates. We also seek comment on whether consumers expect, or should be entitled to expect, the same or equivalent functionalities from new services, or whether there are benefits from new services (*e.g.,* more choice, lower cost, better features) that would compensate for any differences.

85. Below we discuss several of the attributes identified above, but we emphasize that we are interested broadly in identification and discussion (including weighing of costs and benefits) of possible attributes that the Commission should consider in evaluating Section 214 filings concerning discontinuance of retail services.

86. With respect to services for consumers with disabilities, we seek comment on the extent to which an applicant that seeks to discontinue support for analog services must ensure that its services are compatible with assistive devices used by people with disabilities, and provide notice to people with disabilities regarding the potential for disruption in service. (Consumers with disabilities ask the Commission to make sure that accessible features are built into the design of new networks and services from the outset, and that various currently accessible technologies are made widely available and affordable during and after the retirement process.) For example, to what extent will the applicant be required to identify the services that might be disrupted—*e.g.,* home health monitoring, TTY-based communications—and the extent to which loss of support for each such service might have an adverse impact on people with disabilities, as well as its plans for acceptable replacements? How should we account for consumer trends in determining adequate substitutes? What factors affecting access by people with disabilities should we consider in defining what would constitute an adequate substitute for retail services that a carrier seeks to discontinue, reduce, or impair in connection with a technology transition?

87. With respect to call functionality, what functionality is relevant? Should we consider only functionality related to voice calls (*e.g.,* ability to use caller ID), or should we consider non-call functions as well? With regard to non-call functionality, should we consider, for instance, the functionality of third-party CPE and/or services such as home alarms, fax machines and medical alert monitors? Should we apply general principles or more specific technical standards, and in each case what principles or standards should we apply? How can we ensure that our evaluation of functionality is technology neutral?

88. With regard to call persistence, what factors should we consider? Should we consider only voice calls or other forms of communication as well? Should we evaluate the likelihood of improperly dropping calls or other forms of communication? Should we consider whether there is risk of blocking, choking, reducing, or restricting traffic? (We note that the Bureau has issued two Declaratory Rulings clarifying that carriers are prohibited from blocking, choking, reducing, or restricting traffic in any way, including to avoid termination charges; and clarifying the scope of the Commission's prohibition on blocking, choking, reducing, or restricting telephone traffic which may violate section 201 or 202 of the Act.) Are other criteria relevant? What metrics should we apply? Should we apply a minimum performance threshold? How can we ensure that call persistence will be sustained after a Section 214 application is approved?

89. With respect to communications security, while IP technologies can produce cost efficiencies, they also can create the potential for network security risks through the exposure of network monitoring and control systems to end users. Communications network owners and operators have expressed a broad consensus that risk management measures are necessary to address these risks. Providers should implement security plans that can be communicated internally and externally with providers for which security interdependencies exist. We seek comment on the extent to which providers have implemented such measures; whether such implementation has been effective; and whether various providers possess understanding of other providers' risk management measures sufficient to address collective risks in an interconnected IP-network environment. We also seek comment on whether the Commission should require demonstration, as part of the Section 214 discontinuance process, that any IP-supported networks or network components offer comparable communications security, integrity, and reliability. If so, we seek comment on what factors would be relevant to making such a determination.

90. With respect to PSAP and 911 service, is it sufficient that a provider demonstrate that a substitute retail service available to its customers will offer 911 capabilities that comport with Commission rules? Should providers further affirm that the transition to such substitute retail service will not result in any reduction in 911 capability relative to that offered by the discontinued service? For example, if a provider supplies latitude and longitude (''x,y'') coordinates for fixed and portable wireless home phones and femtocells that may replace in-home wire-based solutions, is that equivalent to the provision of a validated civic address Automatic Location Identification (ALI)? What is the impact on PSAPs if providers take different approaches in

providing civic address ALI or just x,y whereas previously PSAPs have been expecting specific information from such providers? Do the issues raised in the *911 Policy Statement and NPRM,* also adopted today, have any bearing on these questions? Although our primary focus is on consumer products, we also seek comment on what criteria we should apply for carriers that seek under Section 214 to discontinue 911 service to PSAPs. We also seek comment on the relationship between consideration of PSAP and 911 service pursuant to Section 214(a) and the *911 Policy Statement and Notice of Proposed Rulemaking* also adopted today.

91. In addition to developing factors to guide evaluation of Section 214 discontinuance filings, we are interested in learning about means by which carriers and other industry segments can work collaboratively to ensure that new services meet the expectations and needs of consumers before any discontinuance occurs. For example, ADT Security Services reports that ''the alarm industry is working with IP communications service providers to develop technical agreements that base their communications on Managed Facilities-Based Voice Network (MFVN) standards'' to ensure that alarm monitoring systems already in consumers' homes can transmit alarm signals properly during emergency situations. We seek comment on progress in developing and implementing the MFVN standards and other standards or initiatives that may ease consumers' transition to new services. Also, is there anything the Commission can or should do to facilitate the development and implementation of such solutions?

2. Scope of Section 214(a) Discontinuance Authority and Wholesale Services

92. *Rebuttable Presumption.* Under our precedent, a carrier need not seek Commission approval when discontinuing service to carrier customers if there is no discontinuance, reduction, or impairment of service to retail end-users. We do not propose to change course from this precedent. However, Section 214 and our implementing rules were designed to protect retail customers from adverse impacts associated with discontinuances, reductions, or impairments of service. As described above, competitive LECs play a vital role in serving the enterprise market. Where an incumbent LEC discontinues, reduces, or impairs a service offering used by competitive LECs to provide end users with service, this can also be expected to affect the competitive LECs' retail customers. We seek comment on whether this is the case. We are concerned that in the absence of further guidance, some carriers will mistakenly assume that their wholesale services are not relied upon by competitive LECs in serving retail customers, and thus will discontinue, reduce, or impair those services without following the process mandated by the Act. We seek comment on whether this concern is justified.

93. To address this potential issue, we seek comment on adopting a rebuttable presumption that where a carrier seeks to discontinue, reduce, or impair a wholesale service, that action will discontinue, reduce, or impair service to a community or part of a community such that approval is necessary pursuant to Section 214(a). This presumption would be rebutted where it could be shown that either: (i) Discontinuance, reduction, or impairment of the wholesale service would not discontinue, reduce, or impair service to a community or part of a community; or (ii) discontinuance, reduction, or impairment of the wholesale service would not impair the adequacy or quality of service provided to end users by either the incumbent LEC or competitive LECs in the market. We seek comment on this proposal, including on its costs and benefits. Is there any reason why we should not adopt this proposal? Should we modify it in any way? Should we evaluate the quality of service provided to end users with reference to service by competitive LECs in the market that use the wholesale service in question, or should we consider a different denominator of service providers? Is such a presumption consistent with Section 214(a)? How should we confirm that an incumbent LEC that discontinues a wholesale service and declines to file an application has properly rebutted the presumption? Should we require the incumbent LEC to file a certification with the Commission identifying and providing the basis for its conclusion? Should the incumbent LEC be required to send a copy of this certification to its competitive LEC wholesale customers and/or make the certification public? What should be the format and timing of this certification? In the alternative, should the incumbent LEC be required to maintain a record of the facts and analysis it relied on to determine the presumption was rebutted for a set period of time, and if so what period of time? Should we instead allow the incumbent LEC to determine for itself what records to retain?

94. *Term Discount Plans.* A discrete but related issue concerns whether a Section 214(a) discontinuance application is required when certain term discount plans are discontinued. For example, many TDM-based services are provided pursuant to various term plans for specific periods of time, such as one-year, three-year, five-year and seven-year commitment periods. In transitioning from TDM-based services to IP-based services, questions arise as to whether a Section 214 application is required with individual incremental changes, such as the elimination of a subset of the available service plans that reduce options for customers by eliminating longer term plans with associated higher discounts (lower prices) prior to elimination of shorter term plans. In such situations, the carrier may claim at each incremental change that, because there are other term plans available, the service is still available and thus no Section 214 application to discontinue, reduce, or impair service is required. Accordingly, we seek comment on this situation. When a carrier is transitioning from TDM-based services to IP-based services, at what point in the process is the carrier required to file a Section 214 application? Although the Commission previously has held that a change in rates does not constitute a discontinuance of a service under Section 214, are there any rate changes that might fall outside the logic of those decisions, and should the Commission change course in this situation and conclude that an elimination of certain rate options can constitute an impairment of service if it is part of a longer term transition? For instance, in many of the sets of term plans applicable to an individual service, the largest discounts are provided to customers that purchase term plans longer than five years. If a carrier pursues elimination of the term plans individually, eliminating the longer term plans first, customers' only purchase options would be shorter length term plans at much higher rates, an effective rate increase. Does such a rate increase constitute a reduction or impairment of service under Section 214, and what criteria may be helpful in this analysis? If not, at what point, if any, in the course of eliminating individual rate options for the same service is the service reduced or impaired, such that the carrier is required to seek authority pursuant to Section 214? We seek comment on this question and on the point in the transition at which incumbent LECs should be required to obtain Section 214 authority. What are the costs and

benefits of various approaches to these questions?

95. *Tariffed and Non-Tariffed Services.* We note that there may be a question regarding whether a carrier is required to file a Section 214 application if a non-tariffed service still being offered is functionally very similar to a tariffed service being discontinued. Indeed, in the past carriers have argued that no Section 214 application is required when discontinuing a tariffed service if they currently offer a non-tariffed service that is similar to the tariffed service being discontinued. We seek comment on whether in such situations, a Section 214 application should be required, because there is a service being removed from the tariff and whether that constitutes a discontinuance, impairment or reduction of service, and on the costs and benefits of possible approaches.

3. Maintaining Wholesale Access to Last-Mile Services

96. Competitive LECs are concerned that, if incumbent LECs discontinue TDM-based services in the transition from TDM to IP-based services, competitive LECs will lose the ability to access last-mile facilities necessary to serve their customers, such as DS1 and DS3 special access lines. (No discontinuance would affect an incumbent LEC's obligations to provide unbundled access to loops under § 51.319(a)(4) of our rules.) As noted above, competitive LECs use these facilities to serve retail customers, including providing packet-based broadband services to hundreds of thousands of American businesses at competitive prices. COMPTEL asserts that ''the overwhelming majority of competition in the business broadband market comes from competitive carriers that rely substantially on last-mile inputs from the incumbent LEC.'' Competitive LECs, like the incumbents, want to transition customers to next generation services and desire a transition without disruptions in service and on comparable terms and conditions.

97. According to the competitive LECs, the uncertainty associated with the possible discontinuance of incumbent LECs' legacy services and replacement with packet-based services creates competitive disadvantages and major concerns about the ability to serve present and new customers. Windstream, for example, argues competitive LECs ''face the prospect of entering into long-term contracts on the assumption that they will continue to be able to purchase equivalent services at equivalent rates, terms, and conditions after the transition, or attempting to price those future unknown input services, rates, terms and conditions into their contracts.'' While competitive LECs request that the Commission protect their access rights to these last-mile services amidst technology transitions, incumbent LECs are concerned that being required to offer long-term TDM arrangements may impede their plans to move to IP-based services.

98. In this rulemaking proceeding, we examine the role of Section 214 of the Act as incumbent LECs seek to discontinue TDM-based service used as wholesale inputs. As guidance, the *National Broadband Plan* recommends that the Commission adopt wholesale access frameworks to ''ensure widespread availability of inputs for broadband services.''

99. The Section 214 discontinuance process provides for Commission oversight to ensure that consumers are fully informed of any proposed change to reduce or end service, and that adequate alternative services are available to them. Related to that, § 63.71 of the Commission's rules establishes the procedures that carriers must follow to obtain such Commission approval, including notification of affected customers and the filing of an application for approval of the proposed discontinuance. As incumbent LECs announce plans and deadlines to transition away from TDM-based services to IP-based services, the Commission will be called upon to strike the appropriate balance between facilitating a viable migration path to IP-based services for incumbent and competitive LECs, and promoting competition and the public interest within the meaning of Section 214. We also take this opportunity to point out that since Section 214(a) and the Commission's discontinuance rules apply to common carrier and interconnected VoIP services, the mere fact that a carrier obtains discontinuance authorization under Section 214(a) for such services has no legal bearing on its obligation to provide UNEs under § 51.319 of our rules. The Commission has held that ''the provision of an unbundled network element is not the provision of a telecommunications service.''

100. Technology transitions must not harm or undermine competition. Our present goal is to maintain established rules and decisions that provide for wholesale access to critical inputs as we continue our special access rulemaking proceeding, along with other initiatives such as technology trials, to determine how customers are affected and whether rules and policies need to be modified in the future. Given the vital role that wholesale access to critical inputs plays in promoting competition, we seek to ensure on an interim basis the availability of last-mile services to competitive LECs as incumbent LECs begin to discontinue their legacy networks in the transition to IP technology. As a result, we tentatively conclude that we should require incumbent LECs that seek Section 214 authority to discontinue, reduce, or impair a legacy service that is used as a wholesale input by competitive carriers to commit to providing competitive carriers equivalent wholesale access on equivalent rates, terms, and conditions. We seek comment on this tentative conclusion and how or whether it will promote the benefits of competition—innovation, investment, economic growth for the nation, and competitive prices and services for consumers. To what services should this apply? We also seek comment on the costs and benefits of such a conclusion—for example, how would it affect the incentives for incumbent LECs to upgrade their facilities? Should we require incumbent LECs to commit to a different standard, such as a ''reasonably comparable'' standard? We also seek comment on whether we should apply any standard that we establish as a condition on the grant of Section 214 discontinuance authority to preserve competition as we transition to an all-IP world or as a guide when considering applications. If applied as a condition on the grant, then we seek comment on the appropriate term. For example, should its duration be indefinite, or should it be dependent upon the outcome of our special access proceeding? And we seek comment on appropriate enforcement remedies for failure to comply with this proposed obligation.

101. Furthermore, through seeking comment in this rulemaking, we seek to establish important ground rules that would facilitate the IP transition by establishing objective standards and clear criteria for applying the standard set forth above in advance of Section 214 applications and narrowing the range of time-consuming individual disputes. For example, Windstream has suggested that when an incumbent LEC is discontinuing legacy services offered at speeds of 50 Mbps or less that the Commission apply six principles to evaluate replacement offerings as follows:

(1) *Price per Mbps Shall Not Increase.* The price per Mbps of the IP replacement product shall not exceed

the price per Mbps of the TDM product that otherwise would have been used to provide comparable special access service at 50 Mbps or below.

(2) *A Provider's Wholesale Rates Shall Not Exceed Its Retail Rates.* An incumbent's wholesale charges for the IP replacement product shall not exceed its retail rates for the equivalent offering.

(3) *Basic Service Pricing Shall Not Increase.* The wholesale price of the lowest capacity level of special access service at or above the DS1 level shall not increase (*e.g.,* 2 Mbps Ethernet price shall not exceed the DS1 price when 2 Mbps is the lowest Ethernet option available).

(4) *Bandwidth Options Shall Not Be Reduced:* Wholesale bandwidth options must, at a minimum, include the options that the incumbent offers to its retail business service customers.

(5) *No Backdoor Price Increases:* Price hikes shall not be effectuated via significant changes to charges for NNI or any other rate elements, lock-up provisions, ETFs, special construction charges, or any other measure.

(6) *No Impairment of Service Delivery or Quality:* Service functionality and quality, OSS efficiency, and other elements affecting service quality shall be equivalent to, if not better than, what is provided for TDM inputs today. Installation intervals and other elements affecting service delivery shall be equivalent to, if not better than, what the incumbent delivers for its own or its affiliates' operations.

We seek comment on each of Windstream's proposed principles and other principles the Commission could use to guide its determinations of a functionally equivalent service with equivalent rates, terms, and conditions. Are some of Windstream's proposed principles more appropriate for adoption in this proceeding than others? For each principle, should its duration be indefinite, or should it be dependent upon the outcome of our special access proceeding?

102. We note that the Commission, in evaluating Section 214 applications, is called upon to examine a number of factors. (Those factors include: (1) The financial impact on the provider of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (40 the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations.) To accomplish the underlying goal of ensuring that competition is not adversely affected as incumbent LECs discontinue their TDM services in the IP transition, which the tentative conclusion is intended to address, we seek comment on whether the Commission should evaluate any other factors in the reasonable interpretation of Section 214. Should we consider revising our rules in the way we apply this provision? We note that many of the services that the incumbent LECs are claiming would replace TDM offerings currently are not offered pursuant to tariffs and therefore, lack the transparency and section 203 protections that purchasing a tariffed service provides. How should the Commission take these differences into account in considering whether these services are adequate substitutes?

103. In addition, we seek comment on whether we should consider revising § 63.71 of the Commission's rules that establish the procedures that carriers should follow to obtain Section 214 approval, including notification of affected customers. We recognize that incumbent LECs and wholesale customers may be at different stages of moving to IP-based services. Incumbent LECs argue that without the ability to discontinue long-term TDM-based offerings, their transition plans to IP services may be impeded. Meanwhile, competitive LECs express concerns that ''wholesale customers need significant lead time so that they can both plan for the necessary changes to their products as well as prepare their customers for changes to offerings dependent upon ILEC last-mile facilities.'' Therefore, we seek comment on what is sufficient notice for competitive LECs when there is a discontinuance, reduction, or impairment of service in a transitioning market. In particular, how much lead time is needed for a competitive LEC to move its customers to alternative service arrangements absent disruptions in service while not unduly impeding the incumbent LEC's ability to transition? Additionally, many competitive LECs currently purchase wholesale inputs pursuant to long-term tariffs and other agreements that contain early termination penalties. How should such terms be treated when the provisioning carrier is seeking to end provisioning a service and the purchasing carrier needs to move to alternative services and/or providers in order to continue providing its retail offering? We seek comment on both the timing and form of notice. Does the sufficiency of the notice depend on how many of the competitive LEC(s) customers will have to be moved as a result of the discontinued, reduced, or impaired service?

IV. Procedural Matters

A. Ex Parte Presentations

104. The proceeding this document initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Filing Instructions

105. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments may be filed electronically using the Internet by

accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

• Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Because more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

C. Paperwork Reduction Act

106. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.''

D. Regulatory Flexibility Act

107. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *NPRM.* The analysis is found below. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the *NPRM* and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

E. Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rule Making (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in paragraph [insert] of this Notice. The Commission will send a copy of this Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

F. Need for, and Objectives of, the Proposed Rules

2. The Notice proposes new steps to address competition and consumer protection issues in connection with copper retirement, service transitions, and related issues. The Commission has recognized that the Nation's communications networks are in the midst of a technological revolution involving the transition from a network based on time-division multiplexed (TDM) circuit-switched voice services running on copper loops to an all-Internet Protocol (IP) multi-media network using copper, co-axial cable, wireless, and fiber as physical infrastructure. The Commission has also recognized the need to ensure our core values as we move further toward the tipping point of the technology transition. Thus, the Commission seeks comment on a variety of issues in the following areas.

3. First, the Notice proposes and seeks comment on steps the Commission could take to safeguard continuity of communications throughout a power outage, including the possible adoption of new rules in this area.

4. Second, the Notice seeks comment on a proposed definition of copper retirement that includes within its purview copper loops, subloops, and the feeder portion of the loop, and the removing and disabling of those loops, subloops and feeder portion of the loops.

5. Third, the Notice seeks comment on whether and how the Commission's rules should ensure that incumbent LECs maintain copper facilities for which they have not undergone the retirement process. The Notice also seeks comment on whether and how the Commission should revise its rules to address inadequate maintenance, including whether to define retirement to include *de facto* retirement, *i.e.,* failure to maintain copper that is the functional equivalent of removal or disabling.

6. Fourth, the Notice seeks comment on modifications to the Commission's existing network change disclosure rules. These rule revisions would expand notice, comment, and objection requirements for notices of network change. Specifically, the Notice seeks comment on whether to: (1) Encompass the feeder portion of copper loops and subloops in the rules; (2) require direct notification to all interconnecting carriers plus a public notice filed with the Commission; (3) extend the minimum time for providing notice of copper retirements; (4) expand the notice requirement to retail customers; (5) allow incumbent LECs to use written or electronic notice such as email to provide notice to retail customers of a planned copper retirement; (6) impose minimum requirements for the content of notices to retail customers; (7) require incumbent LEC to maintain records of customer notifications for some period of time; (8) prohibit incumbent LECs from including in notice to retail customers any statement attempting to encourage the purchase of a service other than the service to which the customer currently subscribes; (8) require that retail customers be given the same amount of notice as we propose to provide to interconnected providers in connection with copper retirement notices; (9) require that the incumbent LEC file a certificate of service with the Commission that includes all of the following: (i) A statement that identifies the proposed

changes; (ii) a statement that public notice has been given in compliance with the rule; (iii) if an incumbent LEC provides public notice other than by filing with the Commission, a statement identifying the location of the change information and describing how this information can be obtained; (iv) a statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each interconnecting telephone exchange service provider; (v) the name and address of each interconnecting provider upon which written notification was served; (vi) a statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served the required direct notice upon all affected retail customers; (vii) a copy of the written notice provided to affected retail customers; and (viii) a statement that the incumbent LEC notified and submitted a copy of its public notice to the public utility commission and to the Governor of the State in which the network change is proposed, and also to the Secretary of Defense; and (10) allow retail customers the opportunity to publicly comment on copper retirement notices.

7. Fifth, the Notice seeks comment on whether and how the Commission should take action to promote the sale or auction of copper prior to retirement. The Notice seeks to gauge the level of interest by competitive providers and others in purchasing copper facilities that incumbents intend to retire, including under what terms and in what circumstances would they be interested in purchasing copper facilities. The Notice also seeks comment on whether and how the Commission should encourage the voluntary sale or auction of copper.

8. Sixth, seeks comment on whether the Commission should update its rules to define what would constitute an adequate substitute for a retail service that a carrier seeks to discontinue, reduce, or impair.

9. Seventh, the Notice seeks comment on establishing a rebuttable presumption that where a carrier seeks to discontinue, reduce, or impair a wholesale service, that action will discontinue, reduce, or impair service to a community or part of a community such that approval is necessary pursuant to Section 214(a). The Notice also seeks comment on whether a Section 214(a) discontinuance application is required when certain term discount plans are discontinued. And the Notice seeks comment on whether a carrier is required to file a Section 214 application if a non-tariffed service still being offered is functionally very similar to a tariffed service being discontinued.

10. Finally, with respect to competitive access to wholesale last-mile services, this Notice tentatively concludes that we should require incumbent LECs that seek Section 214 authority to discontinue, reduce, or impair a legacy service that is used as a wholesale input by competitive providers to commit to providing competitive carriers equivalent wholesale access on equivalent rates, terms, and conditions.

G. Legal Basis

11. The proposed action is authorized under sections 1, 2, 4(i), 214, and 251 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 152, 154(i), 214, and 251.

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

12. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

13. The majority of our proposals in the Notice will affect obligations on incumbent LECs. Other entities, however, that choose to object to network change notification for copper retirement under our new proposed rules may be economically impacted by the proposals in this Notice.

14. *Small Businesses.* Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA.

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

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

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

18. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

19. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant*

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

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

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

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

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

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

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

26. *All Other Telecommunications.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' The SBA has developed a small business size standard for this category; that size standard is $30.0 million or less in average annual receipts. According to Census Bureau

data for 2007, there were 2,623 firms in this category that operated for the entire year. Of these, 2478 establishments had annual receipts of under $10 million and 145 establishments had annual receipts of $10 million or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

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

27. The Notice proposes a number of rule changes that will affect reporting, recordkeeping, and other compliance requirements. Each of these changes is described below.

28. The Notice proposes to require incumbent LECs to provide direct notification to all interconnecting carriers and affected retail customers of a network change involving copper retirement plus a public notice filed with the Commission. The *Notice* also proposes to require incumbent LECs to provide additional information about the potential impacts of proposed copper retirements in their notices. In addition, the Notice proposes to require incumbent LECs to file a certification with the Commission that includes the proposed network change, the notification to interconnecting carriers, and a copy of the written notice provided to affected retail customers. For other entities that wish to object to a proposed network change involving copper retirement, they may file objections to and comments on copper retirement notices.

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

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

30. The proposals require notifications and information regarding copper retirements as well as certifications. Paragraph 46 in the primary item discusses the need to revise the requirements of our network change disclosure rules to promote competition and safeguard against copper retirements for discriminatory and anticompetitive purposes. The Notice seeks comment on the proposed notification requirements and alternative methods of communication such as email and company Web sites.

31. The proposal also seeks to require incumbent LECs to maintain records of customer notifications, in whatever form provided, for a fixed period of time. The Notice seeks comment on the proposal. It also seeks comment on the appropriate retention period and on whether the benefits of such a record retention requirement outweigh any associated burden on incumbent LECs. The Commission seeks the same cost/benefit analysis of its proposed certification requirement.

K. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

32. None.

V. Ordering Clauses

33. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1–4, 201, 214, and 251 of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 201, 214, 251, and 157(a), and § 1.1 of the Commission's rules, 47 CFR 1.1, that the Notice of Proposed Rulemaking *is adopted.*

34. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *NPRM,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Communications, Communications common carriers, Defense communications, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 51 as follows:

PART 51—INTERCONNECTION

■ 1. The authority for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 706 of the Telecommunication Act of 1996, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302, 47 U.S.C. 157 *note,* unless otherwise noted.

■ 2. Section 51.325 is amended by revising paragraph (a)(4), redesignating paragraphs (c) and (d) as (d) and (e), and adding new paragraphs (c) and (f), to read as follows:

§ 51.325 Notice of network changes: Public notice requirement.

(a) * * *

(4) Will result in the retirement of copper, as defined in § 51.332.

* * * * *

(c) In addition to providing the public notice required by paragraph (a) of this section, the incumbent LEC shall notify and submit a copy of its public notice to the public utility commission and to the Governor of the State in which the network change is proposed, and also to the Secretary of Defense, Attn. Special Assistant for Telecommunications, Pentagon, Washington, DC 20301.

* * * * *

(f) Notices of network changes involving the retirement of copper, as defined in § 51.332, are subject only to the requirements set forth in this section and §§ 51.329(c) and (d), 51.332 and 51.335.

■ 3. Section 51.329 is amended by redesignating paragraph (c) as paragraph (d) and adding new paragraph (c) to read as follows:

§ 51.329 Notice of network changes: Methods for providing notice; public comment.

* * * * *

(c) The public may file comments on an incumbent LEC's notice of planned network change. In the context of copper retirement, such comments must be filed with the Commission no later than the twenty-ninth day following the release of the Commission's public notice. In all other instances, such comments may be filed with the Commission until the effective date of the planned network changes.

* * * * *

§ 51.331 [Amended].

■ 4. Section 51.331 is amended by deleting paragraph (c).

■ 5. Add § 51.332 to read as follows:

§ 51.332 Notice of network changes: Copper retirement.

(a) *Definition.* For purposes of this section, copper retirement is defined as removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops, or the replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops, as those terms are defined in § 51.319(a)(3).

(b) *Methods for Providing Notice.*

(1) In providing the required notice to the public of network changes, an incumbent LEC must use one of the following methods:

(i) Filing a public notice with the Commission; or

(ii) Providing written public notice through industry fora, industry publications, or the carrier's publicly accessible Internet site.

(2) An incumbent LEC must provide each information service provider and telephone exchange service provider that directly interconnects with the incumbent LEC's network with a copy of the public notice.

(3) An incumbent LEC also must directly provide notice through electronic mail or postal mail to all retail customers affected by the planned copper retirement.

(i) For purpose of this section, an affected retail customer is anyone who will need new or modified customer premise equipment or who will be negatively impacted by the planned network change. The contents of any such notification must comply with the requirements of paragraph (c) of this section.

(ii) Notice to each affected retail customer shall be in writing unless the Commission authorizes in advance, for good cause shown, another form of notice. If an incumbent LEC uses email to provide notice to retail customers, it must comply with the following requirements in addition to the requirements generally applicable to notification:

(A) an incumbent LEC must obtain express, verifiable, prior approval from retail customers to send notices via email regarding their service in general, or planned network changes in particular;

(B) An incumbent LEC must allow customers to reply directly to the email notice;

(C) Email notices that are returned to the carrier as undeliverable must be sent to the retail customer in another form before carriers may consider the retail customer to have received notice; and

(D) an incumbent LEC must ensure that the subject line of the message clearly and accurately identifies the subject matter of the email.

(c) *Content of Notice.*

(1) *Public Notice.* Public notice must set forth the information required by § 51.327. In addition, the public notice must include a description of any changes in prices, terms, or conditions that will accompany the planned changes.

(2) *Retail Customers.* Notification to retail customers must provide sufficient information to enable the retail customer to make an informed decision as to whether to continue subscribing to the service to be affected by the planned network changes, including but not limited to the following:

(i) The information required by § 51.327;

(ii) A statement that the retail customer will still be able to purchase the existing service(s) to which he or she subscribes with the same functionalities and features as the service he or she currently purchases from the incumbent LEC, *except that* if this statement would be inaccurate, the incumbent LEC must include a statement identifying any changes to the service(s) and the functionality and features thereof;

(iii) A statement that the retail customer has the right to comment on the planned network changes; and

(iv) The following statement: ''This notice of planned network change will become effective ninety days after the Federal Communications Commission (FCC) releases a public notice of the planned change on its Web site. If you wish to comment on the planned network change, you should file your comments as soon as possible, but no later than thirty calendar days after the FCC releases public notice of the planned network change. You may file your comments electronically on the Commission's Web site at [insert URL for ECFS], or you may file them by mail. If you wish to file by mail, address your comments to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments the statement 'Network Change' and a reference to [insert name of ILEC and affected geographic region]. Comments should include specific information about the impact of this planned network change upon you, including any potential loss of functionalities or interference with third-party devices or services.''

(3) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

(4) An incumbent LEC may not include in the notification or any other communication to a customer related to copper retirement any statement attempting to encourage a customer to purchase a service other than the service to which the customer currently subscribes.

(d) *Certification.* An incumbent LEC must file a certification with the Commission that shall include:

(1) A statement that identifies the proposed changes;

(2) A statement that public notice has been given in compliance with paragraph (b)(1);

(3) If an incumbent LEC provides public notice by any of the methods specified in paragraph (b)(1)(ii) of this section, a statement identifying the location of the change information and describing how this information can be obtained.

(4) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each information service provider and telecommunications service provider that directly interconnects with the incumbent LEC's network;

(5) The name and address of each such information service provider and telecommunications service provider upon which written notification was served;

(6) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served the direct notice required by paragraph (c)(3) of this section upon all affected retail customers;

(7) A copy of the written notice provided to affected retail customers; and

(8) A statement that the incumbent LEC notified and submitted a copy of its public notice to the public utility commission and to the Governor of the State in which the network change is proposed, and also to the Secretary of Defense in compliance with § 51.325(c).

(e) *Timing of Notice.* An incumbent LEC must provide public notice of copper retirement at least ninety days before implementation pursuant to the procedures provided in paragraph (b) of this section.

(f) *Implementation Date.* The Commission will release a public notice of filings of such notices of copper retirement. The public notice will set forth the docket number and NCD number assigned by the Commission to the incumbent LEC's notice. Notices of copper retirement shall be deemed approved on the 90th day after the release of the Commission's public notice of the filing, unless an objection is filed pursuant to paragraph (h) of this section or the Commission takes action pursuant to paragraph (l) of this section.

(g) *Interconnecting LEC Objection Procedures.* An objection to an incumbent LEC's notice that it intends to retire copper may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the

incumbent LEC, no later than the twenty-ninth day following the release of the Commission's public notice. All objections filed under this section must:

(1) State specific reasons why the objector cannot accommodate the incumbent LEC's changes by the date stated in the incumbent LEC's public notice and must indicate any specific technical information or other assistance required that would enable the objector to accommodate those changes;

(2) List steps the objector is taking to accommodate the incumbent LEC's changes on an expedited basis;

(3) State the earliest possible date (not to exceed six months from the date the incumbent LEC gave its original public notice under this section) by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the technical information or other assistance requested under paragraph (h) of this section;

(4) Provide any other information relevant to the objection; and

(5) Provide the following affidavit, executed by the objector's president, chief executive officer, or other corporate officer or official, who has appropriate authority to bind the corporation, and knowledge of the details of the objector's inability to adjust its network on a timely basis:

''I, (name and title), under oath and subject to penalty for perjury, certify that I have read this objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay. I have appropriate authority to make this certification on behalf of (objector) and I agree to provide any information the Commission may request to allow the Commission to evaluate the truthfulness and validity of the statements contained in this objection.''

(h) *Responses to Objections.* If an objection is filed, an incumbent LEC shall have until no later than the sixtieth business day following the release of the Commission's public notice to file with the Commission a response to the objection and to serve the response on all parties that filed objections. An incumbent LEC's response must:

(1) Provide information responsive to the allegations and concerns identified by the objectors;

(2) State whether any implementation date(s) proposed by the objector(s) are acceptable;

(3) Indicate any specific technical assistance that the incumbent LEC is willing to give to the objectors; and

(4) Provide any other relevant information.

(i) *Resolution of Objections to Timing.* If an objection based on timing is filed pursuant to paragraph (h) of this section, then the Chief, Wireline Competition Bureau, will issue an order determining a reasonable public notice period, provided however, that if an incumbent LEC does not file a response within the time period allotted, or if the incumbent LEC's response accepts the latest implementation date stated by an objector, then the incumbent LEC's public notice shall be deemed amended to specify the implementation date requested by the objector, without further Commission action. An incumbent LEC must amend its public notice to reflect any change in the applicable implementation date pursuant to paragraph (b) of this section.

■ 6. Section 51.333 is amended by revising the section heading and paragraphs (b) and (c) to read as follows and removing paragraph (f).

§ 51.333 Notice of network changes: Short term notice, objections thereto.

* * * * *

(b) *Implementation date.* The Commission will release a public notice of filings of such short term notices. The public notice will set forth the docket number assigned by the Commission to the incumbent LEC's notice. The effective date of the network changes referenced in those filings shall be deemed final on the tenth business day after the release of the Commission's public notice, unless an objection is filed pursuant to paragraph (c) of this section.

(c) *Objection procedures for short term notice.* An objection to an incumbent LEC's short term notice may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the ninth business day following the release of the Commission's public notice. All objections filed under this section must:

(1) State specific reasons why the objector cannot accommodate the incumbent LEC's changes by the date stated in the incumbent LEC's public notice and must indicate any specific technical information or other assistance required that would enable the objector to accommodate those changes;

(2) List steps the objector is taking to accommodate the incumbent LEC's changes on an expedited basis;

(3) State the earliest possible date (not to exceed six months from the date the incumbent LEC gave its original public notice under this section) by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the technical information or other assistance requested under paragraph (c)(1) of this section;

(4) Provide any other information relevant to the objection; and

(5) Provide the following affidavit, executed by the objector's president, chief executive officer, or other corporate officer or official, who has appropriate authority to bind the corporation, and knowledge of the details of the objector's inability to adjust its network on a timely basis:

''I, (name and title), under oath and subject to penalty for perjury, certify that I have read this objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay. I have appropriate authority to make this certification on behalf of (objector) and I agree to provide any information the Commission may request to allow the Commission to evaluate the truthfulness and validity of the statements contained in this objection.''

* * * * *

[FR Doc. 2014–30776 Filed 1–5–15; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1250

[Docket No. EP 724 (Sub-No. 4)]

United States Rail Service Issues—Performance Data Reporting

AGENCY: Surface Transportation Board (the Board or STB), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: Through this Notice of Proposed Rulemaking, the Board is proposing to establish new regulations requiring all Class I railroads and the Chicago Transportation Coordination Office (CTCO), through its Class I members, to report certain service performance metrics on a weekly basis.

DATES: Comments are due by March 2, 2015. Reply comments are due by April 29, 2015.

ADDRESSES: Comments and replies may be submitted either via the Board's e-filing format or in the traditional paper

format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 724 (Sub-No. 4), 395 E Street SW., Washington, DC 20423–0001.

Copies of written comments and replies will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site. Copies will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245–0238 or 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board has been closely monitoring the rail industry's performance since service problems began to emerge in late 2013. Service challenges have impacted a wide range of commodities, including grain, fertilizer, ethanol, coal, automobiles, chemicals, propane, consumer goods, crude oil, and industrial commodities.

In response to the service challenges affecting this broad cross-section of rail shippers, the Board held two public hearings this year, in April in Washington, DC, and in September in Fargo, N.D., to provide the opportunity for interested persons to report on service problems, to hear from rail industry executives on plans to address rail service problems, and to explore additional options to improve service. During and after these hearings, shippers expressed concerns about the lack of publicly available information related to rail service and requested access to performance data from the railroads to better understand the scope, magnitude, and impact of the service issues,[1] as well as the underlying causes and the prospects for recovery.

Based on these concerns and our own need to better understand railroad operating conditions, on October 8, 2014, the Board ordered all Class I railroads and the Class I railroad members of the CTCO to file weekly reports on an interim basis, containing specific performance data. *See U.S. Rail Serv. Issues—Data Collection* (*Interim Data Order*), EP 724 (Sub-No. 3) (STB served Oct. 8, 2014). Specifically, railroads were asked to report weekly average train speeds, weekly average terminal dwell times, weekly average cars online, number of trains held short of destination or scheduled interchange, and loading metrics for grain and coal service, among other items. The data were intended to give both the Board and its stakeholders access to near real-time information about the operations and performance of the Class I railroads, and the fluidity of the Chicago gateway. In addition, the data were expected to assist rail shippers in making logistics decisions, planning operations and production, and mitigating losses amid the challenging railroad operating environment.

On October 22, 2014, the Class I railroads and the Association of American Railroads (AAR) (on behalf of the CTCO) filed the first set of weekly reports in response to the *Interim Data Order.* As requested by the Board, each carrier also provided an explanation of its methodology for deriving performance data in response to each request. Generally, the responses corresponded to the elements of the *Interim Data Order;* however, some railroads approached individual requests differently, leading to variations in the reported data. The different approaches primarily were due to the railroads' disparate data-keeping systems, different railroad operating practices, and/or unintended ambiguities in certain requests. Certain railroads also departed from the Board's prescribed reporting in order to maintain consistency with their own weekly data runs and analysis. For the most part, however, railroads made reasonable efforts to respond to each request, substituting analogous data when precise information could not readily be derived.

In addition to the weekly data reports, AAR, on behalf of its Class I freight railroad members (except Canadian Pacific Railway Company (CP)), submitted a letter to the Board indicating that it believes the public, the Board, and the railroads would have benefited from ''[a] constructive public discourse regarding service data [which] could have led to a more productive and less burdensome collection of information that would have satisfied the Board's regulatory objectives.'' [2] With the first several weeks of filings in response to the *Interim Data Order* complete, we invite public comment to determine whether to establish new regulations for permanent reporting and to receive constructive input to revise, as necessary, and improve the existing data reporting structure.

The weekly filings have allowed the Board and rail stakeholders to monitor the industry's performance in near real-time, and allowed the Board to begin to develop baseline performance data. Based on the Board's experience with the reporting to date, and as expressly contemplated in the *Interim Data Order,* the Board is now moving forward with a rulemaking to determine whether to establish new regulations for permanent reporting by the members of the Class I railroad industry, the Class I carriers operating in the Chicago gateway, and the CTCO through its Class I members. The permanent collection of performance data on a weekly basis would allow continuity of the current reporting and improve the Board's ability to identify and help resolve future regional or national service disruptions more quickly, should they occur. Transparency would also benefit rail shippers and other stakeholders, by helping them to better plan operations and make informed decisions based on publicly available, near real-time data, and their own analysis of performance trends over time.

The proposed data requirements have been designed to impose as small a burden as possible on the carriers that would be subject to the rule, while achieving the Board's goal of continued rail service performance transparency. The Board believes that the benefit to the Board, rail shippers, and other stakeholders would outweigh the burden of reporting under the proposed rule. The data collected pursuant to the rule would continue to provide for service performance transparency in the industry and allow the Board to more rapidly identify and respond to service performance issues.

Accordingly, the Board seeks public comments on proposed new regulations to be codified at 49 CFR 1250.1–1250.3 to require Class I rail carriers, Class I carriers operating in the Chicago gateway, and the CTCO, through its Class I members, to submit to the Board weekly reports on railroad performance. The proposed reporting requirements are based on and include those contained in the *Interim Data Order,* but include the following modifications:

[1] *See generally* National Grain and Feed Association Letter, *U.S. Rail Serv. Issues,* EP 724 (filed May 6, 2014); Western Coal Traffic League Letter, *U.S. Rail Serv. Issues,* EP 724 (filed Apr. 17, 2014); Apr. Hr'g Tr. 154–155, *U.S. Rail Serv. Issues,* EP 724 (Apr. 10, 2014); Western Coal Traffic League Statement 5–6, *U.S. Rail Serv. Issues,* EP 724 (filed Sept. 5, 2014); Sept. Hr'g Tr. 48, 290, *U.S. Rail Serv. Issues,* EP 724 (Sept. 4, 2014).

[2] AAR Letter 1, *U.S. Rail Serv. Issues—Data Collection,* EP 724 (Sub-No. 3) (filed Oct. 22, 2014).

• In subsection (a), instructions have been added to Requests nos. 1–3 to align the requests with performance data being published by AAR;

• In subsection (a), Request no. 4 has been modified to capture average dwell time for ''loaded'' unit trains at origin ''or interchange receipt,'' and to clarify that the data is to be reported by the railroad receiving the loaded train at a shipper facility or interchange location;

• In subsection (a), Requests nos. 5 and 6 have been revised to cure ambiguities that emerged during the initial reporting periods and to clarify the data intended to be reported. Request no. 5 is intended to capture *every* instance during the reporting week in which specific types of loaded or empty trains are held at a location on the reporting railroad's system short of destination or scheduled interchange for longer than six consecutive hours. Request no. 6 is intended to capture an average of daily snap shots of cars in specific services that have not moved for the specified durations (48–120 hours; greater than 120 hours);

• In subsection (a), Request no. 9 has been deleted from the proposed requirements because it appears to have limited application to the carriers' disparate grain unit train operations; however, we ask that commenters propose an appropriate measure to capture performance data for grain unit train operations;

• In subsection (a), Request no. 10 has been renumbered as Request no. 9 and revised to allow carriers to report weekly total coal unit train loadings or weekly total coal car loadings by coal production region;

• In subsection (b), Request no. 1 has been modified to clarify that the request is for the average daily car ''volume'' at the key Chicago yards, meaning cars on hand, rather than cars processed;

• In subsection (b), Request no. 2 has been modified to clarify the method for deriving trains held outside the Chicago gateway;

• A new item has been added in subsection (d) to request a quarterly listing of all work-in-progress, major rail infrastructure projects, including project location by state, planned completion date for the project, percentage complete at the time of reporting, and project description and purpose. For purposes of this request, ''work-in-progress'' refers to projects for which ground breaking has taken place, ''major'' refers to any rail infrastructure project budgeted at $25 million or more over the life of the project, and ''rail infrastructure'' refers to capacity expansion or enhancement projects, excluding maintenance-of-way.

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Table 1. Major changes to the data requests between the Interim Data Order and the proposed rule.

Interim Data Order	Proposed Rule	Description of Change
Subsection (a), Request nos. 1-3: Train speed, terminal dwell time, total cars on line.	Subsection (a), Request nos. 1-3 (with added instructions)	Adds instructions to align requests with performance data being published by AAR.
Subsection (a), Request no. 4: Weekly average dwell time at origin for unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, and all other unit trains.	Subsection (a), Request no. 4: Weekly average dwell time at origin **or interchange location** for **loaded** unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, and all other unit trains. . . . **The data is to be reported by the receiving carrier.**	Captures average dwell time for loaded unit trains at origin or interchange receipt, and clarifies that the data is to be reported by the railroad receiving the loaded train.
Subsection (a), Request no. 5: Trains held short of destination or scheduled interchange for longer than six hours.	Subsection (a), Request no. 5 (with added instructions)	Adds instructions to cure ambiguities that emerged during the initial reporting periods.
Subsection (a), Request no. 6: The ~~weekly total~~ number of loaded and empty cars, ~~stated separately, in revenue service that~~ have not moved in . . . sorted by the following classifications (intermodal, grain, coal, crude oil, automotive, ethanol, or all other). . . .	Subsection (a), Request no. 6: The **daily average** number of loaded and empty cars, **operating in normal movement and billed to an origin or destination, which** have not moved in . . . sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, or all other).	Adds instructions to cure ambiguities and clarifies data intended to be reported.
Subsection (a), Request no. 9: Plan versus performance for grain shuttle (or dedicated grain train) round trips.	Deleted	Prior request no. 9 appears to have limited application to the carriers' disparate grain unit train operations; commenters are asked to propose an appropriate measure to capture performance data for grain unit train operations.
Subsection (a), Request no. 10: ~~Average daily~~ coal unit	Subsection (a), Request no. 9: **Weekly total** coal unit	Allows carriers to report weekly total coal unit train

train loadings versus plan for the reporting week by coal production region.	train loadings **or car loadings** for the reporting week by coal production region.	loadings or weekly total coal car loadings by coal production region.
Subsection (b), Request no. 1: Average daily car ~~counts~~ in the key Chicago terminal yards	Subsection (b), Request no. 1: Average daily car **volume** in the following Chicago area yards	Clarifies that the request is for the average daily car volume at the key Chicago yards.
Subsection (b), Request no. 2	Subsection (b), Request no. 2 (with added instructions)	Adds instructions for developing the average daily number of trains held for delivery to Chicago.
	New Subsection (d)	Adds quarterly request to list rail infrastructure projects.

As the Board noted in the *Interim Data Order,* at both hearings, carriers cited congestion in Chicago as one significant cause of the service problems.[3] While congestion in the area was particularly acute last winter, it has been a recurring problem at this crucial network hub. The Board continues to recognize the longstanding importance of Chicago as a hub in national rail operations and the impact that recent extreme congestion in Chicago has had on rail service in the Upper Midwest and nationwide. CP asserts, in its response to the *Interim Data Order,* that if either the Belt Railway of Chicago (BRC) or the Indiana Harbor Belt Railroad (IHB) becomes congested, the Chicago Terminal then becomes congested and that congestion then ''reverberates throughout the system.''[4] CP urges the Board to require BRC and IHB to report appropriate metrics on a weekly basis.[5] Under the *Interim Data Order,* AAR has been reporting average daily car counts in key Chicago area yards, including Clearing and Blue Island, which are BRC and IHB yards, respectively. Commenters are invited to propose the reporting of additional metrics, from the BRC and IHB or others, that could improve oversight and support a better understanding of service issues in the Chicago area. Finally, the Board in the *Interim Data Order* directed the Class I members of the CTCO to file a general summary of the CTCO's service contingency protocols. However, given that the Chicago gateway remains a concern, we believe that having more information about how the Class I carriers are managing operations in Chicago would be beneficial. Accordingly, the Class I members of the CTCO are directed to file a detailed explanation of the CTCO's service contingency protocols, including the protocol triggers and countermeasures. Should the members need to provide proprietary information to sufficiently explain the CTCO protocols (such as car counts and specific locations that trigger the protocols), they may request a protective order.

The Board also asks that Class I railroads comment on the capabilities of their respective internal data-keeping systems for capturing and generating data and the appropriate timeframe (*i.e.,* starting day and ending day) for the reporting week and for filing reports. Commenters are also asked to address whether and how geographical parameters could be practically incorporated into the requests in order to identify parts of the freight rail network experiencing acute congestion or service issues. The proposed rules address the same specific commodities covered under the *Interim Data Order.* If commenters believe it would advance the Board's goals, they may include metrics focused on other commodities along with an explanation of why it would be beneficial to collect that information.[6] Additionally, commenters may propose revised definitions for terms used in the data requests, such as ''unit train,'' if they believe such revised definitions would be necessary or helpful to the uniform collection of data, and methodologies for deriving data.

Additionally, on October 22, 2014, Kansas City Southern Railway Company (KCS) filed a petition for a waiver from certain requirements due to the nature of its grain business and its very limited number of customers in a discrete number of states in its service territory.[7] In response to the petition, the Board proposes to exempt KCS from filing state-specific information in response to Request nos. 7 and 8. Commenters may address whether this exemption is appropriate.

Because the Board is considering whether to implement a standardized set of weekly reporting requirements, proposals for new reporting items should take into account whether they may be obtained from data likely maintained by railroads in the ordinary course of business. Proposed items should not call for narrative responses or impose requirements that vary from week to week. Also, the Class I railroads are asked to comment on which requests can be reported through AAR or Railinc Corporation[8] on behalf of the industry.

In seeking public comments, the Board requests that interested stakeholders evaluate the utility of each

[3] Apr. Hr'g Tr. 186–87, 208, *U.S. Rail Serv. Issues,* EP 724 (Apr. 10, 2014); North Dakota Public Service Commission Comments 3, *U.S. Rail Serv. Issues,* EP 724 (filed Sept. 4, 2014).

[4] CP Comment 1, *U.S. Rail Serv. Issues—Data Collection,* EP 724 (Sub-No. 3) (filed Oct. 22, 2014).

[5] *Id.*

[6] On October 24, 2014, The Fertilizer Institute submitted a letter asking the Board to require separate reporting with regard to fertilizer shipments. The Fertilizer Institute Letter 1–2, *U.S. Rail Serv. Issues—Data Collection,* EP 724 (Sub-No. 3) (filed Oct. 24, 2014).

[7] *See* KCS Petition for Waiver, *U.S. Rail Serv. Issues—Data Collection,* EP 724 (Sub-No. 3) (filed Oct. 22, 2014).

[8] Railinc Corporation provides information technology, applications, and electronic data services to the North American freight railway industry. It is a wholly-owned subsidiary of AAR. *See* Railinc, Company Overview, *https://www.railinc.com/rportal/company-overview* (last visited Dec. 19, 2014).

data request, offer proposed modifications, and/or propose other requests that would assist the Board and the public in gaining complete and accurate near real-time assessment of the performance of Class I railroads.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. §§ 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, § 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities.'' § 605(b). The impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The rules proposed here would not have a significant economic impact upon a substantial number of small entities, within the meaning of the RFA. The reporting requirements would apply only to Class I rail carriers, which, under the Board's regulations, have annual carrier operating revenues of $250 million or more in 1991 dollars (adjusted for inflation using 2013 data, the revenue threshold for a Class I rail carrier is $467,063,129). Class I carriers generally do not fall within the Small Business Administration's definition of a small business for the rail transportation industry.[9] Therefore, the Board 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 within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

Paperwork Reduction Act. Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board seeks comments regarding: (1) Whether the collection of information in the proposed rule, and further described in the Appendix, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Information pertinent to these issues is included in the Appendix. The collection in this proposed rule will be submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

This proposal would not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments are due by March 2, 2015. Reply comments are due by April 29, 2015.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

3. Notice of this decision will be published in the **Federal Register**.

4. The Class I members of the CTCO shall file a detailed explanation of the CTCO's service contingency protocols, including the protocol triggers and countermeasures, by January 14, 2015.

5. This decision is effective on its service date.

List of Subjects

49 CFR Part 1250

Administrative practice and procedure, Railroads, Reporting and record keeping requirements.

Decided: December 30, 2014.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend title 49, chapter X, subchapter D, of the Code of Federal Regulations by adding Part 1250 as follows:

PART 1250—RAILROAD PERFORMANCE DATA REPORTING

Sec.
1250.1 Reporting Requirements
1250.2 Definitions
1250.3 Data Elements

Authority: 49 U.S.C. 721 and 11145.

§ 1250.1 Reporting Requirements.

Each Class I railroad is required to report to the Board on a weekly basis, the performance data set forth in § 1250.3(a)(1)–(9). The Class I railroads operating at the Chicago gateway are required to jointly report on a weekly basis the performance data set forth in § 1250.3(b)(1)–(2). The reports required under § 1250.3(b)(1)–(2) may be submitted by the Association of American Railroads (AAR). The data must be reported to the Board between 9 a.m. and 5 p.m. Eastern Time on Tuesday of each week, covering the previous reporting week (12:01 a.m. Sunday–11:59 p.m. Saturday). In the event that a particular Tuesday is a Federal holiday or falls on a day when STB offices are closed for any other reason, then the data should be reported on the next business day when the offices are open. The data must be filed in Excel format, using an electronic spreadsheet made available by the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), and should be emailed to *data.reporting@stb.dot.gov.* Each week's report must include data only for that week, and should not include data for previous weeks. Unless otherwise provided, the data will be publicly available and posted on the Board's Web site.

§ 1250.2 Definitions.

(a) Unit train. Unit train refers to a train comprising 50 or more railcars of the same or similar type, carrying a single commodity in bulk.

§ 1250.3 Railroad Performance Data Elements.

(a) Each Class I railroad must report the following performance data elements for the reporting week. However, with regard to elements 7 and 8, Kansas City Southern Railway Company is not required to report information by State, but instead shall report system-wide data.

(1) System-average train speed by the following train types for the reporting week. (Train speed should be measured for line-haul movements between terminals. The average speed for each train type should be calculated by dividing total train-miles by total hours operated.)

(i) Intermodal
(ii) Grain unit
(iii) Coal unit
(iv) Automotive unit
(v) Crude oil unit

[9] The Small Business Administration's Office of Size Standards has established a size standard for rail transportation, pursuant to which a line-haul railroad is considered small if its number of employees is 1,500 or less, and a short line railroad is considered small if its number of employees is 500 or less. 13 CFR 121.201 (industry subsector 482).

(vi) Ethanol unit
(vii) Manifest
(viii) All other

(2) Weekly average terminal dwell time, measured in hours, excluding cars on run-through trains (*i.e.,* cars that arrive at, and depart from, a terminal on the same through train) for the carrier's system and its 10 largest terminals in terms of railcars processed. (Terminal dwell is the average time a car resides at a specified terminal location expressed in hours.)

(3) Weekly average cars on line by the following car types for the reporting week. (Each railroad is requested to average its daily on-line inventory of freight cars. Articulated cars should be counted as a single unit. Cars on private tracks (*e.g.,* at a customer's facility) should be counted on the last railroad on which they were located. Maintenance-of-way cars and other cars in railroad service are to be excluded.)

(i) Box
(ii) Covered hopper
(iii) Gondola
(iv) Intermodal
(v) Multilevel (Automotive)
(vi) Open hopper
(vii) Tank
(viii) Other
(ix) Total

(4) Weekly average dwell time at origin or interchange location for loaded unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, and all other unit trains. (For the purposes of this data element, dwell time refers to the time period from release of a unit train at origin or interchange location until actual movement by the receiving carrier. The data is to be reported by the receiving carrier.)

(5) The weekly total number of loaded and empty trains held short of destination or scheduled interchange for longer than six consecutive hours sorted by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, other unit, and all other) and by cause (crew, locomotive power, track maintenance, mechanical issue, or other (explain)). (This request is intended to capture *every* instance during the reporting week in which a loaded or empty train is held at a location on the reporting railroad's system short of its destination or scheduled interchange for longer than six consecutive hours. For example, if, during a reporting week, a coal unit train originating from the Powder River Basin, and scheduled to be interchanged in St. Louis were held for six consecutive hours in Nebraska due to crew unavailability and held again for nine consecutive hours in Iowa due to track maintenance, during the same reporting week, then this train would be reported twice in the weekly report to the STB (once for ''crew'' and once for ''track maintenance'').)

(6) The daily average number of loaded and empty cars, operating in normal movement and billed to an origin or destination, which have not moved in (a) more than 120 hours; and (b) more than 48 hours, but less than or equal to 120 hours, sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, or all other). In order to derive the daily averages for the reporting week, carriers are requested to run a same-time snapshot each day of the reporting week, capturing cars within each category. The number of cars captured on the daily snapshot for each category should be added, and then divided by the number of days in the reporting week (typically seven days). In deriving this data, carriers should include cars in normal service anywhere on their system, but should not include cars placed at a customer facility; in constructive placement; placed for interchange to another carrier; in bad order status; in storage; or operating in railroad service (*e.g.,* ballast).

(7) The weekly total number of grain cars loaded and billed, reported by State, aggregated for the following Standard Transportation Commodity Codes (STCCs): 01131 (barley), 01132 (corn), 01133 (oats), 01135 (rye), 01136 (sorghum grains), 01137 (wheat), 01139 (grain, not elsewhere classified), 01144 (soybeans), 01341 (beans, dry), 01342 (peas, dry), and 01343 (cowpeas, lentils, or lupines). ''Total grain cars loaded and billed'' includes cars in shuttle service; dedicated train service; reservation, lottery, open and other ordering systems; and, private cars. Additionally, separately report the total cars loaded and billed in shuttle service (or dedicated train service) versus total cars loaded and billed in all other ordering systems, including private cars.

(8) For the aggregated STCCs in Item 7, report by State the following:

(i) The total number of overdue car orders (a car order equals one car; overdue means not delivered within the delivery window);

(ii) Average number of days late for all overdue grain car orders;

(iii) The total number of new orders received during the past week;

(iv) The total number of orders filled during the past week; and

(v) The number of orders cancelled, respectively, by shipper and railroad during the past week.

(9) Weekly total coal unit train loadings or car loadings for the reporting week by coal production region.

(b) The Class I railroads operating at the Chicago gateway (or AAR on behalf of the Class I railroads operating at the Chicago gateway) must jointly report the following performance data elements for the reporting week:

(1) Average daily car volume in the following Chicago area yards: Barr, Bensenville, Blue Island, Calumet, Cicero, Clearing, Corwith, Gibson, Kirk, Markham, and Proviso for the reporting week; and

(2) Average daily number of trains held for delivery to Chicago sorted by receiving carrier for the reporting week. The average daily number should be derived by taking a same time snapshot each day of the reporting week, capturing the trains held for each railroad at that time, and then adding those snapshots together and dividing by the days in the reporting week. (For purposes of this request, ''held for delivery'' refers to a train staged by the delivering railroad short of its scheduled arrival at the Chicago gateway at the request of the receiving railroad, and that has missed its scheduled window for arrival.)

(Note: If Chicago terminal yards not identified in § (b)(1), are included in the Chicago Transportation Coordination Office's (CTCO) assessment of the fluidity of the gateway for purposes of implementing service contingency measures, then the data requested in § (b)(1) shall also be reported for those yards.)

(c) The Class I railroad members of the CTCO (or one Class I railroad member of the CTCO designated to file on behalf of all Class I railroad members, or AAR) must:

(1) File a written notice with the Board when the CTCO changes its operating Alert Level status, within one business day of that change in status.

(2) If the CTCO revises its protocol of service contingency measures, file with the Board a detailed explanation of the new protocol, including both triggers and countermeasures, within seven days of its adoption.

(d) On a quarterly basis, each Class I railroad must report all work-in-progress, major rail infrastructure projects, including location by State, planned completion date for each project, percentage complete for each project at the time of reporting, and project description and purpose. For purposes of this request, ''work-in-progress'' refers to projects for which ground-breaking has taken place; ''major'' refers to projects whose budget equals or exceeds $25 million over the life of the project; and ''rail

infrastructure'' refers to network capacity expansion or enhancement, excluding maintenance-of-way. The data must be reported to the Board between 9AM and 5PM Eastern Time on the first Tuesday of each quarter. In the event that the first Tuesday of a quarter is a Federal holiday or falls on a day when STB offices are closed for any other reason, then the data should be reported on the next business day when the offices are open.

The following will not appear in the CFR:

Appendix

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

Description of Collection

Title: Rail Service Data Collection.

OMB Control Number: 2140–XXXX.

STB Form Number: None.

Type of Review: New collection.

Respondents: Class I railroads (on behalf of themselves and the Chicago Transportation Coordination Office (''CTCO'')).

Number of Respondents: Seven.

Estimated Time per Response: The proposed rules seek three related responses, as indicated in the table below.

TABLE—ESTIMATED TIME PER RESPONSE

Type of responses	Estimated time per response (hours)
Weekly	3
Quarterly	3
On occasion	3

Frequency: The frequencies of the three related collections sought under the proposed rules are set forth in the table below.

TABLE—FREQUENCY OF RESPONSES

Type of responses	Frequency of responses (per year)
Weekly	52
Quarterly	4
On occasion	2

Total Burden Hours (annually including all respondents): The recurring burden hours are estimated to be no more than 1,182 hours per year, as derived in the table below. In addition, there are some one-time, start-up costs of approximately 2 hours for each respondent filing a quarterly report that must be added to the first year's total burden hours. To avoid inflating the estimated total annual hourly burden, the two-hour start-up burden has been divided by three and spread over the three-year approval period. Thus, the total annual burden hours for each of the three years are estimated at no more than 1,186.67 hours per year.

TABLE—TOTAL BURDEN HOURS

[Per year]

Type of responses	Number of respondents	Estimated time per response (hours)	Frequency of responses (per year)	Total yearly burden hours
Weekly	7	3	52	1,092
Quarterly	7	3	4	84
On occasion	1	3	2	6
Total				1,182

Total ''Non-hour Burden'' Cost: None identified. Reports will be submitted electronically to the Board.

Needs and Uses: The new information collections would allow the Board to better understand current service issues and potentially to identify and resolve possible future regional and national service disruptions more quickly. Transparency would also benefit rail shippers and stakeholders, by allowing them to better plan operations and make informed business decisions based on publicly-available real-time data, and their own analysis of performance trends over time.

Retention Period: Information in this report will be maintained in the Board's files for 10 years, after which it is transferred to the National Archives.

[FR Doc. 2014–30940 Filed 1–5–15; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register

Vol. 80, No. 3

Tuesday, January 6, 2015

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974; System of Records

AGENCY: United States Agency for International Development.

ACTION: Altered system of records notice.

SUMMARY: Pursuant to the Privacy Act, 5 U.S.C. 552a, the United States Agency for International Development (USAID) is issuing public notice for an altered system of records entitled, ''AID–16 Employee Time, Attendance, and Payroll Records'' last published at 42 FR 47381 (Sept. 20, 1977). This action is necessary to meet the requirements of the Privacy Act, 5 U.S.C. 522a(e)(4), to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency.

DATES: In accordance with 5 U.S.C. 522a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, any comments must be received on or before February 5, 2015. Unless comments are received that would require a revision, this altered system of records will become effective on February 5, 2015.

ADDRESSES: You may submit comments:

Electronic

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- *Email: privacy@usaid.gov.*

Paper

- *Fax:* (703) 666–5670.
- *Mail:* Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue NW., Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: The USAID Privacy Office at United States Agency for International Development, Bureau for Management, Office of the Chief Information Officer, Information Assurance Division, 1300 Pennsylvania Avenue NW., Washington, DC 20523; or via email at *privacy@usaid.gov.*

SUPPLEMENTARY INFORMATION: USAID has recently conducted a review of system of records notices and has determined that the system of records USAID–15 Employee Payroll Records was deleted in error on November 5, 2012 (77 FR 66432). In order to reflect the system of records current status, USAID will incorporate USAID–15 into and alter USAID–16 Attendance and Leave Reporting Records to create USAID–16 Employee Time, Attendance, and Payroll Records.

Dated: December 10, 2014.

William Morgan,

Chief Privacy Officer, United States Agency for International Development.

USAID–16

SYSTEM NAME:

Employee Time, Attendance, and Payroll Records.

SYSTEM LOCATION:

Records are maintained at United States Agency for International Development (USAID) offices in Washington, DC 20523 and other USAID offices in the United States and throughout the world; U.S. Department of State COOP Beltsville (BIMC), 8101 Odell Road, Floor/Room—173, Beltsville, MD 20705; and USAID payroll and information technology services provider locations such as Terremark, 50 NE. 9th Street, Miami, FL 33132, and Global Financial Service Center (GFSC–DoS) 1969 Dyess Avenue, Building A, Computer Room 2A228, Charleston, SC 29405.

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

The system encompasses all individuals who are current or former Civil Service and Foreign Service employees of USAID, including direct-hire employees assigned to positions in the United States and direct-hire employees assigned to positions overseas; and all individuals who are personal services contractors paid by USAID.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of any and all records essential to the conduct of payroll-related activities. These records may contain the following types of information:

(1) Payroll Records: Taxes, various deductions, garnishments, salary data, retirement data, pay period, fiscal year data, benefits, and direct deposit information.

(2) Personnel Records: Social Security Number, employee's name, date of birth, gender, race or national origin, disability data, address data, duty location, position data, awards and bonuses, employment verification information, reinstatement and separation data, travel and relocation data, transfer data, education and training data, employee death records, and military and veterans data.

(3) Time and Attendance Records: Number and type of hours worked (such as regular, overtime, night differential, Federal Equal Pay Act (FEPA), and Sunday differential), compensatory time earned and used, compensatory travel earned, Fair labor Standards Act compensation, tour of duty data, leave requests, leave balances and credits, training time, voluntary leave transfer records, and military leave.

(4) Data Reporting and Personnel and Pay Processing Tables: Nature of action codes, Civil Service authority codes, standard remarks, signature block table, position title table; financial organization table; and salary tables.

AUTHORITY FOR MAINTENANCE OF SYSTEM OF RECORDS:

The system was established and is maintained pursuant to 5 U.S.C. 301, Departmental Regulations; 5 U.S.C. Part III, Employees, Subpart D, Pay and Allowances; 22 U.S.C. Ch. 14, Foreign Service, Subchapter I, General Provisions; 22 U.S.C. Ch. 52, Foreign Service, Subchapter IV, Compensation; 26 U.S.C. 6109, Identifying numbers; 31 U.S.C. 3512, Executive agency accounting and other financial management reports and plans, and 3513, Financial reporting and accounting system; 42 U.S.C. 659, Consent by United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations; 44 U.S.C. 3101, Records management by agency heads; general duties; Executive Order 9397, Numbering System for Federal Accounts Relating to Individual Persons, E.O. 9397, 3 CFR, 1943–1948 Comp., p. 283, as amended by E.O. 13478, Amendments To Executive

Order 9397 Relating To Federal Agency Use of Social Security Numbers, 73 FR 70279 (Nov. 18, 2008).

PURPOSE(S):

The purposes of this system are to ensure proper payment of salary and benefits to USAID personnel and to track time worked for reporting and compliance purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USE:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records contained in this system of records may be disclosed outside USAID as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To a court, magistrate, or other administrative body of competent jurisdiction for the purposes of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when USAID is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary.

(2) To the Department of Justice or other appropriate United States Government Agency when the records are arguably relevant to a proceeding in a court or other tribunal of competent jurisdiction in which USAID or a USAID official in his or her official capacity is a party or has an interest, or when the litigation is likely to affect USAID.

(3) In the event of an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by statute or particular program pursuant thereto, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(4) To the Department of State and its posts abroad for the purposes of transmission of information between organizational units of the Agency, or for purposes related to the responsibilities of the Department of State in conducting United States foreign policy or protecting United States citizens, such as the assignment of employees to positions abroad, the reporting of accidents abroad, evacuation of employees and dependents, and other purposes for which officers and employees of the Department of State have a need for the records in the performance of their duties.

(5) To a foreign government or international agency in response to its request for information to facilitate the conduct of U.S. relations with that government or agency through the issuance of such documents as visas, country clearances, identification cards, drivers' licenses, diplomatic lists, licenses to import or export personal effects, and other official documents and permits routinely required in connection with the official service or travel abroad of the individual and his or her dependents.

(6) To Federal agencies with which the Agency has entered into an agreement to provide services to assist the Agency in carrying out its functions under the Foreign Assistance Act of 1961, as amended. Such disclosures would be for the purposes of transmission of information between organizational units of the Agency; of providing to the original employing agency information concerning the services of its employee while under the supervision of the Agency, including performance evaluations, reports of conduct, awards and commendations, and information normally obtained in the course of personnel administration and employee supervision; or of providing other information directly related to the purposes of the inter-agency agreement as set forth therein, and necessary and relevant to its implementation.

(7) To Federal, State, local, foreign, and international agencies when the information is relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

(8) To the National Archives and Records Administration for the purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(9) To a former employee of USAID for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable agency regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the agency requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(10) To appropriate agencies, entities, and persons when (1) USAID suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) USAID 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 USAID or another Agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USAID's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(11) To the Office of Personnel Management and the Department of State for purposes of personnel management and benefits processing.

(12) To the Office of Personnel Management, the Department of State, and the Social Security Administration for purposes of retirement benefits processing.

(13) To the Combined Federal Campaign for purposes of charitable contributions processing.

(14) To Federal agencies that provide payroll processing services under a cross-servicing agreement to provide support services for the purposes of payroll processing, including issuing pay to employees and the distribution of allotments and deductions to financial and other institutions, some through electronic transfer.

(15) To labor organizations for the purposes of providing information on eligible employees and dues payments.

(16) To Federal, State, and local agencies for the purposes of identifying individuals and verifying their income sources in relation to paternity, orders of support, and related court orders.

(18) To judgment holders for the purposes of garnishment for the payment of alimony and child support.

(19) To State and local courts of competent jurisdiction for the purposes of enforcing alimony and child support.

(20) To heirs, executors, and legal representatives of beneficiaries for the purposes of probating and settling estates.

(21) To the Department of the Treasury for the purposes of payroll and other types of payment and offset processing.

(22) To the Internal Revenue Service for the purposes of (a) processing taxable earnings and withholding; (b) handling audits, inspections, and investigations; (c) obtaining mailing addresses of debtors in order to collect a Federal debt; and (c) offsetting a Federal debt against the debtor's income tax refund.

(23) To Federal agencies for the purposes of providing wage and separation information to another agency as required by law for payroll purposes.

(24) To the Merit System Protection Board, Federal Labor Relations Authority, the Equal Employment Opportunity Commission, and the Foreign Service Grievance Board, when requested in the performance of their authorized duties.

(25) To contractors, grantees, experts, consultants, students, detailees, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency functions related to this system of records.

(26) To anyone who is under contract to USAID for the purposes of fulfilling an agency function but only to the extent necessary to fulfill that function.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in paper, microfiche, and/or electronic form; and are maintained in locked cabinets and/or user-authenticated, password-protected systems.

RETRIEVABILITY:

Records are retrieved by the individual's name or Social Security Number.

SAFEGUARDS:

Paper and microfiche records are maintained by USAID and are safeguarded in secured cabinets within secured rooms. The electronic records are stored in the WebTA time and attendance system, National Finance Center Payroll/Personnel System, Phoenix Financial Management System, or other time and attendance and financial management systems, which are safeguarded in accordance with applicable rules and policies, including all applicable USAID automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the records is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Time and attendance records are destroyed after a General Accountability Office audit or when six years old, whichever is sooner. These records are maintained in accordance with National Archives and Records Administration General Records Schedule 2, Item 7. Individual employee payroll records are destroyed when 56 years old in accordance with National Archives and Records Administration General Records Schedule 2, Item 1.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Payroll Division, Office of the Chief Financial Officer, United States Agency for International Development, 1300 Pennsylvania Avenue NW., Washington, DC 20523–2120.

NOTIFICATION PROCEDURE:

Same as Record Access Procedures.

RECORDS ACCESS PROCEDURES:

Under the Privacy Act, individuals may request access to records about themselves. If an agency or a person, who is not the individual who is the subject of the records, requests access to records about an individual, the written consent of the individual who is the subject of the records is required.

Requesters may submit requests for records under the Privacy Act: (1) By mail to the USAID FOIA Office, Bureau for Management, Office of Management Services, Information and Records Division, 1300 Pennsylvania Avenue NW., Room 2.07C–RRB, Washington, DC 20523–2701; (2) via Facsimile to 202–216–3070; (3) via email to *foia@usaid.gov;* (4) on the USAID Web site at *www.usaid.gov/foia-requests;* or (5) in person during regular business hours at USAID, 1300 Pennsylvania Avenue NW., Washington, DC 20523–2701, or at USAID overseas missions.

Requesters using 1 through 4 may provide a written statement or may complete and submit USAID Form 507–1, Freedom of Information/Privacy Act Record Request Form, which can be obtained: (a) On the USAID Web site at *www.usaid.gov/foia-requests;* (b) by email request to *foia@usaid.gov*; or (c) by writing to the USAID FOIA Office, Bureau for Management, Office of Management Services, Information and Records Division, 1300 Pennsylvania Avenue NW., Room 2.07C–RRB, Washington, DC 20523–2701, and provide information that is necessary to identify the records, including the following: Requester's full name; present mailing address; home telephone; work telephone; name of subject, if other than requester; requester relationship to subject; description of type of information or specific records; and purpose of requesting information. Requesters should provide the system of record identification name and number, if known; and, to facilitate the retrieval of records contained in those systems of records which are retrieved by Social Security Numbers, the Social Security Number of the individual to whom the record pertains.

In addition, requesters using 1 through 4 must include proof of identity information by providing copies of two (2) source documents that must be notarized by a valid (un-expired) notary public. Acceptable proof-of-identity source documents include: An unexpired United States passport; Social Security Card (both sides); unexpired United States Government employee identity card; unexpired driver's license or identification card issued by a state or United States possession, provided that it contain a photograph; certificate of United States citizenship; certificate of naturalization; card showing permanent residence in the United States; United States alien registration receipt card with photograph; United States military card or draft record; or United States military dependent's identification card.

Requesters using 1 through 4 must also provide a signed and notarized statement that they are the person named in the request; that they understand that any falsification of their statement is punishable under the provision of 18 U.S.C. 1001 by a fine, or by imprisonment of not more than five years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisonment of not more than eight years, or both; and that requesting or obtaining records under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) as a misdemeanor and by a fine of not more than $5,000.

Requesters using 5 must provide such personal identification as is reasonable under the circumstances to verify the requester's identity, including the following: An unexpired United States passport; Social Security Card; unexpired United States Government employee identity card; unexpired driver's license or identification card issued by a state or United States possession, provided that it contain a photograph; certificate of United States citizenship; certificate of naturalization; card showing permanent residence in the United States; United States alien

registration receipt card with photograph; United States military card or draft record; or United States military dependent's identification card.

CONTESTING RECORDS PROCEDURES:

Individuals seeking to contest or amend records maintained on himself or herself must clearly and concisely state that information is being contested, and the proposed amendment to the information sought. Requests to amend a record must follow the Record Access Procedures above.

RECORDS SOURCE CATEGORIES:

Information contained in the system is obtained from the individual concerned and USAID employees acting in their official capacity.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2014–30912 Filed 1–5–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0109]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Pale Cyst Nematode

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the interstate movement of regulated articles to prevent the spread of the pale cyst nematode to noninfested areas of the United States.

DATES: We will consider all comments that we receive on or before March 9, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2014-0109.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2014–0109, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0109* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the interstate movement of regulated articles to prevent the spread of pale cyst nematode, contact Mr. Jonathan Jones, National Policy Manager, PHP, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 851–2128. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Pale Cyst Nematode.

OMB Control Number: 0579–0322.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture, either independently or in cooperation with States, may carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests that are new to or not widely distributed within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, which administers regulations to implement the PPA.

In accordance with the regulations in ''Subpart–Pale Cyst Nematode'' (7 CFR 301.86 through 301.86–9), APHIS restricts the interstate movement of certain articles to help prevent the artificial spread of pale cyst nematode, a major pest of potato crops in cool-temperature areas, to noninfested areas of the United States. The regulations contain requirements for the interstate movement of regulated articles and involve information collection activities, including certificates, permits, and compliance agreements. For this collection, we are also adding self-certification as an additional information collection activity.

Since the last approval of this collection, the areas regulated for pale cyst nematode have decreased. The decrease in regulated areas and the additional information collection activity have contributed to an overall decrease by 39 of the estimated annual number of respondents and an increase by 41 hours in the estimated total annual burden on respondents.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the 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 our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.2 hours per response.

Respondents: U.S. potato producers, packers, processors, and handlers of potatoes.

Estimated annual number of respondents: 113.

Estimated annual number of responses per respondent: 16.

Estimated annual number of responses: 1,860.

Estimated total annual burden on respondents: 383 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 31st day of December 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–30928 Filed 1–5–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0102]

Notice of Request for Extension of Approval of an Information Collection; Nomination Request Form; Animal Disease Training

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with training related to animal diseases.

DATES: We will consider all comments that we receive on or before March 9, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0102.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2014–0102, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0102* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the training related to animal diseases, contact Ms. Alicia D. Love, Training Technician, Professional Development Staff, VS, APHIS, 4700 River Road Unit 27, Riverdale, MD 20737; (301) 851–3425. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Nomination Request Form; Animal Disease Training.

OMB Control Number: 0579–0353.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to protect the health of U.S. livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and by eradicating such diseases from the United States when feasible. In connection with this mission, APHIS' Veterinary Services (VS) program provides vital animal disease training to State, Tribal, military, international, university, and industry personnel.

Individuals who wish to attend animal disease-related training must submit a Nomination Request Form (VS Form 1–5) to VS to help the program coordinate courses and select participants. VS develops rosters with course participants' names and contact information to notify them of future training courses and to encourage contact among participants throughout their careers.

Since the last extension of approval for this information collection activity, APHIS has increased the estimated annual number of respondents and responses from 100 to 350 due to an increase in the number of training courses APHIS offers. As a result, the estimated total annual burden on respondents has increased from 30 hours to 116 hours.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the 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 our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, such as electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.33 hours per response.

Respondents: State, Tribal, military, international, university, and industry personnel.

Estimated annual number of respondents: 350.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 350.

Estimated total annual burden on respondents: 116 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 31st day of December 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–30930 Filed 1–5–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0108]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Animal Welfare

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the Animal Welfare Act regulations for the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers.

DATES: We will consider all comments that we receive on or before March 9, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2014-0108.*

• Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2014–0108, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0108* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the Animal Welfare Act regulations, contact Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 851–3751. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Animal Welfare.

OMB Control Number: 0579–0036.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Animal Welfare Act (AWA or Act, 7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. The Secretary of Agriculture has delegated the authority for enforcement of the AWA to the Animal and Plant Health Inspection Service (APHIS).

The regulations in 9 CFR parts 1 through 3 were promulgated under the AWA to ensure the humane handling, care, treatment, and transportation of regulated animals under the Act. The regulations in 9 CFR part 2 require documentation of specified information by dealers, research institutions, exhibitors, carriers (including foreign air carriers), and intermediate handlers. The regulations in 9 CFR part 2 also require that facilities that use animals for regulated purposes obtain a license or register with the U.S. Department of Agriculture (USDA). Before being issued a USDA license, individuals are required to undergo prelicense inspections; once licensed, a licensee must periodically renew the license.

To help ensure compliance with the AWA regulations, APHIS performs unannounced inspections of regulated facilities. A significant component of the inspection process is review of records that must be established and maintained by regulated facilities. The information contained in these records is used by APHIS inspectors to ensure that dealers, research facilities, exhibitors, intermediate handlers, and carriers comply with the Act and regulations.

Facilities must make and maintain records that contain official identification for all dogs and cats and certification of those animals received from pounds, shelters, and private individuals. These records are used to ensure that stolen pets are not used for regulated activities. Dealers, exhibitors, and research facilities that acquire animals from nonlicensed persons are required to have the owners of the animals sign a certification statement verifying the owner's exemption from licensing under the Act. Records must also be maintained for animals other than dogs and cats when the animals are used for purposes regulated under the Act.

Research facilities must also make and maintain additional records for animals covered under the Act that are used for teaching, testing, and experimentation. This information is used by APHIS personnel to review the research facility's animal care and use program.

APHIS needs the reporting and recordkeeping requirements contained in 9 CFR part 2 to enforce the Act and regulations. APHIS also uses the collected information to provide a mandatory annual report of animal welfare activities to Congress.

In addition to the above information collection activities approved under 0579–0036, APHIS is combining to this collection the burden from 0579–0361, Submission of Itineraries, and 0579–0392, Animal Welfare; Retail Pet Stores and Licensing Exemptions. Upon approval of this collection by the Office of Management and Budget (OMB), APHIS will retire numbers 0579–0361 and 0579–0392.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the 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 our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.63 hours per response.

Respondents: Dealers, research facilities, exhibitors, carriers, and intermediate handlers; and persons exempt from licensing under the AWA.

Estimated annual number of respondents: 13,985.

Estimated annual number of responses per respondent: 15.

Estimated annual number of responses: 216,171.

Estimated total annual burden on respondents: 136,364 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 31st day of December 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–30929 Filed 1–5–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Guarantee Fee Rates for Guaranteed Loans for Fiscal Year 2015; Maximum Portion of Guarantee Authority Available for Fiscal Year 2015;Annual Renewal Fee for Fiscal Year 2015

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in 7 CFR 4279.107, the Agency has the authority to charge an initial guarantee fee and an

annual renewal fee for loans made under the Business and Industry (B&I) Guaranteed Loan Program. Pursuant to that authority, the Agency is establishing the renewal fee rate at one-half of 1 percent for the B&I Guaranteed Loan Program. This rate will apply to all loans obligated in Fiscal Year (FY) 2015 that are made under the B&I program. As established in 7 CFR 4279.107(b)(1), the amount of the fee on each guaranteed loan will be determined by multiplying the fee rate by the outstanding principal loan balance as of December 31, multiplied by the percent of guarantee.

The Agency was authorized by the 2012 Appropriations Bill, and subsequent Appropriation Acts, to charge a maximum of 3 percent for its guarantee fee for FYs 2012, 2013, and 2014. The 2015 Appropriations Act does contain a provision to charge a maximum of 3 percent for its guarantee fee for FY 2015. As such, the guarantee fee for FY 2015 will be 3 percent.

As set forth in 7 CFR 4279.107(a) and 4279.119(b)(4), each fiscal year, the Agency shall establish a limit on the maximum portion of B&I guarantee authority available for that fiscal year that may be used to guarantee loans with a reduced guarantee fee or guaranteed loans with a guarantee percentage exceeding 80 percent.

Allowing a reduced guarantee fee or exceeding the 80 percent guarantee on certain B&I guaranteed loans that meet the conditions set forth in 7 CFR 4279.107 and 4279.119 will increase the Agency's ability to focus guarantee assistance on projects which the Agency has found particularly meritorious. For reduced guarantee fees, the borrower's business must support value-added agriculture and result in farmers benefiting financially or must be a high impact business investment as defined in 7 CFR 4279.155(b)(5) and be located in rural communities that experience long-term population decline and job deterioration, remain persistently poor, are experiencing trauma as a result of natural disaster, or are experiencing fundamental structural changes in its economic base. For guaranteed loans exceeding 80 percent, such projects must qualify as a high-priority project (a requirement of 7 CFR 4279.119(b)), scoring at least 50 points in accordance with 7 CFR 4279.155(b).

Not more than 12 percent of the Agency's quarterly apportioned B&I guarantee authority will be reserved for loan requests with a reduced fee, and not more than 15 percent of the Agency's quarterly apportioned guarantee authority will be reserved for guaranteed loan requests with a guarantee percentage exceeding 80 percent. Once the respective quarterly limits are reached, all additional loans for that quarter will be at the standard fee and guarantee limits.

DATES: *Effective Date:* January 6, 2015.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, USDA, Rural Development, Business Programs, Business and Industry Division, STOP 3224, 1400 Independence Avenue SW., Washington, DC 20250–3224, telephone (202) 720–6802, email *Brenda.griffin@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866, as amended by Executive Order 13258.

Lillian E. Salerno,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2014–30967 Filed 1–5–15; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Halibut Fisheries: Charter Permits.

OMB Control Number: 0648–0592.

Form Number(s): None.

Type of Request: Regular (revision and extension of a currently approved information collection).

Number of Respondents: 68.

Average Hours per Response: Application for Transfer of Charter Halibut Permit, Application for Military Charter Permit, Application for Transfer between IFQ and Guided Angler Fish, 2 hours each.

Burden Hours: 98.

Needs and Uses: This request is for revision and extension of a currently approved information collection.

The Alaska Pacific Halibut Charter Program established Federal Charter Halibut Permits (CHPs) for operators in the charter halibut fishery in IPHC regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). Since February 1, 2011, all vessel operators in Areas 2C and 3A with charter anglers onboard catching and retaining Pacific halibut must have a valid CHP onboard during every charter vessel fishing trip. CHPs must be endorsed with the appropriate regulatory area and number of anglers.

The National Marine Fisheries Service (NMFS) implemented this program based on recommendations by the North Pacific Fishery Management Council to meet allocation objectives in the charter halibut fishery. This program provides stability in the fishery by limiting the number of charter vessels that may participate in Areas 2C and 3A and decreasing the overall number of available CHPs over time. The program goals are to increase the value of the resource, limit boats to qualified active participants in the guided sport halibut sector, and enhance economic stability in rural coastal communities.

Revision: Charter permits and appeals regarding charter permits are no longer applicable and have been removed from this collection.

Affected Public: Business or other for profit organizations; individuals or households.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: December 31, 2014

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–30923 Filed 1–5–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–992]

Monosodium Glutamate From the People's Republic of China: Second Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 26, 2014, the Department of Commerce (''the Department'') published the First Amended Final Determination in the **Federal Register.** We are amending our *First Amended Final Determination* to

correct a ministerial error and amending the order to reflect the rates in the second amended final determination.[1]

DATES: *Effective Date:* January 6, 2015.

FOR FURTHER INFORMATION CONTACT: Milton Koch or Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2584 or (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2014, the Department published the final determination of sales at less than fair value in the antidumping duty investigation of monosodium glutamate (''MSG'') from the People's Republic of China (''PRC'').[2] On November 26, 2014, the Department published its *First Amended Final Determination* in response to ministerial error allegations filed by Ajinomoto North America Inc. (''Petitioner''), the petitioner in this investigation, and Langfang Meihua Bio-Technology Co., Ltd., Tongliao Meihua Biological SCI–TECH Co., Ltd., Meihua Group International Trading (Hong Kong) Limited, Meihua Holdings Group Co., Ltd, and Meihua Holdings Group Co., Ltd, Bazhou Branch (collectively, ''Meihua'', or the ''Meihua Group'').[3] In accordance with 19 CFR 351.224(b), the Department disclosed to interested parties the details of its calculations for the *First Amended Final Determination* on November 24, 2014. On November 25, 2014, Petitioner submitted a timely ministerial error allegation regarding the *First Amended Final Determination* and requested, pursuant to 19 CFR 351.224, that the Department correct the alleged ministerial error.

Scope of the Order

The scope of this order covers monosodium glutamate (MSG), whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15 percent or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in this order regardless of physical form (including, but not limited to, in monohydrate or anhydrous form, or as substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging.

MSG in monohydrate form has a molecular formula of $C_5H_8NO_4Na - H_2O$, a Chemical Abstract Service (CAS) registry number of 6106–04–3, and a Unique Ingredient Identifier (UNII) number of W81N5U6R6U. MSG in anhydrous form has a molecular formula of $C_5H_8NO_4Na$, a CAS registry number of l42–47–2, and a UNII number of C3C196L9FG.

Merchandise covered by the scope of this order is currently classified in the Harmonized Tariff Schedule (''HTS'') of the United States at subheading 2922.42.10.00. Merchandise subject to the order may also enter under HTS subheadings 2922.42.50.00, 2103.90.72.00, 2103.90.74.00, 2103.90.78.00, 2103.90.80.00, and 2103.90.90.91. The tariff classifications, CAS registry numbers, and UNII numbers are provided for convenience and customs purposes; however, the written description of the scope is dispositive.

Amendment to the *First Amended Final Determination*

After analyzing Petitioner's allegation, we determine that, in accordance with section 735(e) of the Tariff Act of 1930, as amended, (''the Act'') and 19 CFR 351.224(e), a ministerial error was made that affects the Meihua margin calculation, the separate rates, and the PRC-wide entity rate.[4] Specifically, the Department inadvertently failed to include the cost of steam in Meihua's ancillary operations regarding its MSG production. The amended estimated weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average dumping margin (percent)
Langfang Meihua Bio-Technology Co., Ltd./Meihua Group International Trading (Hong Kong) Limited.	Tongliao Meihua Biological SCI–TECH Co., Ltd./Meihua Holdings Group Co., Ltd., Bazhou Branch.	21.28 percent.
Fujian Province Jianyang Wuyi MSG Co., Ltd..	Fujian Province Jianyang Wuyi MSG Co., Ltd..	21.28 percent.
Neimenggu Fufeng Biotechnologies Co., Ltd..	Neimenggu Fufeng Biotechnologies Co., Ltd..	21.28 percent.
Baoji Fufeng Biotechnologies Co., Ltd..	Baoji Fufeng Biotechnologies Co., Ltd..	21.28 percent.
PRC-wide Entity	.....	40.41 percent.

The PRC-wide entity includes Shandong Linghua Monosodium Glutamate Incorporated Company (Shandong Linghua), a mandatory respondent in this investigation.

Cash Deposit Requirements

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation on all entries of MSG from the PRC. We will instruct CBP to require cash deposits at rates equal to the estimated weighted-average dumping margins indicated above. Accordingly, effective November 17, 2014, the date of publication of the ITC's final affirmative injury determinations, CBP will require a cash deposit at rates equal to the estimated weighted-average dumping margins listed above. The relevant rate for the PRC-wide entity, as applicable, applies to all exporter and producer combinations not specifically listed. These cash deposits will remain in effect until further notice.

This notice constitutes the amended antidumping duty order with respect to MSG from the PRC. This second amended final determination is published in accordance with sections 735(e) and 777(i) of the Act.

Dated: December 30, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–30957 Filed 1–5–15; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Monosodium Glutamate from the People's Republic of China, and the Republic of Indonesia: Antidumping Duty Orders; and Monosodium Glutamate from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 70505 (November 26, 2014) (''*First Amended Final Determination*'').

[2] *See Monosodium Glutamate from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and the Final Affirmative Determination of Critical Circumstances,* 79 FR 58326 (September 29, 2014).

[3] *See First Amended Final Determination.*

[4] For a detailed discussion of the alleged ministerial error, as well as the Department's analysis, *see* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding, ''Second Amended Final Determination of the Antidumping Duty Investigation of Monosodium Glutamate from the People's Republic of China: Allegation of Ministerial Errors,'' dated concurrently with this notice.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Vessel Logbooks and Cost-Earnings Data Reports

AGENCY: National Oceanic and Atmospheric Administration, Department of 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 March 9, 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 Katie Davis, (727) 824–5399 or *Katie.Davis@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection. Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) is responsible for management of the nation's marine fisheries. In addition, NMFS must comply with the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*), which implements the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations.

NMFS collects information via vessel logbooks to monitor the U.S. catch of Atlantic swordfish, sharks, billfish, and tunas in relation to the quotas, thereby ensuring that the United States complies with its domestic and international obligations. HMS logbooks are verified using observer data that is collected under OMB Control No. 0648–0593 (Observer Programs' Information That Can Be Gathered Only Through Questions). In addition to HMS fisheries, the HMS logbook is also used to report catches of dolphin and wahoo by commercial and charter/headboat fisheries. The HMS logbooks collect data on incidentally-caught species, including sea turtles, which is necessary to evaluate the fisheries in terms of bycatch and encounters with protected species. For both directed and incidentally caught species, the information supplied through vessel logbooks also provides the catch and effort data on a per-set or per-trip level of resolution.

These data are necessary to assess the status of highly migratory species, dolphin, and wahoo in each fishery. International stock assessments for tunas, swordfish, billfish, and some species of sharks are conducted and presented to the ICCAT periodically and provide, in part, the basis for ICCAT management recommendations which are binding on member nations. Domestic stock assessments for most species of sharks and for dolphin and wahoo are often used as the basis of managing these species.

Supplementary information on fishing costs and earnings has been collected via this vessel logbook program. This economic information enables NMFS to assess the economic impacts of regulatory programs on small businesses and fishing communities, consistent with the National Environmental Policy Act (NEPA), Executive Order 12866, the Regulatory Flexibility Act, and other domestic laws.

II. Method of Collection

Logbook entries are mailed.

III. Data

OMB Control Number: 0648–0371.

Form Number: NOAA Form 88–191.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit (vessel owners).

Estimated Number of Respondents: 10,216.

Estimated Time per Response: 10 minutes for cost/earnings summaries attached to logbook reports, 30 minutes for annual expenditure forms, 12 minutes for logbook catch reports, 2 minutes for negative logbook catch reports.

Estimated Total Annual Burden Hours: 36,189.

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: December 31, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–30924 Filed 1–5–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD690

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Observer Policy Committee will meet to review scientific information affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, January 22, 2015 beginning at 9:30 a.m.

ADDRESSES: The meeting will be held at the DoubleTree Hotel Boston North Shore, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7991.

Council Address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda items:

The Observer Policy Committee will meet to: Review draft Environmental Assessment for NMFS-led omnibus amendment to establish provisions for industry-funded monitoring (IFM) across all Council-managed fisheries; discuss details of the omnibus IFM amendment alternatives, review available information and analyses, and discuss Herring Committee recommendations regarding the options in the IFM amendment that address observer coverage on Atlantic herring vessels; develop Observer Committee recommendations regarding the selection of Preferred Alternatives for the omnibus IFM amendment and address other business as necessary.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: December 31, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–30933 Filed 1–5–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD695

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Recreational Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, January 22, 2015 at 10 a.m.

ADDRESSES:

Meeting Address: The meeting will be held at the DoubleTree by Hilton, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7959.

Council Address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are:

The panel will receive an overview of the Council's Groundfish Priorities for 2015 and a presentation summarizing the recreational management measures in Draft Groundfish Framework Adjustment 53. The panel will also receive presentations on proactive AMs for FY 2015 for Gulf of Maine (GOM) haddock and GOM cod, including potential mechanisms to further reduce actual discard mortality of GOM cod (*e.g.,* adoption of circle hooks). The panel plans to discuss and recommend GOM haddock and GOM cod proactive AMs for FY 2015 to the Groundfish Committee.

Additionally, they will discuss and recommend other related issues to the Groundfish Committee, as appropriate. The panel will initiate discussion of the recreational management measure process improvement—2015 Council Priority. The panel plans to hold elections for Chair and Vice Chair of the Recreational Advisory Panel. The panel will discuss other business as necessary.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 31, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–30934 Filed 1–5–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information and the National Telecommunications and Information Administration (NTIA) on spectrum management policy matters.

DATES: The meeting will be held on February 18, 2015, from 1:00 p.m. to 4:00 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held at the Raytheon Company, 1100 Wilson Boulevard, 20th Floor, Rosslyn, VA 22209–2249. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4099, Washington, DC 20230 or emailed to *BWashington@ntia.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Bruce M. Washington, Designated Federal Officer, at (202) 482–6415 or *BWashington@ntia.doc.gov;* and/or visit NTIA's Web site at *http://www.ntia.doc.gov/category/csmac.*

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: License radio frequencies in a way that maximizes their public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. *See* Charter at *http://www.ntia.doc.gov/other-publication/2013/csmac-2013-charter.* This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. § 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.doc.gov/category/csmac.*

Matters To Be Considered: The Committee will receive reports on the progress of the following subcommittees established to help NTIA develop new or revised strategies for responding more efficiently and effectively to fundamental technological, operational, and other trends to continue advancement of delivering spectrum products, services, and solutions that will support the ever-increasing demand for spectrum:

1. Enforcement
2. Transitional Sharing
3. General Occupancy Measurements and Quantification of Federal Spectrum Use
4. Spectrum Management via Databases
5. Federal Access to Non-federal Bands (Bi-Directional Sharing)
6. Spectrum Sharing Cost Recovery Alternatives
7. Industry and Government Collaboration

NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov/category/csmac,* prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may speak to or otherwise address the Committee regarding the agenda items. *See Open Meeting and Public Participation Policy,* available at *http://www.ntia.doc.gov/category/csmac.*

Time and Date: The meeting will be held on February 18, 2015, from 1:00 p.m. to 4:00 p.m., Eastern Standard Time. The times and the agenda topics are subject to change. The meeting will be available via two-way audio link and may be webcast. Please refer to NTIA's Web site, *http://www.ntia.doc.gov/category/csmac,* for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at the Raytheon Company, 1100 Wilson Boulevard, 20th Floor, Rosslyn, VA 22209–2249. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4099, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. All visitors, especially Foreign National Visitors, must send a written request to participate in the meeting on site. Visit request must be provided to Mr. Washington at *BWashington@ntia.doc.gov* no later than February 6, 2015. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Washington at (202) 482–6415 or *BWashington@ntia.doc.gov* at least ten (10) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of a meeting must send them to NTIA's Washington, DC office at the above-listed address and comments must be received five (5) business days before the scheduled meeting date, to provide sufficient time for review. Comments received after this date will be distributed to the Committee, but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in Word or PDF format. CDs should be labeled with the name and organizational affiliation of the filer. Alternatively, comments may be submitted electronically to *BWashington@ntia.doc.gov.* Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and any reports are available on NTIA's Committee Web page at *http://www.ntia.doc.gov/category/csmac.*

Dated: December 30, 2014.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2014–30872 Filed 1–5–15; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2014–0068]

Grant of Interim Extension of the Term of U.S. Patent No. 5,593,823; INTERCEPT® Blood System for Plasma

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued an order granting a second interim extension under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 5,593,823.

FOR FURTHER INFORMATION CONTACT: Mary C. Till by telephone at (571) 272–7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7755; or by email to *Mary.Till@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to one year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On December 5, 2014, Cerus Corporation, the patent owner of record, timely filed an application under 35 U.S.C. 156(d)(5) for a second interim extension of the term of U.S. Patent No. 5,593,823. The patent claims the medical device INTERCEPT® Blood System for Plasma. The application indicates that a Premarket Approval Application (PMA) was submitted to the Food and Drug Administration (FDA) in four modules. The PMA Shell number BM120078 was assigned on December 5, 2012. The first module was received by the FDA on March 1, 2013, the second module was received on June 3, 2013, by the FDA, the third module was received by the FDA on September 3, 2013, and the fourth module was received by the FDA on November 29, 2013. The medical device is currently undergoing regulatory review before the FDA for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Because it is apparent that the regulatory review period will continue beyond the extended expiration date of the patent, January 14, 2015, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 5,593,823 is granted for a period of one year from the extended expiration date of the patent.

Dated: December 23, 2014.

Andrew Hirshfeld,

Deputy Commissioner for Patent Examination Policy United States Patent and Trademark Office.

[FR Doc. 2014–30945 Filed 1–5–15; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before February 5, 2014.

ADDRESSES: Comments may be submitted directly to the Office of Information and Regulatory Affairs (OIRA) in OMB, within 30 days of the notice's publication, by email at *OIRAsubmissions@omb.eop.gov.* Please identify comments by ''Financial Resource Reporting Requirements for Derivatives Clearing Organizations (OMB Control No. 3038–0066).'' Please provide the Commission with a copy of all submitted comments at the address listed below. Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, and Eileen Chotiner, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

Comments may be also be submitted, regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, identified by ''Financial Resource Requirements for Derivatives Clearing Organizations (OMB Control No. 3038–0066),'' by any of the following methods:

- Agency Web site, via its Comments Online process: *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- Mail: Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- Hand Delivery/Courier: Same as Mail, above.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

All comments must be submitted in English or, if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission's regulations.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this matter will be retained in the public comment file and will be considered as required under applicable laws.

FOR FURTHER INFORMATION CONTACT: Eileen Chotiner, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; (202) 418–5467; email: *echotiner@cftc.gov,* and refer to OMB Control number 3038–0066. This contact can also provide a copy of the ICR.

SUPPLEMENTARY INFORMATION: This is a request for extension of a currently approved information collection.

Title: ''Financial Resource Reporting Requirements for Derivatives Clearing Organizations (OMB Control No. 3038–0066).''

Abstract: Part 39 of the Commission's regulations establishes financial reporting requirements for derivatives clearing organizations (DCOs), which are required to be registered with the Commission. The Commission will use the information in the reports to assess the DCOs' compliance with the financial resource requirements for DCOs prescribed in the Commodity Exchange Act and Commission regulations.

Burden Statement: The respondent burden for this collection is estimated to average 10 hours per response.

Respondents/Affected Entities: Derivatives clearing organizations.

Estimated Number of Respondents: 14.

Estimated Total Annual Burden on Respondents: 560 hours.

Frequency of Collection: Quarterly and on occasion.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 31, 2014.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2014–30950 Filed 1–5–15; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–45]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–45 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 31, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 19 2014

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-45, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $2.4 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

for J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 13–45

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Iraq

(ii) *Total Estimated Value:*

Major Defense Equipment*	$.70 billion
Other	$*1.70 billion*
Total	$2.40 billion

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration*

for Purchase: 175 Full Track M1A1 Abrams Tanks with 120mm Gun modified and upgraded to the M1A1 Abrams configuration, 15 M88A2 Improved Tank Recovery Vehicles, 175 .50 Cal M2 Machine Guns with Chrysler Mount, 350 7.62mm M240 Machine Guns, 10 .50 Cal BR M2 HB Machine Guns, 10,000 M831A1 120mm High Explosive Anti-tank TP–T Ammunition, 25,000 M865 120mm TPCSDS–T Ammunition, 10,000 M830A1 120mm High Explosive Anti-tank Multipurpose Tracer Ammunition, 10,000 M1002 120mm Target Practice Multipurpose Tracer (TPMP–T) Ammunition, and 190 AN/VRC–92 Vehicular Dual Long-Range Radio Systems, 700 M1028 Commercial Utility Cargo Vehicles, Radios, Receiver Transmitters (RT–1702G), installation, ammunition, simulators,

communication equipment, support equipment, fuel, transportation, spare and repair parts, site surveys, Quality Assurance Teams, special tools and test equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor technical, engineering, and logistical support services, and other related elements of program and logistics support.

(iv) *Military Department:* U.S. Army (USA)

(v) *Prior Related Cases, if any:* FMS case VPP—$684M–20Oct08

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* 19 Dec 14

POLICY JUSTIFICATION

Iraq—M1A1 Abrams Tanks

The Government of Iraq has requested a possible sale of 175 Full Track M1A1 Abrams Tanks with 120mm Gun modified and upgraded to the M1A1 Abrams configuration, 15 M88A2 Improved Tank Recovery Vehicles, 175 .50 Cal M2 Machine Guns with Chrysler Mount, 350 7.62mm M240 Machine Guns, 10 .50 Cal BR M2 HB Machine Guns, 10,000 M831A1 120mm High Explosive Anti-tank TP–T Ammunition, 25,000 M865 120mm TPCSDS–T Ammunition, 10,000 M830A1 120mm High Explosive Anti-tank Multipurpose Tracer Ammunition, 10,000 M1002 120mm Target Practice Multipurpose Tracer (TPMP–T) Ammunition, and 190 AN/VRC–92 Vehicular Dual Long-Range Radio Systems, 700 M1028 Commercial Utility Cargo Vehicles, Radios, Receiver Transmitters (RT–1702G), installation, ammunition, simulators, communication equipment, support equipment, fuel, transportation, spare and repair parts, site surveys, Quality Assurance Teams, special tools and test equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor technical, engineering, and logistical support services, and other related elements of program and logistics support. The estimated cost is $2.4 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Government of Iraq and serves the interests of the people of Iraq and the United States.

Iraq will use the M1A1 Abrams tank to facilitate progress towards increasing its ability to quickly mobilize and defend its border. Support of the M1A1 Abrams tanks for Iraq demonstrates the on-going U.S. commitment to support Iraq's continued development into a sovereign, stable, and long-term self-reliant strategic partner. Iraq will have no difficulty absorbing this equipment into its armed forces

The proposed sale of these tanks will not alter the basic military balance in the region.

The principal contractor is not known at this time and will be determined during contract negotiations. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require approximately five U.S. Government and one hundred contractor representatives to travel to Iraq for a period of up to five years for delivery, system checkout, program support, and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–45

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. The M1A1M Abrams Tank components considered to contain sensitive technology in the proposed program are as follows:

a. The M1A1M Thermal Imaging System (TIS) 2nd Generation Forward Looking Infrared (FLIR) constitutes a target acquisition system which, when operated with other tank systems, gives the tank crew a substantial advantage over a potential threat. The TIS provides the M1A1 crew with the ability to effectively aim and fire the tank main armament system under a broad range of adverse battlefield conditions. The hardware itself is Unclassified. The engineering design and manufacturing data associated with the detector and infrared (IR) optics and coatings are considered sensitive. The technical data package is Unclassified with exception of the specifications for target acquisition range (Confidential), nuclear hardening (Confidential, restricted data), and laser hardening (Secret).

b. Major components of Special Armor are fabricated in sealed modules and in serialized removable subassemblies. Special armor vulnerability data for both chemical and kinetic energy rounds are classified Secret. Engineering design and manufacturing data related to the special armor are also classified Secret.

c. The 120mm Gun and 120mm KEW II Tungsten Ammunition with standard High Explosive Anti-Tank (HEAT) and training ammunition will be authorized for export. Performance characteristics of service rounds are sensitive since they reveal the penetration capabilities of the Abrams tank. Since the U.S. intends to offer only the most basic ammunition, the capability of the Abrams tank would not be seriously compromised. Most of the components of the training ammunition are not considered to be sensitive material or technology. These rounds could be reverse engineered given sufficiently capable analysis. Technical information available from testing and analysis of this ammunition could form the basis of research to develop more capable rounds.

d. (U) The use of the Advanced Gas Turbine-1500 (AGT–1500) Gas Turbine Propulsion System in the M1A1M is a unique application of armored vehicle power pack technology. The hardware is composed of the AGT–1500 engine and transmission, and is Unclassified. Manufacturing processes associated with the production of turbine blades, recuperator, bearings and shafts, and hydrostatic pump and motor, are proprietary and therefore commercially competition sensitive.

e. (U) A major survivability feature of the Abrams Tank is the compartmentalization of fuel and ammunition. Compartmentalization is the positive separation of the crew and critical components from combustible materials. In the event the fuel or ammunition is ignited or deteriorated by an incoming threat round, the crew is fully protected by the compartmentalization. Sensitive information includes the performance of the ammunition compartments as well as of the compartment design parameters.

2. (U) If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2014–30935 Filed 1–5–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–34]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 14–34 with attached transmittal, and policy justification.

Dated: December 31, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 19 2014

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 14-34, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $579 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 14–34

Notice of proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Republic of Iraq

(ii) *Total Estimated Value:*

Major Defense Equipment: *	$399 million
Other:	$180 million
Total	$579 million

(iii) *Description and Quantity of Articles or Services under Consideration for Purchase:* 1000 M1151A1 Up-Armored High Mobility Multi-Purpose Wheeled Vehicles (HMMWVs), 1000 M2 .50 cal. machine guns, and 1000 MK–19 40mm grenade launchers with universal mounts, commercial radios, communication equipment, repair and spare parts, publications and technical documentation, tools and test equipment, personnel training and training equipment, U.S. Government and contractor logistics and technical support services, and other related elements of logistics support.

(iv) *Military Department:* Army (ZAT)

(v) *Prior Related Cases, if Any:*
FMS case UGP—$25M—12Feb14
FMS case UAG—$52M—28Sep12
FMS Case AAH—$46 million—29May07
FMS Case AAI—$49 million—29May07

(vi) *Sales Commission, Fee, etc., Paid, Offered or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 19 Dec 14

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq—M1151A1 Up-Armored High Mobility Multi-Purpose Wheeled Vehicles

The Government of Iraq has requested a possible sale of 1000 M1151A1 Up-Armored High Mobility Multi-Purpose Wheeled Vehicles (HMMWVs), 1000 M2 .50 cal. machine guns, and 1000 MK–19 40mm grenade launchers with universal mounts, commercial radios, communication equipment, repair and spare parts, publications and technical documentation, tools and test equipment, personnel training and training equipment, U.S. Government and contractor logistics and technical support services, and other related elements of logistics support. The estimated cost is $579 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a strategic partner. This proposed sale directly supports the Government of Iraq and serves the interests of the people of Iraq and the United States.

The proposed sale of the M1151 HMMWVs would facilitate progress towards increasing the Iraqi Security Force's mobility and self-defense capabilities. Iraq will use the HMMWVs to increase the safety, effectiveness, and self-reliance of the Iraqi Security Forces. Iraq will have no difficulty absorbing these additional HMMWVs into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be AM General in South Bend, Indiana. There are no known offset agreements proposed in connections with this potential sale.

Implementation of this proposed sale will not require U.S Government or contractor representatives to travel to Iraq.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2014–30943 Filed 1–5–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents, Uniformed Services University of the Health Sciences; Notice of Federal Advisory Committee Meeting

AGENCY: Uniformed Services University of the Health Sciences (USU), Department of Defense.

ACTION: Quarterly meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following meeting of the Board of Regents, Uniformed Services University of the Health Sciences (''the Board'').

DATES: Tuesday, February 3, 2015, from 8:00 a.m. to 11:15 a.m. (Open Session) and 11:20 a.m. to 12:15 p.m. (Closed Session).

ADDRESSES: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Everett Alvarez Jr. Board of Regents Room (D3001), Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Jennifer Nuetzi James, Designated Federal Officer, 4301 Jones Bridge Road, D3002, Bethesda, Maryland 20814; telephone 301–295–3066; email *jennifer.nuetzi-james@usuhs.edu.*

SUPPLEMENTARY INFORMATION: This meeting notice is being published under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice and recommendations to the Secretary of Defense through the Under Secretary of Defense for Personnel and Readiness, on academic and administrative matters critical to the full accreditation and successful operation of the University. These actions are necessary for the University to pursue its mission, which is to educate, train and comprehensively prepare uniformed services health professionals, officers, scientists and leaders to support the Military and Public Health Systems, the National Security and National Defense Strategies of the United States, and the readiness of the Uniformed Services.

Agenda: The actions that will take place include the approval of minutes from the Board Meeting held on October 14, 2014; recommendations regarding the awarding of post-baccalaureate degrees; recommendations regarding the approval of faculty appointments and promotions; a review of awards and honors; award nominations; and proposed updates to Board governing documents. The USU President will provide a report on recent actions affecting academic and operational aspects of the University. The Vice President for Research will provide an update on the USU Office of Research; the USU Inspector General (IG) will provide an update on any IG issues that have occurred; the School of Medicine will present options to address challenges with the Graduate Endowment Fund; the School of Medicine will also provide updates on the USU Honor Code and the faculty appointment process; and the Walter Reed National Military Medical Center will provide the Board with a presentation on recapturing patients from the civilian health care system. A closed session will be held, after the open session, to discuss personnel actions and active investigations.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the meeting is open to the public from 8:00 a.m. to 11:15 a.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting should contact Jennifer Nuetzi James at the address and phone number noted in the

FOR FURTHER INFORMATION CONTACT section.

Pursuant to 5 U.S.C. 552b(c)(2, 5–7) the Department of Defense has determined that the portion of the meeting from 11:20 a.m. to 12:15 p.m. shall be closed to the public. The Under Secretary of Defense (Personnel and Readiness), in consultation with the Office of the DoD General Counsel, has determined in writing that a portion of the committee's meeting will be closed as the discussion will disclose sensitive personnel information, will include matters that relate solely to the internal personnel rules and practices of the agency, will involve allegations or findings of a person having committed a crime or censuring an individual, and may disclose investigatory records compiled for law enforcement purposes.

Written Statements: Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Board about its approved agenda pertaining to this meeting or at any time on the Board's mission. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. If such statement is not received at least 5 calendar days prior to the meeting, it may not be provided to or considered by the Board until a later date. The Designated Federal Officer will compile all timely submissions with the Board's Chairman and ensure such submissions are provided to Board Members before the meeting.

Dated: December 30, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–30873 Filed 1–5–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0163]

Privacy Act of 1974; system of records

AGENCY: Defense Commissary Agency, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Commissary Agency proposes to alter a system of records, Z0035–01, entitled ''Commissary Retail Sales Transaction Data'' in its inventory of record systems subject to the Privacy Act of 1974, as amended.

The Commissary Retail Sales Transaction Data System of Records enables the Defense Commissary Agency to carry out its mission to enhance the quality of life of members of the uniformed services, retired members, and dependents of such members, and to support military readiness, recruitment and retention, by providing a world-wide system of commissaries similar to commercial grocery stores and selling merchandise and household goods similar to that sold in commercial grocery stores by, among other things, enable the authentication of authorized patrons, record purchases and purchases prices, calculate the total amount owed by the customer, and accept payment by various media; enable the collection of debts due the United States in the event a patron's medium of payment is declined or returned unpaid; enable the monitoring of purchases of restricted items outside the United States, its territories and possession and to comply with age restrictions applicable to certain purchases by minors or those under allowable ages; and to obtain aggregate demographic data concerning patron satisfaction with the delivery of the commissary benefit, and in determining appropriate product availability meeting the commissary customers' current and future needs and wants; and to facilitate implementation of various e-commerce initiatives.

DATES: Comments will be accepted on or before February 5, 2015. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket 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, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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. Thomas Rathgeb, Deputy General Counsel—Litigation, FOIA and Privacy Act, Office of the General Counsel, Defense Commissary Agency, 1300 E. Avenue Fort Lee, VA 23801–1800; telephone (804) 734–8000, extension 48116.

SUPPLEMENTARY INFORMATION: The Defense Commissary Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.* The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 17, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 31, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Z0035–01

SYSTEM NAME:

Commissary Retail Sales Transaction Data (May 24, 2013, 78 FR 31528).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's name; address(es); zip code; ship-to address(es); email address(es); telephone number(s); date of birth; Social Security Number (SSN); Department of Defense Identification Number (DoD ID Number), and ID card bar code value; internet and mobile ordering web login username and password; financial transaction information; store, point-of-sale terminal number, date of transaction, transaction number, merchandise purchased, universal product codes (UPCs), global trade item numbers (GTINs), quantity, unit price, total purchase, on-line orders; method of payment information; account/card holder name, check number, financial institution routing number, financial institution bank account number, Magnetic Ink Character Recognition

Number (MICR), credit and debit/ATM card number, expiration date, Card Verification Value 2 (CVV2), Card Validation Code (CVC), or Card Identifier (CID); smart card and other chip-based card payment information; issuer, card holder name, bank, credit or debit account and account limits; electronic benefit transfer card (Women, Infants and Children Program (WIC) and Supplemental Nutritional Assistance Program (SNAP)) information; issuer, account/card holder name, account number, purchases and refunds, account balance; prepaid/preloaded/stored value card information; issuer, account number, account limits, and account balance; gift card/certificate information; gift card/certificate number, amount, limits, and balance; coupon information; brand, product, and value; loyalty card, rewards card, points card, advantage card or club card information; card holder name, card number, digital coupons available, buying preferences, and demographic data concerning the patron; other similar methods of payment information initiated by mobile device applications; Near Field Communications (NFC).

Commissary Patron Demographic Information: age, military status (active, reserve, retired, civilian, officer, enlisted, family member, survivor, foreign), military rank, branch of service, household size, distance from nearest commissary, frequency of grocery shopping trips, gender, ethnicity, race, marital status, education level, household information (sponsor, dependent, spouse, child), and income range; shopper preference information; preferred brand names, price, quality, size, availability of discounts, promotions or coupons; and commissary patron profile information; social media (*e.g.* Facebook, Twitter, Flickr, YouTube) username; compilation of commissary patron comments, inquiries, complaints, and feedback concerning commissary merchandise and the patron's commissary shopping experience posted by the commissary patron in the social media environment; and the commissary patron's publically viewable social media profile information.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records of commissary retail transactions are maintained for 6 years and 3 months. Records of demographic information, shopper preferences and customer profiles are maintained for 3 years. Paper records containing Personally Identifiable Information (PII) are shredded to a level where the information cannot be reconstructed. Paper records not containing PII are recycled. Electronic records, including metadata, are permanently deleted by Records Managers with administrator privileges from applicable information systems upon verification of disposal status.''

* * * * *

[FR Doc. 2014–30961 Filed 1–5–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2014–0050]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Army (DOA) announces a proposed public information collection and seeks public comment on the provisions thereof. 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 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 9, 2015

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

- Federal eRulemaking 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, docket number and title 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: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Army Marketing and Research Group, ATTN: Alicia McCleary 200 Stovall Street, Hoffman II Room 4N29 or call 703–545–3476.

SUPPLEMENTARY INFORMATION: The purpose of this collection is to provide qualitative and quantitative data to the DOA on the civilian workforce's attitudes, perceptions, and awareness of civilian career opportunities within the Federal Government. The DOA maintains a listing of professional and technical skill sets that are critical to the Service's needs of today and tomorrow. The collection, compilation, and analysis of the new qualitative and quantitative data is imperative to the DOA's marketing and recruitment strategy for informing, identifying, and ultimately hiring those identified with the skill sets necessary for a sustainable DOA. Attention will be focused in particular on DA Civilian critical occupations with current or projected shortfalls to set specific marketing objectives, goals, and strategies for these critical skill areas. Information for this study will be collected in two phases. Phase I will be qualitative (focus groups) and Phase II will be quantitative (survey). This is a one-time data collection anticipated to be completed within approximately six months of OMB approval. The data collected from these activities will be supplemented with reviews of recent Army branding and marketing practices as well as of recent and projected hiring needs into DA Civilian jobs.

Title; Associated Form; and OMB Number: Civilian Attitudes and Feedback on the Affectedness of DOA Recruiting Techniques (Advertisements and Marketing) for Government Service Positions within the Service; Control Number 0702–XXXX

Needs and Uses: The collection of information is necessary to provide the data needed to understand the best strategies to raise awareness and spark interest in Army civilian employment opportunities with the ultimate goal of filling critical DA occupations.

Affected Public: Individuals or Households.

Focus Groups

Annual Burden Hours: 192.
Number Of Respondents: 128.
Responses Per Respondent: 1.
Average Burden Per Response: 1.5 hours.
Frequency: Once.
Quantitative Study:

Annual Burden Hours: 2,000.
Number Of Respondents: 6,000.
Responses Per Respondent: 1.
Average Burden Per Response: 20 minutes.
Frequency: Once.
Total Collection:
Annual Burden Hours: 2,192.
Number of Respondents: 6,128.
Responses per Respondent: 1.
Average Burden per Response: 21.46 minutes.
Frequency: Once.

Respondents for both the focus groups and quantitative study will be individuals currently employed in the private sector in occupations deemed essential by the Army or individuals who are considering careers in these essential occupations. Quota groups will be established to ensure there is an adequate representation of career stage (pre-, early- and mid) volunteers. Focus group data will be collected via moderator-led discussions. Quantitative study data will be collected via a questionnaire administered online. Participation in the focus groups and quantitative study will be voluntary.

The data collection will focus on awareness and knowledge of DA Civilian job opportunities; comparison of DA Civilian vs. private jobs/careers across key dimensions; most important reasons to seek civilian employment in the Army; perceived negative aspects of civilian Army employment; reactions to facts and marketing concepts concerning civilian Army employment; and intended behaviors concerning applying for civilian employment in the Army or recommending to others that they do so.

Dated: December 31, 2014.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2014–30965 Filed 1–5–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket Number. EERE–2014–BT–BLDG–0050]

Request for Information (RFI) for Definition for Zero Energy Buildings

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

ACTION: Request for Information, RFI.

SUMMARY: The U.S. Department of Energy (DOE or the Department) seeks to develop a common definition for Zero Energy Buildings (ZEBs). A broadly accepted market definition of ZEB boundaries and metrics is foundational to efforts by governments, utilities, or private entities to recognize or incentivize zero energy buildings. DOE seeks comments and information related to the zero energy definitions, nomenclature, and implementation guidelines.

DATES: Written comments and information are requested on or before February 20, 2015.

ADDRESSES: Interested persons are encouraged to submit comments electronically. Interested persons may submit comments, identified by docket number EERE–2014–BT–BLDG–0050. Your response should be limited to 4 pages.

Email: To *ZEB2014BLDG0050@ee.doe.gov.* Include EERE–2014–BT–BLDG–0050 in the subject line of the message. Submit electronic comments in Microsoft Word or Microsoft Excel, and avoid the use of special characters or any form of encryption.

Instructions: All submissions received must include the agency name and docket number.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, comments, and other supporting documents/materials (search EERE–2014–BT–BLDG–0050). All documents in the docket are listed in the *www.regulations.gov* index.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-BLDG-0050.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains instructions on how to access all documents, including public comments, in the docket. See section II, Public Participation for further information on submitting comments. The content that we are requesting your feedback on is located at *https://buildingdata.energy.gov/cbrd/resource/1665.*

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information may be sent to Ms. Sonia Punjabi, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: 202–287–1866. Email: *Sonia.Punjabi@ee.doe.gov.* Ms. Ami Grace-Tardy, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–5709. Email: *Ami.Grace-Tardy@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The U.S. Department of Energy (DOE or the Department) seeks to develop common definitions for Zero Energy Buildings (ZEBs). Broadly accepted market definitions of ZEB boundaries and metrics are foundational to efforts by governments, utilities, or private entities to recognize or incentivize zero energy buildings. DOE expects to use the definition and guidelines in DOE projects that provide guidance on the design or operations of zero energy buildings, and in any DOE programs that recognize or track zero energy buildings.

To help inform decision-making regarding commonly-accepted ZEB definitions and nomenclature, DOE is publishing this to request information and comment about the definitions, nomenclature, and guidelines. The Department will consider all input it receives and plans to publish a report on definitions in 2015. In particular, DOE seeks comment and information about the topics below.

1. Definitions: Are the Zero Energy Building, Zero Energy Campus, Zero Energy Portfolio, and Zero Energy Community definitions reasonable and appropriate when applied to their respective scopes? Should the broad characterizations of zero energy be changed in any way between building, campus, portfolio and community?

2. Nomenclature: Are the definitions provided in the nomenclature section of the draft clear and complete? Please provide specific feedback about these definitions.

3. Are there any recommendations regarding the topics addressed in the section ''Additional considerations under review''?

4. Are there any specific recommendations for a uniform approach to tracking renewable energy generation for the purpose or ''zero energy'' claims to avoid double-counting?

5. Are there any other recommendations that would help clarify and improve the definitions, nomenclature, and guidelines?

II. Public Participation

All interested parties are invited to submit in writing by the date specified previously in the **DATES** section of this RFI, comments and information on all elements listed in the discussion section above. DOE considers public

participation to be an important part of the process for developing a commonly-accepted definition of Zero Energy Buildings.

Comments may be submitted in writing via email on or before February 20, 2015. Please limit comments to no more than a total of 4 pages.

Issued in Washington, DC, on December 30, 2014.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2014–30927 Filed 1–5–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15–284–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) rate filing per 154.403: Environmental Filing 2014 to be effective 2/1/2015.
Filed Date: 12/29/14.
Accession Number: 20141229–5162.
Comments Due: 5 p.m. ET 1/12/15.

Docket Numbers: RP01–74–008.
Applicants: Dominion Transmission, Inc.
Description: Petition of Dominion Transmission, Inc. to Modify Term of Gathering and Products Extraction Settlement and Requesting Expedited Action.
Filed Date: 12/29/14.
Accession Number: 20141229–5184.
Comments Due: 5 p.m. ET 1/12/15.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 30, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30948 Filed 1–5–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–57–000.
Applicants: Kay Wind, LLC, Southern Power Company.
Description: Joint Application for Authorization for Disposition of Jurisdictional Facilities of Kay Wind, LLC, *et. al.*
Filed Date: 12/29/14.
Accession Number: 20141229–5206.
Comments Due: 5 p.m. ET 1/20/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1484–010.
Applicants: Shell Energy North America (U.S.), L.P.
Description: Updated Market Power Analysis for the Southeast Region of Shell Energy North America (U.S.), L.P.
Filed Date: 12/29/14.
Accession Number: 20141229–5201.
Comments Due: 5 p.m. ET 2/27/15.

Docket Numbers: ER10–2743–006; ER12–995–004; ER12–637–004; ER10–2793–006; ER10–2755–007; ER10–2739–010; ER10–1892–006; ER10–1886–006; ER10–1872–006; ER10–1859–006.
Applicants: Bluegrass Generation Company, L.L.C., Calhoun Power Company, LLC, Cherokee County Cogeneration Partners, LLC, Columbia Energy LLC, Decatur Energy Center, LLC, DeSoto County Generating Company, LLC, Las Vegas Power Company, LLC, Mobile Energy L L C, Santa Rosa Energy Center, LLC, LS Power Marketing, LLC.
Description: Updated Market Power Analysis in Southeast Region of the LS Power Development, LLC subsidiaries.
Filed Date: 12/29/14.
Accession Number: 20141229–5192.
Comments Due: 5 p.m. ET 2/27/15.

Docket Numbers: ER10–2870–005; ER14–2548–004; ER11–3013–004; ER10–2872–004; ER10–2868–004; ER10–2865–005; ER10–2860–006.
Applicants: TransCanada Power Marketing Ltd, TransCanada Hydro Northeast Inc., Ocean State Power LLC, TransCanada Maine Wind Development Inc., TC Ravenswood, LLC, TransCanada Energy Sales Ltd., Coolidge Power LLC.
Description: Notice of Non-Material Change in Status of TransCanada Entities.
Filed Date: 12/29/14.
Accession Number: 20141229–5179.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER11–4498–008; ER14–325–004; ER13–2409–004; ER12–979–008; ER12–2542–005; ER12–2448–008; ER12–128–005; ER11–4507–007; ER11–4501–009; ER11–4500–007; ER11–4499–008; ER11–4363–005.
Applicants: Smoky Hills Wind Farm, LLC, Smoky Hills Wind Project II, LLC, Enel Cove Fort, LLC, Enel Stillwater, LLC, Canastota Windpower, LLC, EGP Stillwater Solar, LLC, Caney River Wind Project, LLC, Rocky Ridge Wind Project, LLC, Prairie Rose Wind, LLC, Chisholm View Wind Project, LLC, Buffalo Dunes Wind Project, LLC, Osage Wind, LLC.
Description: Notice of Change in Status of Smoky Hills Wind Farm, LLC, et. al.
Filed Date: 12/29/14.
Accession Number: 20141229–5211.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER13–67–003.
Applicants: NorthWestern Corporation.
Description: Compliance filing per 35: Order No 1000 Fourth Regional Compliance Filing—Montana OATT to be effective 10/1/2013.
Filed Date: 12/30/14.
Accession Number: 20141230–5012.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER13–136–003; ER13–135–003; ER13–137–003; ER13–138–003; ER13–141–003; ER13–142–003.
Applicants: Georgia-Pacific Brewton LLC, Brunswick Cellulose LLC, Georgia-Pacific Cedar Springs LLC, Georgia-Pacfic Consumer Operations LLC, Palatka, Georgia-Pacific Consumer Products LP, Naheola, Georgia-Pacific Consumer Products LP, Savannah.
Description: Updated Market Power Analysis in Southeast Region of the Georgia-Pacific Entities.
Filed Date: 12/30/14.
Accession Number: 20141230–5028.
Comments Due: 5 p.m. ET 3/2/15.

Docket Numbers: ER15–747–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–12–29 Sub-Regional Constraints in the PRA Filing to be effective 3/1/2015.

Filed Date: 12/29/14.
Accession Number: 20141229–5165.
Comments Due: 5 p.m. ET 1/20/15

Docket Numbers: ER15–748–000.
Applicants: Garrison Energy Center LLC.
Description: Baseline eTariff Filing per 35.1: Application for Market-Based Rate Authorization to be effective 12/31/2014.
Filed Date: 12/30/14.
Accession Number: 20141230–5002.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–749–000.
Applicants: Wheelabrator Ridge Energy Inc.
Description: Compliance filing per 35.37: compliance to be effective 2/28/2015.
Filed Date: 12/30/14.
Accession Number: 20141230–5026.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–750–000.
Applicants: Wheelabrator South Broward Inc.
Description: Compliance filing per 35.37: Compliance South to be effective 2/28/2015.
Filed Date: 12/30/14.
Accession Number: 20141230–5027.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–751–000.
Applicants: Wabash Valley Power Association, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Amendment to Rate Schedule—NREMC and SDI to be effective 1/1/2015.
Filed Date: 12/30/14.
Accession Number: 20141230–5054.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–752–000.
Applicants: Southwestern Public Service Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 12–30–14_RS135 SPS–GSEC_Amended Op Proc to be effective 1/1/2015.
Filed Date: 12/30/14.
Accession Number: 20141230–5064.
Comments Due: 5 p.m. ET 1/20/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 30, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30946 Filed 1–5–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–1858–004*; ER11–1859–003*.
Applicants: NorthWestern Corporation, Montana Generation, LLC.
Description: Triennial Updated Market Power Analysis for the Central Region of NorthWestern Corporation and Montana Generation, LLC.
Filed Date: 12/30/14.
Accession Number: 20141230–5201.
Comments Due: 5 p.m. ET 3/2/15.

Docket Numbers: ER13–64–003.
Applicants: PacifiCorp.
Description: Compliance filing per 35: OATT Order 1000 Fourth Regional Compliance Filing to be effective 10/1/2013.
Filed Date: 12/30/14.
Accession Number: 20141230–5179.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER13–65–003.
Applicants: Deseret Generation & Transmission Co-operative, Inc.
Description: Compliance filing per 35: OATT Order No. 1000 Fourth Regional Compliance Filing to be effective 10/31/2013.
Filed Date: 12/30/14.
Accession Number: 20141230–5135.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER13–127–004.
Applicants: Idaho Power Company.
Description: Compliance filing per 35: OATT Order No. 1000 Fourth Regional Compliance Filing to be effective 10/1/2013.
Filed Date: 12/30/14.
Accession Number: 20141230–5125.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–281–002.
Applicants: Duke Energy Indiana, Inc.
Description: Tariff Amendment per 35.17(b): Errata to Hoosier Filing to be effective 1/1/2015.
Filed Date: 12/30/14.
Accession Number: 20141230–5089.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–753–000.
Applicants: J. Aron & Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revised MBR re Category 1 SE to be effective 12/31/2014.
Filed Date: 12/30/14.
Accession Number: 20141230–5081.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–754–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 20141230_NSP MBR Filing to be effective 3/1/2015.
Filed Date: 12/30/14.
Accession Number: 20141230–5107.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–755–000.
Applicants: Powerex Corp.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Authorization for MBR Sales of Operating Reserves to NorthWestern to be effective 3/1/2015.
Filed Date: 12/30/14.
Accession Number: 20141230–5139.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–756–000.
Applicants: Southern California Edison Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Amendment to Extend Terms of Eldorado Co-Tenancy and Communication Agreement to be effective 1/1/2015.
Filed Date: 12/30/14.
Accession Number: 20141230–5142.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–757–000.
Applicants: Central Maine Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Executed Interconnection Agreement with Kennebec Water District to be effective 1/1/2015.
Filed Date: 12/30/14.
Accession Number: 20141230–5159.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–758–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to the OATT Schedule 12 Appendices re Annual Allocations to be effective 1/1/2015.
Filed Date: 12/30/14.
Accession Number: 20141230–5184.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–759–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2969 Associated Electric Cooperative, Inc. NITSA NOA to be effective 12/1/2014.

Filed Date: 12/30/14.
Accession Number: 20141230–5196.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–760–000.
Applicants: WESTERN ANTELOPE BLUE SKY RANCH A LLC.
Description: Initial rate filing per 35.12 Western Antelope Blue Sky Ranch A LLC MBR Tariff to be effective 2/1/2015.
Filed Date: 12/30/14.
Accession Number: 20141230–5197.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–761–000.
Applicants: Valley Electric Association, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Annual TRBAA Update to be effective 1/1/2015.
Filed Date: 12/30/14.
Accession Number: 20141230–5198.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–762–000.
Applicants: SIERRA SOLAR GREENWORKS LLC.
Description: Initial rate filing per 35.12 Sierra Solar Greenworks LLC MBR Tariff to be effective 2/1/2015.
Filed Date: 12/30/14.
Accession Number: 20141230–5200.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–763–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to Attachment AE (MPL)—Allocation of Over-Collected Losses to be effective 4/1/2015.
Filed Date: 12/30/14.
Accession Number: 20141230–5224.
Comments Due: 5 p.m. ET 1/20/15.

Docket Numbers: ER15–764–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. Request for Approval of Recovery of Charges in Accordance with Schedule 34 (Allocation of Costs Associated with Reliability Penalty Assessments) of the Open Access Transmission, Energy and Operating Reserve.
Filed Date: 12/30/14.
Accession Number: 20141230–5225.
Comments Due: 5 p.m. ET 1/20/15.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH15–5–000.
Applicants: IIF US Holding 2 GP, LLC.
Description: IIF US Holding 2 GP, LLC submits Notification of Material Change in Facts and Update of FERC 65–A Exemption Notification.
Filed Date: 12/30/14.
Accession Number: 20141230–5115.
Comments Due: 5 p.m. ET 1/20/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 30, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30947 Filed 1–5–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD15–5–000]

Available Transfer Capability Standards for Wholesale Electric Transmission Services; Notice of Workshop

Take notice that Federal Energy Regulatory Commission (Commission) staff will convene a workshop to discuss actions the Commission could take to ensure that transmission providers continue to calculate and post available transfer capability (ATC) in a manner that ensures nondiscriminatory access to wholesale electric transmission services. This workshop is prompted by the filing by the North American Electric Reliability Corporation proposing changes to its ATC-related reliability standards,[1] and the initiative to replace these standards with similarly focused business practice standards to be developed by the North American Energy Standards Board (NAESB).[2] The workshop will be held on Thursday, March 5, 2015 from 8:45 a.m. to 5:00 p.m. in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commission members may participate in the workshop.

A supplemental notice will be issued prior to the workshop with further details regarding the agenda and organization of the workshop. The workshop will be open for the public to attend. Advance registration is not required, but is encouraged. Attendees may register at the following Web page: *https://www.ferc.gov/whats-new/registration/03–05–15-form.asp.*

Details also will be posted on the Calendar of Events on the Commission's Web site, *www.ferc.gov.*

Commission workshops are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For further information on this workshop, please contact:

Logistical Information: Sarah McKinley, Office of External Affairs. Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 (202) 502–8368, *sarah.mckinley@ferc.gov.*

Technical Information: Christopher Young, Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6403, *christopher.young@ferc.gov.*

Legal Information Richard Wartchow, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8744, *richard.wartchow@ferc.gov.*

Dated: December 30, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30960 Filed 1–5–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR15–9–000]

Tapstone Midstream, LLC; Notice of Request for Temporary Waiver

Take notice that on December 24, 2014, pursuant to Rule 202 of the Federal Energy Regulatory Commission's (Commission) Rules of

[1] NERC's proposal is currently pending before the Commission in the rulemaking: *Modeling, Data, and Analysis Reliability Standards,* Notice of Proposed Rulemaking, Docket No. RM14–7–000; 79 FR 36,269 (June 26, 2014).

[2] *See, e.g.,* the December 18, 2014 status report filed by NAESB in Docket Nos. RM05–5–000 and RM14–7–000.

Practice and Procedure, 18 CFR 385.202 (2014), Tapstone Midstream, LLC (Tapstone) filed a request for a temporary waiver of sections 6 and 20 of the Interstate Commerce Act and parts 341 and 357 of the Commission's regulations, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (2014)) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on Tapstone.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on January 9, 2015.

Dated: December 30, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30959 Filed 1–5–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9921–39–Region 5]

Proposed Prospective Purchaser Agreement for the Willow Run Powertrain Site in Ypsilanti, Michigan

AGENCY: Environmental Protection Agency, EPA.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Prospective Purchaser Agreement, notice is hereby given of a proposed administrative settlement concerning a portion of the Willow Run Powertrain Site in Ypsilanti, Michigan with the following settling party: Yankee Air Force Incorporated. The settlement requires the Settling Party to, if necessary, execute and record a Declaration of Restrictive Covenant; provide access to the Property and exercise due care with respect to existing contamination. The settlement includes a covenant not to sue the Settling Party pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act or the Resource Conservation and Recovery Act with respect to the Existing Contamination. Existing Contamination is defined as any Waste Material present or existing on or under the Property as of the Effective Date of the Settlement Agreement; any Waste Material that migrated from the Property prior to the Effective Date; and any Waste Material presently at the Site that migrates onto, on, under, or from the Property after the Effective Date.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA, Region 5, Records Center, 77 W. Jackson Blvd., 7th Fl., Chicago, Illinois 60604.

DATES: Comments must be submitted on or before 30 days after publication in the **Federal Register**.

ADDRESSES: The proposed settlement is available for public inspection at the EPA, Region 5, Records Center, 77 W. Jackson Blvd., 7th Fl., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Peter Felitti, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., mail code: C–14J, Chicago, Illinois 60604. Comments should reference the Willow Run Powertrain Site, Ypsilanti, Michigan and EPA Docket No. V–W–15–C–017 and should be addressed to Peter Felitti, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., mail code: C–14J, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Peter Felitti, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., mail code: C–14J, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: The Settling Party proposes to acquire ownership of a portion of the former General Motors Corporation North American operation, at 2930 Ecorse Road, Ypsilanti, Michigan. The EPA identification number for the Site is # MID980587893. The Site is one of the 89 sites that were placed into an Environmental Response Trust (the ''Trust'') as a result of the resolution of the 2009 GM bankruptcy. The Trust is administrated by Revitalizing Auto Communities Environmental Response.

Dated: December 12, 2014.

Richard Karl,

Director, Superfund Division.

[FR Doc. 2014–30938 Filed 1–5–15; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP088936XX; withdrawal

AGENCY: Export-Import Bank of the United States.

ACTION: Notice; withdrawal.

SUMMARY: This Notice is to inform the public of the withdrawal of an invalid notice published on December 30, 2014 at 79 FR 78433.

DATES: As of January 6, 2015 the notice published December 30, 2014 at 79 FR 78433 are withdrawn.

Reference: AP088936XX.

Lloyd Ellis,

Program Specialist, Office of the General Counsel.

[FR Doc. 2014–30936 Filed 1–5–15; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP088936XX; Withdrawal

AGENCY: Export-Import Bank of the United States.

ACTION: Notice; withdrawal.

SUMMARY: This Notice is to inform the public of the withdrawal of an invalid notice published on December 30, 2014 at 79 FR 78433.

DATES: As of January 6, 2015 the notice published December 30, 2014 at 79 FR 78433 are withdrawn.

Reference: AP088936XX.

Lloyd Ellis,

Program Specialist, Office of the General Counsel.

[FR Doc. 2014–30941 Filed 1–5–15; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0573]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before February 5, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the ''Supplementary Information'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0573.

Title: Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise, FCC Form 394.

Form Number: FCC Form 394.

Type of Review: Extension of a currently approved collection.

Respondents: Business of other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 2,000 respondents; 1,000 responses.

Estimated Time per Response: 1–5 hours.

Frequency of Response: Third Party Disclosure Requirement.

Total Annual Burden: 7,000 hours.

Total Annual Costs: $750,000.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: FCC Form 394 is a standardized form that is completed by cable operators in connection with the assignment and transfer of control of cable television systems. On July 23, 1993, the Commission released a Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92–264, FCC 93–332, Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions. Among other things, this Report and Order established procedures for use of the FCC Form 394.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–30869 Filed 1–5–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS14–11]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of Meeting.

Description: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: Federal Reserve Board—International Square location, 1850 K Street NW., Washington, DC 20006.

Date: January 14, 2015.

Time: 10:30 a.m.

Status: Open.

Reports

Chairman
Executive Director
Delegated State Compliance Reviews
Financial Report
Appraisal Subcommittee Advisory Committee

Action and Discussion Items

November 12, 2014 minutes—Open Session
Alaska Compliance Review
AMC Registration and Supervision (discussion only)

How to Attend and Observe an ASC meeting:

If you plan to attend the meeting in person, we ask that you notify the Federal Reserve Board via email at *appraisal-questions@frb.gov,* requesting a return meeting registration email. The Federal Reserve Law Enforcement Unit will then send an email message with a web link where you may provide your date of birth and social security number through their encrypted system. You may register until close of business January 9, 2015. You will also be asked to provide identifying information, including a valid government-issued photo ID, before being admitted to the meeting. Alternatively, you can contact Kevin Wilson at 202–452–2362 for other registration options. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: December 31, 2014.

James R. Park,

Executive Director.

[FR Doc. 2014–30939 Filed 1–5–15; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 008005–012.

Title: New York Terminal Conference Agreement.

Parties: American Stevedoring Inc.; APM Terminals Elizabeth, LLC; Port Newark Container Terminal LLC; GCT Bayonne LP; and GCT New York LP.

Filing Party: George J. Lair; New York Terminal Conference; P.O. Box 875; Chatham, NJ 07928.

Synopsis: The amendment replaces Universal Maritime Services Corp. with APM Terminals Elizabeth, LLC.

Agreement No.: 011409–019.

Title: Transpacific Carrier Services Inc. Agreement.

Parties: American President Lines, Ltd. and APL Co. PTE Ltd.; China Shipping Container Lines (Hong Kong) Co., Ltd.; China Shipping Container Lines Co., Ltd.; CMA CGM S.A.; COSCO Container Lines Company, Ltd.; Evergreen Line Joint Service Agreement; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha, Ltd.; Orient Overseas Container Line Limited; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment corrects the addresses of APL Co Pte. Ltd. and Hyundai Merchant Marine Co., Ltd.

Agreement No.: 011426–056.

Title: West Coast of South America Discussion Agreement.

Parties: Compania Chilena de Navigacion Interoceanica, S.A.; Compania Sud Americana de Vapores, S.A.; Frontier Liner Services, Inc.; Hamburg-Süd; King Ocean Services Limited, Inc.; Mediterranean Shipping Company, SA; Seaboard Marine Ltd.; and Trinity Shipping Line.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would add Hapag-Lloyd AG and Norasia Container Lines Limited (acting as a single party) as parties to the agreement.

Agreement No.: 011679–013.

Title: ASF/SERC Agreement.

Parties: American President Lines, Ltd./APL Co. Pte Ltd.; ANL Singapore Pte Ltd.; China Shipping (Group) Company/China Shipping Container Lines, Co. Ltd.; COSCO Container Lines Company, Ltd.; Evergreen Line Joint Service Agreement; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Ltd.; Wan Hai Lines Ltd.; and Yang Ming Marine Transport Corp.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment corrects the addresses of APL Co Pte. Ltd.; Hyundai Merchant Marine Co., Ltd.; and Kawasaki Kisen Kaisha, Ltd.

Agreement No.: 012194–003.

Title: The G6 Alliance Agreement.

Parties: American President Lines, Ltd. and APL Co. Pte, Ltd. (Operating as one Party); Hapag-Lloyd AG and Hapag Lloyd USA LLC (Operating as one Party); Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; and Orient Overseas Container Line, Limited and OOCL (Europe) Limited (Operating as one party).

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment would change the corporate addresses of American President Lines, Ltd. and APL Co. Pte, Ltd. (collectively one party); and Hyundai Merchant Marine Co., Ltd.

Agreement No.: 012200–002.

Title: The G6/Zim Transpacific Vessel Sharing Agreement.

Parties: American President Lines, Ltd. and APL Co. Pte, Ltd. (Operating as one Party); Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines, Ltd.;

Nippon Yusen Kaisha; and Orient Overseas Container Line, Limited.; and Zim Integrated Shipping Services Limited.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment would change the corporate addresses of American President Lines, Ltd. and APL Co. Pte, Ltd. (collectively one party); and Hyundai Merchant Marine Co., Ltd.

Agreement No.: 012258–001.

Title: The G6/HSDG Atlantic Space Charter Agreement.

Parties: American President Lines, Ltd. and APL Co. Pte, Ltd. (operating as one party); Hapag-Lloyd AG and Hapag-Lloyd USA LLC; Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line, Limited and OOCL (Europe) Limited (acting as a single party); and Hamburg Sud.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment would change the corporate addresses of American President Lines, Ltd. and APL Co. Pte, Ltd. (collectively one party); and Hyundai Merchant Marine Co., Ltd.

Agreement No.: 012311–001.

Title: HSDG/CCNI Agreement.

Parties: Hamburg Sudamerikanische Dampfschifffahrtsgesellschaft and Compania Chilena de Navegacion Interoceanica S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor, 1627 I Street NW.; Washington, DC 20006.

Synopsis: The amendment would add the U.S. Gulf and Pacific Coasts and Central America to the geographic scope of the agreement.

Agreement No.: 201048–008.

Title: Lease and Operating Agreement between Philadelphia Regional Port Authority and Delaware River Stevedores, Inc.

Parties: Philadelphia Regional Port Authority and Delaware River Stevedores, Inc.

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue NW., Tenth Floor; Washington, DC 20036.

Synopsis: The amendment allows for the agreement on and procedures for the dredging of berths to certain depths.

Dated: December 31, 2014.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–30952 Filed 1–5–15; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 30, 2015.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204:

1. *Berkshire Hills Bancorp, Inc.,* Pittsfield, Massachusetts; to acquire and merge with Hampden Bank, and thereby indirectly acquire Hampden Bancorp, Inc., both in Springfield, Massachusetts.

Board of Governors of the Federal Reserve System, December 31, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–30926 Filed 1–5–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–15–15JX]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, 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. To request more information on the below proposed project or to obtain a copy of the information collection plan and instruments, call 404–639–7570 or send comments to LeRoy Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. 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; (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. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. Written comments should be received within 60 days of this notice.

Proposed Project

HIV Outpatient Study (HOPS)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention requests a three-year approval for the HIV Outpatient Study data collection activity. The HIV Outpatient Study (HOPS) is a prospective longitudinal cohort of HIV-infected outpatients at nine well-established private HIV care practices and university-based U.S. clinics, in Tampa, Florida; Washington, DC; Stony Brook, New York; Chicago, Illinois; Denver, Colorado; and Philadelphia, Pennsylvania.

Clinical data are abstracted on ongoing basis from the medical records of adult HIV-infected HOPS study participants, who also complete an optional telephone/Web-based behavioral assessment as part of their annual clinic visit, which on average takes about seven minutes. Before enrolling in this study, all potential study participants will undergo an informed consent process (including signing of a written informed consent) which is estimated to take 15 minutes.

The core areas of HOPS research extending through the present HIV treatment era include (i) monitoring death rates and causes of death, (ii) characterizing the optimal patient management strategies to reduce HIV-related morbidity and mortality (*e.g.,* effectiveness of antiretroviral therapies and other clinical interventions), (iii) monitoring of sexual and drug use behaviors to inform Prevention with Positives, and (iv) investigating disparities in the HIV care continuum by various demographic factors. In recent years, the HOPS has been

instrumental in bringing attention to emerging issues in chronic HIV infection with actionable opportunities for prevention, including cardiovascular disease, fragility fractures, renal and hepatic disease, and cancers. The HOPS remains an important source for multi-year trend data concerning conditions and behaviors for which data are not readily available elsewhere, including: Rates of opportunistic illnesses, rates of comorbid conditions (*e.g.,* hypertension, obesity, diabetes) and antiretroviral drug resistance.

Data will be collected through medical record abstraction by trained abstractors and by telephone or internet-based, computer-assisted interviews at nine funded study sites in six U.S. cities. Collection of data abstracted from patient medical records provides data in five general categories: Demographics and risk behaviors for HIV infection; symptoms; diagnosed conditions (definitive and presumptive); medications prescribed (including dose, duration, and reasons for stopping); all laboratory values, including CD4+ T-lymphocyte (CD4+) cell counts, plasma HIV–RNA determinations, and genotype, phenotype, and trophile results. Data on visit frequency, AIDS, and death are acquired from the clinic chart.

Data collected using a brief Telephone Audio-Computer Assisted Self-Interview (T–ACASI) survey or an identical Web-based Audio-Computer Assisted Self-Interview (ACASI) include: Age, sex at birth, use of alcohol and drugs, cigarette smoking, adherence to antiretroviral medications, types of sexual intercourse, condom use, and disclosure of HIV status to partners.

We anticipate that 450 new HOPS study participants will be recruited annually into the HOPS from a pool of HIV-infected individuals currently in HIV-care at the nine aforementioned clinics (50 patients per site). Patients are approached during one of their routine clinic visits to participate in the HOPS. Patients interested in participating in the HOPS are given detailed information about the nature of the study and provided with written informed consent that must be completed prior to enrollment.

The 450 newly enrolled participants each year will be added to the database of existing participants such that approximately 2,500 participants will be seen in the HOPS each year. Medical record abstractions will be completed on all HOPS participants, and impose no direct burden on HOPS study participants.

Participation of respondents is voluntary. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
HOPS study Patients	Consent form	450	1	15/60	113
HOPS Study Patients	Behavioral survey	2,500	1	7/60	292
Total					405

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–30889 Filed 1–5–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.604]

Announcement of the Award of an Urgent Single-Source Grant to the Center for Survivors of Torture in Dallas, TX.

AGENCY: Office of Refugee Resettlement, ACF, HHS.

ACTION: Announcement of the award of an urgent single-source grant to the Center for Survivors of Torture to provide mental health services for victims of torture.

SUMMARY: The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR) announces the award of an urgent single-source grant in the amount of $250,000 to the Center for Survivors of Torture (CST) in Dallas, TX, to ensure incoming refugee populations in Texas have access to mental health services.

DATES: The project period for the award is July 1, 2014 through September 29, 2015.

FOR FURTHER INFORMATION CONTACT: Kenneth Tota, Deputy Director, Office of Refugee Resettlement, 901 D. Street SW., Washington, DC 20047. Telephone: 202–401–4858. Email: *kenneth.tota@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: CST is the only accredited mental health care provider of specialized torture survivor mental health treatment services in Texas and the surrounding area. Many refugees have been victims of torture. Approximately 48,000 individual refugees reside in the areas covered by CST. Texas is a top resettlement location with one of the highest concentrations of refugees in the United States. In the past few years, an increasing need for mental health services has been associated with refugee populations from Iraq, Burma, and Bhutan who have suffered trauma and torture due to war and genocide in those countries. Currently, the U.S. refugee resettlement program is seeing a rise in refugees from the Democratic Republic of Congo (DRC). The United Nations High Commissioner for Refugees has determined this group is particularly at risk due to decades of extreme violence in DRC and recent arrivals have shown a compelling need for mental health services upon resettlement.

CST services are critical to meeting the mental health needs of individuals who have survived torture. They provide evaluation and counseling to children, adolescents, adults, couples, and families. Additionally, CST offers group therapy, psychosocial activities, and medication management. In addition to these direct services, CST also provides training on refugee mental health issues to other organizations in the area, including schools, health clinics, and social services agencies. During the period of April 1, 2013 through March 31, 2014, CST provided free comprehensive mental health services to 355 ORR clients. More than 82 percent of these clients experienced a reduction in symptoms.

Statutory Authority: Section 5(a) of the ''Torture Victims Relief Act of 1998,'' Public Law 105–320 (22 U.S.C. 2152 note).

Melody Wayland,

Senior Grants Policy Specialist, Office of Administration.

[FR Doc. 2014–30906 Filed 1–5–15; 8:45 am]

BILLING CODE 4184–46–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1081]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Postmarketing Adverse Event Reporting for Medical Products and Dietary Supplements During an Influenza Pandemic; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by February 5, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0701. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Postmarketing Adverse Event Reporting for Medical Products and Dietary Supplements During an Influenza Pandemic; Availability (OMB Control Number 0910–0701)—Extension

The guidance includes recommendations for planning, notification, and documentation for firms that report postmarketing adverse events. The guidance recommends that each firm's pandemic influenza continuity of operations plan (COOP) include instructions for reporting adverse events, including a plan for the submission of stored reports that were not submitted within regulatory timeframes. The guidance explains that firms that are unable to fulfill normal adverse event reporting requirements during an influenza pandemic should: (1) Maintain documentation of the conditions that prevent them from meeting normal reporting requirements; (2) notify the appropriate FDA organizational unit responsible for adverse event reporting compliance when the conditions exist and when the reporting process is restored; and (3) maintain records to identify what reports have been stored.

Based on the number of manufacturers that would be covered by the guidance, we estimate that approximately 5,000 firms will add the following to their COOP: (1) Instructions for reporting adverse events; and (2) a plan for submitting stored reports that were not submitted within regulatory timeframes. We estimate that each firm will take approximately 50 hours to prepare the adverse event reporting plan for its COOP.

We estimate that approximately 500 firms will be unable to fulfill normal adverse event reporting requirements because of conditions caused by an influenza pandemic and that these firms will notify the appropriate FDA organizational unit responsible for adverse event reporting compliance when the conditions exist. Although we do not anticipate such pandemic influenza conditions to occur every year, for purposes of the PRA, we estimate that each of these firms will notify FDA approximately once each year, and that each notification will take approximately 8 hours to prepare and submit.

Concerning the recommendation in the guidance that firms unable to fulfill normal adverse event reporting requirements maintain documentation of the conditions that prevent them from meeting these requirements, maintaining records to identify what adverse event reports have been stored, and when the reporting process is restored. We estimate that approximately 500 firms will each need approximately 8 hours to maintain the documentation and approximately 500 firms will each need approximately 8 hours to maintain the records. Therefore, the total recordkeeping burden that would result from the guidance would be 258,000 hours.

The guidance also refers to previously approved collections of information found in FDA's adverse event reporting requirements in 21 CFR 310.305, 314.80, 314.98, 600.80, 606.170, 640.73, 1271.350, and part 803. These regulations contain collections of information that are subject to review by OMB under the PRA (44 U.S.C. 3501–3520) and are approved under OMB control numbers 0910–0116, 0910–0291, 0910–0230, 0910–0308, 0910–0437, and 0910–0543. In addition, the guidance also refers to adverse event reports for nonprescription human drug products marketed without an approved application and dietary supplements required under sections 760 and 761 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379aa and 379aa–1), which include collections of information approved under OMB control numbers 0910–0636 and 0910–0635.

In the **Federal Register** of August 11, 2014 (79 FR 46839), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received one comment. The comment said that during an influenza pandemic, FDA should not put forth a policy of reduced reporting, especially for newly approved drugs and vaccines. The comment recommended that FDA ask companies to modify their contingency plans by either leveraging the company's remote call center locations not affected by the pandemic or by outsourcing their safety reporting to such locations. The comment stated that at minimum, FDA should require weekly reporting or establish a threshold number of reports that a company must report to FDA. The comment added that FDA should specifically require reporting on newly approved drugs or vaccines for which there is little safety information.

FDA response: The Guidance for Industry on Postmarketing Adverse Event Reporting for Medical Products and Dietary Supplements During an Influenza Pandemic does not describe an approach of reduced reporting during an influenza pandemic. Rather, the guidance states that ''normal adverse event reporting processes should be maintained to the maximum extent possible'' (see section III.C.1, page 3).

FDA also provides recommendations on how to prioritize reporting when regulatory timelines cannot be met due to limited resources during a pandemic, so that FDA continues to receive critical safety information in a timely manner. For example, table 1 of the guidance outlines how companies should prioritize their submission of postmarketing safety reports during an influenza pandemic if normal processes of mandatory adverse event reporting are not feasible because of high employee absenteeism: Reports for pandemic influenza vaccines, drugs and biological products labeled for the treatment of influenza, drugs and biologics approved for less than three years, and products with special concerns as specified by FDA. The list includes reporting on newly approved products as the comment recommended. The guidance provides resources for companies establishing a COOP plan, but specifying the content of the COOP plans as suggested by the comment is beyond the scope of the guidance. Instead, the guidance provides the more general recommendation that ''each firm's pandemic influenza COOP plan should include instructions for reporting adverse events and the submission of any stored reports not submitted in the regulatory timeframes'' (see section III.B, page 2).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of reporting	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Notify FDA when normal reporting is not feasible	500	1	500	8	4,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Type of recordkeeping	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours
Add adverse event reporting plan to COOP	5,000	1	5,000	50	250,000
Maintain documentation of influenza pandemic conditions and resultant high absenteeism	500	1	500	8	4,000
Maintain records to identify what reports have been stored and when the reporting process was restored	500	1	500	8	4,000
Total					258,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 30, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–30907 Filed 1–5–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–P–0980]

Determination That REYATAZ (Atazanavir Sulfate) Capsules, 100 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that REYATAZ (atazanavir sulfate) capsules, 100 milligrams (mg), were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for atazanavir sulfate, 100 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Na'Im R. Moses, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6224, Silver Spring, MD 20993–0002, 240–402–3990.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

REYATAZ (atazanavir sulfate) capsules, 100 mg, is the subject of NDA 21–567, held by Bristol-Myers Squibb, and initially approved on June 20, 2003.

REYATAZ is a protease inhibitor indicated for use in combination with other antiretroviral agents for the treatment of human immunodeficiency virus (HIV–1) infection in patients 3 months and older weighing at least 10 kilograms.

In a letter dated August 19, 2014, Bristol-Myers Squibb notified FDA that REYATAZ (atazanavir sulfate) capsules, 100 mg, had been discontinued. The REYATAZ 150-, 200-, and 300-mg capsule strengths continue to be marketed by Bristol-Myers Squibb. The 100-mg dosage strength of this drug product is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Lachman Consultant Services, Inc., submitted a citizen petition dated July 7, 2014 (Docket No. FDA–2014–P–0980), under 21 CFR 10.30, requesting that the Agency determine whether REYATAZ (atazanavir sulfate) capsules, 100 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that REYATAZ (atazanavir sulfate) capsules, 100 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that REYATAZ (atazanavir sulfate) capsules, 100 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of REYATAZ (atazanavir sulfate) capsules, 100 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that the product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list REYATAZ (atazanavir sulfate) capsules, 100 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to REYATAZ (atazanavir sulfate) capsules, 100 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: December 30, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–30909 Filed 1–5–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Her2 Monoclonal Antibodies, Antibody Drug Conjugates, and Site Specific Antibody Conjugate Methods for the Treatment of Cancer

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 HUIYU Pharmaceuticals Co, Ltd located in Neijiang City, CHINA to practice the inventions embodied in U.S. Provisional Patent Application 61/833,732, filed June 11, 2013 entitled ''Her2-Specific Monoclonal Antibodies and Conjugates Thereof'' [HHS Ref. No.: E–351–2013/0–US–01], and International Application PCT/US2014/041492, filed June 9, 2014 entitled ''Her2-Specific Monoclonal Antibodies and Conjugates Thereof'' [HHS Ref. No.: E–351–2013/0–PCT–02], any PCT, US or foreign applications claiming the benefit of. The patent rights in these inventions have been assigned to the Government of the United States of America.

The prospective exclusive license territory may be limited to China, and the field of use may be limited to:

The use of the m860 monoclonal antibodies as mono-specific antibodies; or targeting moieties for immunoconjugates, wherein the antibodies are conjugated to auristatin F and analogues thereof, for the treatment of HER2 positive cancers.

DATES: Only written comments or applications for a license (or both) which are received by the NIH Office of Technology Transfer on or before February 5, 2015 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: Eggerton Campbell, Ph.D. Licensing and Patenting Manager, Cancer Branch, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5282; Facsimile: (301) 435–4013; Email: *Eggerton.Campbell@nih.gov.*

SUPPLEMENTARY INFORMATION: These inventions concern Antibody Drug Conjugates (ADCs). ADCs can demonstrate high efficacy as cancer therapeutics, however, much more can be done to improve their efficacy and safety profile. Site-specific antibody drug conjugation is a promising way to do this.

The scientists at the NIH have identified a fully human monoclonal antibody, m860, that binds to cell surface-associated Her2 with affinity comparable to that of Trastuzumab (Herceptin) but to a different epitope. In addition, the scientist developed a site-specific glycan engineering method to conjugate the antibody to the small molecule drug auristatin F. The ADC prepared though this site-specific approach shows very good stability, cell surface binding activity and also potent specific cell killing activity against Her2 positive cancer cells, including Trastuzumab resistant breast cancer cells. This ADC has the potential to be developed as a targeted therapeutic for Her2-overexpressing cancers.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license may be granted unless 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 within thirty (30) days from the date of this published notice.

Applications for a license in the field of use that are 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: December 30, 2014.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–30878 Filed 1–5–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Announcement of a Draft NIH Policy on the Use of a Single Institutional Review Board for Multi-Site Research

SUMMARY: On December 3, 2014, the National Institutes of Health (NIH) published a request for public comments in the NIH Guide for Grants and Contracts on a draft policy to promote the use of a single Institutional Review Board of record for domestic sites of multi-site studies funded by the NIH. See Guide notice NOT–OD–15–026 at *http://grants.nih.gov/grants/guide/notice-files/NOT–OD–15–026.html.* NIH is publishing this notice in order to inform readers of the **Federal Register** about the draft policy and the opportunity to comment.

DATES: The deadline for receiving comments on the draft policy is no later than 5:00 p.m. on January 29, 2015.

ADDRESSES: Comments may be submitted by any of the following methods:

- Email: *SingleIRBpolicy@mail.nih.gov*
- Fax: 301–496–9839
- Mail/Hand delivery/Courier: Office of Clinical Research and Bioethics Policy, Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Office of Clinical Research and Bioethics Policy, Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301–496–9838, *OCRBP–OSP@od.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Institutes of Health (NIH) is dedicated to improving the health of Americans by conducting and funding biomedical research through an extensive portfolio of human subjects research. While NIH-funded investigators must adhere to regulations for the protection of human subjects, the agency also looks for ways to reduce procedural inefficiencies so that human subjects research can proceed efficiently without compromising ethical principles and protections.

The Department of Health and Human Services (HHS) regulations for the Protection of Human Subjects at 45 CFR part 46 requires Institutional Review Board (IRB) review of non-exempt HHS conducted or supported human subjects research. IRBs are responsible for performing an ethical review of studies involving human subjects. Research protocols and informed consent documents must be approved by an IRB prior to the commencement of human subjects research. In 1975, when the HHS regulations for protection of human subjects were first published,[1] most clinical research was conducted primarily at a single institution. Since then, the research landscape has evolved, and many studies are carried out at multiple sites.

In order to avoid duplication of the effort, both the HHS regulations at 45 CFR part 46 and the IRB regulations of the Food and Drug Administration (FDA) at 21 CFR part 56 allow institutions that participate in multi-site studies to use joint review, rely on the review of another qualified IRB, or establish other arrangements.[2] FDA and the Office for Human Research Protections (OHRP) have also issued guidance on this topic.[3] [4] However, too few institutions involved in multi-site studies are taking advantage of the option.[5]

Proponents of the single IRB model maintain that review of a multi-site study by the IRB of each participating site involves significant administrative burden in terms of IRB staff and members' time to perform duplicative reviews. When each participating institution's IRB conducts a review, the process can take many months and significantly delay the initiation of research projects and recruitment of human subjects into research studies. Use of single IRBs in multi-site studies, on the other hand, has been shown to decrease approval times for clinical protocols and may be more cost effective than local IRB review.[6]

Importantly, there is no evidence that multiple IRB reviews enhance protections for human subjects. In fact, the use of single IRBs may lead to enhanced protections for research participants by eliminating the problem of distributed accountability, minimizing institutional conflicts of interest, and refocusing IRB time and resources toward review of other studies.[7] [8] With regard to assuring that local perspectives are addressed, the assessment of a study's risks and benefits and the adequacy of the informed consent should not generally require the perspective of a local IRB. Local contextual issues relevant to most studies (*e.g.,* investigator competence and site suitability) can be addressed through mechanisms other than local IRB review, such as the involvement of ad hoc members or consultants with the necessary specialized knowledge or expertise or by submission of information by the individual site(s). Even when certain vulnerable populations are targeted for recruitment, such alternative approaches may be appropriate.

Several extramural NIH programs already support the use of a single IRB for multi-sites studies. For example, the National Cancer Institute has had a Central Institutional Review Board (CIRB) in place for the review of NCI-sponsored clinical trials since 1999. The National Institute of Neurological Disorders and Stroke has incorporated the use of a single IRB for its Network for Excellence in Neuroscience Clinical Trials (NeuroNEXT) and Network for Stroke Research (NIHStrokeNet).[9] [10]

The draft Policy proposes that NIH funded institutions will be expected to use a single IRB of record for domestic sites of multi-site studies unless there is justification for an exception (see exceptions below). The draft Policy applies to all domestic sites participating in NIH conducted or supported multi-site studies, whether supported through grants, contracts, or the NIH intramural program. By expecting all domestic multi-site studies to use a single IRB, this Policy should help achieve greater efficiencies and speed the initiation of studies across NIH's entire clinical research portfolio. This Policy is also in keeping with one of the proposed changes being considered to the Common Rule.[11]

[1] 40 FR 11854 (March 13, 1975)

[2] 45 CFR part 46.114 and 21 CFR part 56.114

[3] See *http://www.fda.gov/RegulatoryInformation/Guidances/ucm127004.htm*

[4] See *http://www.hhs.gov/ohrp/policy/protocol/cirb20100430.html*

[5] Flynn KE, et al. Using central IRBs for multicenter clinical trials in the United States. PLoS ONE. 2013; 8(1):e54999.

[6] Wagner TH, et al. Costs and benefits of the National Cancer Institute Central Institutional Review Board. J Clin Oncol. 2010; 28:662–666.

[7] Emanuel EJ et al. Oversight of human participants research: identifying problems to evaluate reform proposals. Ann Intern Med. 2004; 141(4): 282–291.

[8] Menikoff J. The paradoxical problem with multiple-IRB review. N Engl J Med. 2010; 367:1591–1593.

[9] See http://www.neuronext.org/researchers and http://www.nihstrokenet.org/research

[10] Kaufmann P et al. Central institutional review board review for an academic trial network. Acad Med. 2014; doi: 10.1097/ACM.0000000000000562.

[11] An Advance Notice of Proposed Rulemaking issued in 2011 sought public comment on proposed changes to seven regulatory areas, including requiring the use of a single IRB for domestic sites in multi-site studies. Most commenters supported the idea of requiring the use of a single IRB for review of multi-site studies, especially for cooperative clinical trials, and agree that such a mandate would help speed the initiation of multi-site studies. Some commenters were concerned that

Continued

Request for Comments

NIH encourages the public to provide comments on any aspect of the draft policy outlined below. Comments should be submitted electronically by January 29, 2015, to the Office of Clinical Research and Bioethics Policy, Office of Science Policy, NIH, via email at *SingleIRBpolicy@mail.nih.gov;* mail to 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892; or fax at 301–496–9839. Submitted comments are considered public information; private or confidential information should not be submitted. Comments may be posted along with the submitter's name and affiliation on the OCRBP Web site after the public comment period closes.

Draft NIH Policy on the Use of a Single Institutional Review Board for Multi-Site Research

Purpose. The purpose of this Policy is to increase the use of single Institutional Review Boards (IRB) for multi-site studies funded by the National Institutes of Health (NIH). Its goal is to enhance and streamline the process of IRB review and reduce inefficiencies so that research can proceed efficiently without compromising ethical principles and protections.

Scope. NIH generally expects all domestic sites of multi-site NIH-funded studies to use a single IRB of record. The Policy applies to all domestic sites participating in NIH conducted or supported multi-site studies, whether supported through grants, contracts, or the NIH intramural program. While foreign sites in multi-site studies will not be expected to follow this Policy, they may elect to do so.

Responsibilities. All sites participating in a multi-site study will be expected to rely on a single IRB to carry out the functions that are required for institutional compliance with IRB review set forth in the HHS regulations for the Protection of Human Subjects. The single IRB will be the IRB of record for the other participating sites. The single IRB will be accountable for compliance with regulatory requirements for IRBs specified under the HHS regulations at 45 CFR part 46, such as providing initial and continuing review of the research.[12] All participating sites will be responsible for meeting other regulatory obligations, such as obtaining informed consent, overseeing the implementation of approved protocols, and, reporting unanticipated problems and adverse events to the single IRB of record.

Agreements between the single IRB of record and other participating sites will be needed in accordance with 45 CFR part 46. IRB Authorization Agreements will document the delegation of responsibilities of IRB review to the designated IRB of record and that IRB site's acceptance of the responsibilities. The agreement will set forth the specific responsibilities of each participating site. Participating sites will then rely on the IRB of record to satisfy the regulatory requirements relevant to the IRB review. The awardee or lead site for an NIH-funded, multi-site study will be responsible for maintaining authorization agreements and should be prepared to provide copies of the authorization agreements and other necessary documentation to the NIH funding Institute or Center upon request. As necessary, mechanisms should be established to enable the single IRB of record to consider local context issues during its deliberations. A duplicate IRB review at a participating site would be counter to the intent and goal of the Policy, but the Policy does not prohibit any participating site from carrying out its own IRB review. If this approach is taken, the participating site should expect to bear the cost of the additional review.

Identification of the IRB that will serve as the single IRB of record will be the responsibility of the extramural applicant or offerer, or the intramural principal investigator. The funding NIH Institute or Center has final decisional authority for approving the selected single IRB. Use of the designated single IRB will be a term and condition of award. If the agreed-upon single IRB is a fee-based IRB, these costs will be included in the Notice of Award as a direct cost.

Compliance with this Policy will be a term and condition in the Notice of Award and a contract requirement in the Contract Award.

Exceptions. Exceptions to the expectation to use a single IRB may be made with appropriate justification. Exceptions will be allowed only if the designated single IRB is unable to meet the needs of specific populations or where local IRB review is required by federal, tribal, or state laws or regulations.[13]

Effective Date. The Policy applies to all new grant applications (Type 1 and 2) and contract proposals with receipt dates after [date to be determined]. It will also apply to intramural multi-site studies submitted for initial review after that date.[14]

Dated: December 24, 2014.

Lawrence Tabak,

Principal Deputy Director,

[FR Doc. 2014–30964 Filed 1–5–15; 8:45 am]

BILLING CODE 4140–01–P

the use of a single IRB could lead to increased liability and diminished accountability for participating sites, and decreased consideration of local context. See *http://www.gpo.gov/fdsys/pkg/FR–2011–07–26/html/2011–18792.htm*

[12] On March 5, 2009, OHRP published an ANPRM requesting public comments on whether OHRP should pursue rulemaking to hold institutional review boards and institutions or organizations operating them directly accountable for compliance with the provisions of 45 CFR part 46 that relate to IRB responsibilities. In the ANPRM, OHRP identified: Responsibilities that may be unique to IRBs and the institutions operating them; responsibilities that may be unique to institutions engaged in human subjects research; and, responsibilities that may be fulfilled by either IRBs/IORGs or institutions engaged in human subjects research. See *http://www.gpo.gov/fdsys/pkg/FR–2009–03–05/pdf/E9–4628.pdf.*

[13] For example, FDA-regulated research involving a device is required to have local IRB review under 21 U.S.C. 360j(g)(3)(A)).

[14] When a final policy is issued, NIH will also provide more specific procedural guidance to facilitate implementation.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, January 29, 2015 10:30 a.m. to January 30, 2015, 04:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 which was published in the **Federal Register** on November 26, 2014, 79FR70537.

The meeting notice is amended to change the date and start time to be held on January 29, 2015 at 10:00 a.m. The meeting is closed to the public.

Dated: December 30, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–30883 Filed 1–5–15; 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 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 Allergy and Infectious Diseases Special Emphasis Panel, NIAID Investigator Initiated Program Project Applications (P01).

Date: January 27–28, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3G50, 5601 Fisher Lane, Rockville, MD 20582 (Telephone Conference Call).

Contact Person: B. Duane Price, Ph.D., Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID, 5601 Fisher Lane, Rockville, MD 20582, 240–669–5074, *pricebd@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Clinical Trial Implementation Cooperative Agreement (U01) and Clinical Trial Planning Grant (R34).

Date: February 2, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3G50, 5601 Fisher Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: B. Duane Price, Ph.D., Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Room 3139, Bethesda, MD 20892, (301) 451–2592, *pricebd@niaid.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: December 30, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–30881 Filed 1–5–15; 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 Initial Review Group; Neurological Sciences and Disorders C.

Date: February 26–27, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria, Virginia 22314.

Contact Person: William C. Benzing, 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, 301–496–0660, *benzingw@mail.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: December 30, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–30876 Filed 1–5–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Quantitative Imaging for Evaluation of Response to Cancer Therapies-Renewal.

Date: January 30, 2015.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 1E030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W266, Bethesda, MD 20892–9750, 240–276–6385, *lovingeg@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 30, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–30880 Filed 1–5–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Therapeutic Agents that Target Cancer Stem Cells.

Date: March 10–11, 2015.

Time: 11:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 4W032, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W244, Bethesda, MD 20892–9750, 240–276–6373, *bielatk@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Research in Cancer Nanotechnology (IRCN).

Date: March 19–20, 2015.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel and Conference Center 5701 Marinelli Road Bethesda, MD 20852.

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W244, Bethesda, MD 20892–9750, 240–276–6373, *bielatk@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Advance Culture Systems for Expansion of Cancer Stem Cells.

Date: March 25–26, 2015.

Time: 11:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 2E032, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W244, Bethesda, MD 20892–9750, 240–276–6373, *bielatk@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 30, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–30879 Filed 1–5–15; 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 Initial Review Group; Neurological Sciences and Disorders B.

Date: February 19–20, 2015.

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: December 30, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–30875 Filed 1–5–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, January 29, 2015 10:00 a.m. to January 29, 2015, 05:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 which was published in the **Federal Register** on December 30, 2014, 79FR78456.

The meeting notice is being amended to change the title from Omnibus SEP–5 to Fundamental Mechanisms of Affective and Decisional Processes in Cancer Control. The meeting is closed to the public.

Dated: December 30, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–30877 Filed 1–5–15; 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 Clinical Trial Implementation Cooperative Agreement (U01).

Date: January 22, 2015.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3G62A, 5601 Fisher Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Eleazar Cohen, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, 5601 Fisher Lane, National Institutes of Health, NIAID, Rockville, MD 20852, 240–669–5881, *ec17w@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: December 30, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–30882 Filed 1–5–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2014–0001]

Intent To Request Renewal From OMB of One Current Public Collection of Information: TSA Pre✓® Application Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0059, abstracted below, that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the voluntary submission of biographic and biometric information that will be used for identity verification and to conduct a security threat assessment which includes vetting of an individual's voluntarily submitted information against law enforcement, immigration, and intelligence databases to determine if the person poses a low risk to transportation or national security and is eligible for expedited screening through TSA Pre✓® lanes at airports. This notice also provides initial information regarding TSA plans to expand opportunities for enrollment into the TSA Pre✓® Application Program by using additional contractors that will be permitted to market, enroll, and pre-screen individuals for TSA Pre✓® Application Program eligibility. Under the proposed expansion, selected contractors will collect biographic and biometric information from the applicant, and perform an initial prescreening of applicants using processes approved by TSA. Those applicants who meet the prescreening standards will be forwarded by the contractors to TSA, which shall perform a security threat assessment and make a final determination of the applicants' eligibility for the TSA Pre✓® Application Program.

DATES: Send your comments by March 9, 2015.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0059; TSA Pre✓®Application Program. Under the TSA Pre✓® Application Program, individuals may submit biographic and biometric information directly to TSA, which in turn uses the information to conduct a security threat assessment (STA) of law enforcement, immigration, and intelligence databases, including a criminal history check. The results are used by TSA to decide if an individual poses a low risk to transportation or national security. Approved applicants are issued a Known Traveler Number (KTN) that may be used when making travel reservations. Airline passengers who submit their KTN when making airline reservations are eligible for expedited screening on flights originating from U.S. airports with TSA Pre✓® lanes.[1] TSA uses the traveler's KTN and other information during passenger prescreening to verify that the individual traveling matches the information on TSA's list of known travellers and to confirm TSA Pre✓® expedited screening eligibility.

TSA plans to expand enrollment options for the TSA Pre✓® Application Program by using additional contractor options or capabilities to market, enroll and pre-screen applicants.[2] Approved contractors will provide secure enrollment options to collect biographic and biometric (*e.g.,* fingerprints, iris scans, and/or photo) information, to validate identity, to facilitate collection citizenship/immigration information, and to perform a criminal history records check to ensure that applicants do not have convictions for criminal offenses that would disqualify them from the TSA Pre✓® Application Program (please refer to the list of current disqualifiers available at *www.tsa.gov/tsa-precheck/eligibility-requirements*). These expansion options may include the use of commercial and other publicly available data to conduct identity verification, collection of citizenship/immigration information, and prescreening of applicants.

For successfully enrolled and prescreened applicants, TSA will receive via a secure interface certain minimum required data elements (including, but not be limited to, name, date of birth, gender, address, contact information, country of birth, images of identity documents, proof of citizenship/immigration status information, and biometrics) to enable TSA to conduct a STA, make a final eligibility determination for the TSA Pre✓® Application Program, and verify TSA Pre✓® enrolled and approved individuals when they are travelling.

[1] Passengers who are eligible for expedited screening through a dedicated TSA Pre✓® ™ lane typically will receive more limited physical screening, *e.g.,* will be able to leave on their shoes, light outerwear, and belt, to keep their laptop in its case, and to keep their 3–1–1 compliant liquids/gels bag in a carry-on. For airports with TSA Pre✓® ™ lanes, see *http://www.tsa.gov/tsa-precheck/tsa-precheck-participating-airports.*

[2] For further information, see the Request for Proposal TSA published on FedBizOpps.gov on December 22, 2014, available at *https://www.fbo.gov/spg/DHS/TSA/HQTSA/HSTS02-15-R-OIA037/listing.html.*

Applicants who are found to be ineligible as a result of prescreening by a contractor shall be notified by the respective contractor of the reason. The notification will include, when relevant, information about the available correction of records process and any alternatives available for identity verification, as well as other available channels for TSA Pre✓® expedited screening.

The TSA-conducted STA for applicants forwarded by the contractors will include checks against government watchlists and databases associated with security and immigration. TSA will make the final determination on eligibility for the TSA Pre✓® Application Program and notify the applicant of the decision. Applicants generally should expect to receive notification from TSA within 2–3 weeks of the submission of their completed applications.

Eligibility for the TSA Pre✓® Application Program is within the sole discretion of TSA, which will notify applicants who are denied eligibility by TSA in writing of the reasons for the denial. If initially deemed ineligible by TSA, applicants will have an opportunity to correct cases of misidentification or inaccurate criminal or immigration records. If advised during the application eligibility review process that the criminal record discloses a disqualifying criminal offense, the applicant must submit in writing within a specified period of his or her intent to correct any information he or she believes to be inaccurate. The applicant must provide a certified revised record, or the appropriate court must forward a certified true copy of the information, prior to TSA approving eligibility of the applicant for the TSA Pre✓® Application Program. With respect to citizenship and/or immigration records, within 60 days after being advised that the citizenship or immigration records indicate that the applicant is ineligible for the TSA Pre✓® Application Program, the applicant must notify TSA in writing of his or her intent to correct any information believed to be inaccurate. TSA will review any information submitted and make a final decision. If neither notification nor a corrected record is received by TSA, the agency may make a final determination to deny eligibility. Individuals who TSA determines are ineligible for the TSA Pre✓® Application Program will be screened at airport security checkpoints pursuant to standard screening protocols.

The TSA Pre✓® Application Program enhances aviation security by permitting TSA to better focus its limited security resources on passengers who are more likely to pose a threat to civil aviation, while also facilitating and improving the commercial aviation travel experience for the public. Travelers who choose not to enroll in this initiative are not subject to any limitations on their travel because of their choice; they will be processed through normal TSA screening before entering the sterile areas of airports. TSA also retains the authority to perform standard or other screening on a random basis on TSA Pre✓® Application Program participants and any other travelers authorized to receive expedited physical screening.

Average Annual Number of Respondents: An estimated 2,074,000 annualized enrollments over a five-year period. This estimate is based on current and projected enrollment with TSA's current program, as well as what TSA anticipates from program expansion to additional contractors performing enrollment and prescreening functions.

Estimated Annual Burden Hours: An estimated 2,742,049 annualized hours based on a five-year projection. TSA estimates 1.32 hours per applicant to complete the enrollment process, which includes providing biographic and biometric information to TSA (via an enrollment center or pre-enrollment options) or to a TSA Pre✓® Application Program contractor, and the burden for any records correction for the applicant, if applicable.

Estimated Annual Cost Burden: $72,290,129 annualized cost burden based on a five-year projection. The TSA fee per respondent for those who apply for the program directly with TSA will remain $85, which covers TSA's program costs and the FBI fee for the criminal history records check. The fee charged by contractors under the expansion of the program may differ, as it may include, but not be limited to, fees for other services that the companies provide separately to their customers.

Dated: December 30, 2014.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2014–30874 Filed 1–5–15; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0103]

Agency Information Collection Activities: Passenger List/Crew List; CBP Form I–418

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; reinstatement of a previously approved 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: Passenger List/Crew List (CBP Form I–418). CBP is proposing that this information collection be reinstated with a change to the burden hours. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before March 9, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information

technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (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: Passenger List/Crew List.

OMB Number: 1651–0103.

Form Number: Form I–418.

Abstract: CBP Form I–418 is prescribed by CBP, for use by masters, owners, or agents of vessels in complying with Sections 231 and 251 of the Immigration and Nationality Act (INA). This form is filled out upon arrival of any person by commercial vessel at any port within the United States from any place outside the United States. The master or commanding officer of the vessel is responsible for providing CBP officers at the port of arrival with lists or manifests of the persons on board such conveyances. CBP is currently working to allow for electronic submission of the information on CBP Form I–418. This form is provided for in 8 CFR 251.1, 251.3, and 251.4. A copy of CBP Form I–418 can be found at *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20I-418.pdf.*

Current Actions: This submission is being made to reinstate this previously approved information collection with a change to the burden hours resulting from updated estimates of the number of I–418s filed. There are no changes to the information collected or to Form I–418.

Type of Review: Reinstatement (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 48,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Hours: 48,000.

Dated: December 31, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–30922 Filed 1–5–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–17258; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 22, 2014. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 21, 2015. 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.

Dated: December 3, 2014.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

Santa Clara County

San Jose Central Fire Station, 201 N. Market St., San Jose, 14001113

Woman's Club of Palo Alto, 475 Homer Ave., Palo Alto, 14001114

Sonoma County

Sonoma Valley Woman's Club, 574 1st St., E., Sonoma, 14001115

FLORIDA

Sarasota County

Scott Commercial Building, (Sarasota School of Architecture MPS) 261–265 S. Orange Ave., Sarasota, 14001116

KANSAS

Butler County

Smith, Ray L., House, 812 W. Central Ave., El Dorado, 14001117

Ellsworth County

Lloyd, Ira E, Stock Farm, (Agriculture-Related Resources of Kansas MPS) 1575 Ave. JJ, Ellsworth, 14001118

Harvey County

Wirkler—Krehbiel House, 2727 N. Main St., North Newton, 14001119

Leavenworth County

Little Stranger Church and Cemetery, NE. corner of Tonganoxie & Stranger Rds., Leavenworth, 14001120

Meade County

Dalton Gang Hideout and Museum, (Roadside Kansas MPS) 502 S. Pearlette St., Meade, 14001121

Pratt County

Hotel Roberts, 120 W. 4th St., Pratt, 14001122

MICHIGAN

Wayne County

Grosse Pointe Yacht Club, 788 Lake Shore Rd., Grosse Pointe Shores, 14001124

MISSOURI

St. Louis County

Father Dickson Cemetery, 845 S. Sappington Rd., Crestwood, 14001125

MONTANA

Flathead County

Big Creek Ranger Station Historic District, North Fork Rd., Polebridge, 14001126

Petroleum County

Cat Creek Oil Field Sign, Mi. 150, MT 200, Mosby, 14001127

NEBRASKA

Keith County

Front Street, 519 E. 1st St., Ogallala, 14001128

NEW YORK

Oswego County

Derrick Boat No. 8, 1 W. 1st St., Oswego, 14001129

Schoharie County

House at 461 Spruce Lake Road, 461 Spruce Lake Rd., Summit, 14001130

OREGON

Curry County

Lindberg, Peter John, House, 906 N. Washington St., Port Orford, 14001131

PENNSYLVANIA

Erie County

Adams, C.F., Building, 101 E. 6th St., Erie, 14001132

Washington County

Washington Trust Company Building, 6 S. Main St., Washington, 14001133

PUERTO RICO

Ponce Municipality

Puente Rio Portugues, (Historic Bridges of Puerto Rico MPS) Eugenio Maria de Hostos Ave., Ponce, 14001134

San Juan Municipality

Villa Victoria, 905 Ponce de Leon Ave., San Juan, 14001135

UTAH

Davis County

Wayman, John and Sarah Jane, House, (Centerville MPS) 240 S. 300 East, Centerville, 14001136

Salt Lake County

Bradford, Rawsel and Jane, House, (Murray City, Utah MPS) 570 E. 4800 South, Murray City, 14001137

Miller, James and Mary Jane, House, (Murray City, Utah MPS) 4929. S. Lake Pines Dr., Murray City, 14001138

Murray City Diesel Power Plant, (Murray City, Utah MPS) 157 W. 4800 South, Murray City, 14001139

Price, John and Margaret, House, 2691 E. St. Mary's Way, Salt Lake City, 14001140

VERMONT

Windsor County

Abbott Memorial Library, 15 Library St., Pomfret, 14001141

WASHINGTON

Clark County

Meyer, Heye H. and Eva, Farmstead, 13705 NE. 50th Ave., Vancouver, 14001142

King County

Si View Park, 400 SE. Orchard Dr., North Bend, 14001143

Spokane County

Kiesow—Gentsch House, 618 W. 23rd Ave., Spokane, 14001144

A request for removal has been received for the following resources:

KANSAS

Dickinson County

First Presbyterian Church of Abilene, 300 N. Mulberry St., Abilene, 01000540

Rush County

Rush County Line Bridge, (Masonry Arch Bridges of Kansas TR) 11 mi. N. of Otis, Otis, 86003355

[FR Doc. 2014–30887 Filed 1–5–15; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04073000, XXXR4081X3, RX.05940913.7000000]

Notice of Public Meeting for the Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Glen Canyon Dam Adaptive Management Work Group (AMWG) makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

DATES: The meeting will be held on Wednesday, February 25, 2015, from approximately 9:30 a.m. to approximately 5:30 p.m.; and Thursday, February 26, 2015, from approximately 8:00 a.m. to approximately 3 p.m.

ADDRESSES: The meeting will be held at the Red Lion Hotel, 161 West 600 South, Wasatch Ballroom, Salt Lake City, Utah 84101.

FOR FURTHER INFORMATION CONTACT: Glen Knowles, Bureau of Reclamation, telephone (801) 524–3781; facsimile (801) 524–3807; email at *gknowles@usbr.gov*.

SUPPLEMENTARY INFORMATION: The Glen Canyon Dam Adaptive Management Program (GCDAMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The GCDAMP includes a Federal advisory committee, the AMWG, a technical work group (TWG), a Grand Canyon Monitoring and Research Center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

Agenda: The primary purpose of the meeting will be to discuss preliminary results from the November 2014 High Flow Experiment. The AMWG will receive updates on: (1) The Long-Term Experimental and Management Plan Environmental Impact Statement, (2) current basin hydrology and drought impacts, (3) reports from the Glen Canyon Dam Tribal and Federal Liaisons, and (4) science results from Grand Canyon Monitoring and Research Center staff. The AMWG will also address other administrative and resource issues pertaining to the GCDAMP.

To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's Web site at *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/15feb25*. Time will be allowed at the meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Glen Knowles, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 8100, Salt Lake City, Utah 84138; telephone (801) 524–3781; facsimile (801) 524–3807; email at *gknowles@usbr.gov,* at least five (5) days prior to the meeting. Any written comments received will be provided to the AMWG members.

Public Disclosure 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.

Dated: December 17, 2014.

Glen Knowles,

Chief, Adaptive Management Work Group, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 2014–30913 Filed 1–5–15; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–526–527 and 731–TA–1262–1263 (Preliminary)]

Melamine From China and Trinidad and Tobago

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (''the Act''), that there is a reasonable indication that an industry

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

in the United States is materially injured by reason of imports from China and Trinidad and Tobago of melamine, provided for in subheading 2933.61.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and subsidized by the governments of China and Trinidad and Tobago.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On November 12, 2014, a petition was filed with the Commission and Commerce by Cornerstone Chemical Company, Waggaman, Louisiana, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of melamine from China and Trinidad and Tobago. Accordingly, effective November 12, 2014, the Commission instituted countervailing duty investigation nos. 701–TA–526–527 and antidumping duty investigation nos. 731–TA–1262–1263 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 18, 2014 (79 FR 68699). The conference was held in Washington, DC, on December 3, 2014, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 30, 2014. The views of the Commission are contained in USITC Publication 4514 (January 2015), entitled *Melamine from China and Trinidad and Tobago: Investigation Nos. 701–TA–526–527 and 731–TA–1262–1263 (Preliminary).*

By order of the Commission.

Issued: December 30, 2014.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–30908 Filed 1–5–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States, et al.* v. *XTO Energy, Inc.,* Civil Action No. 1:14–cv–00218–IMK, was lodged with the United States District Court for the Northern District of West Virginia, Clarksburg Division, on December 22, 2014.

This proposed Consent Decree concerns a complaint filed by the United States and the State of West Virginia against XTO Energy, Inc., pursuant to Section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), and the West Virginia Water Pollution Control Act, W. Va. Code Chapter 22, Article 11, *et seq.,* to obtain injunctive relief from, and impose civil penalties on, the Defendant in connection with alleged discharges of pollutants at various locations in Harrison, Marion, and Upshur Counties in West Virginia and for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore the impacted areas and/or perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Kenneth C. Amaditz, Trial Attorney, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, Post Office Box 7611, Washington, DC 20044 and refer to *United States, et al.* v. *XTO Energy, Inc.,* DJ # 90–5–1–1–19518.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of West Virginia, Clarksburg Division, 500 West Pike Street, Room 301, Clarksburg, WV 26302. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2014–30904 Filed 1–5–15; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Li Ling Hamady, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On November 19, 2014 the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on December 30, 2014 to: Dr. Joseph A. Covi, Permit No. 2015–015.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2014–30886 Filed 1–5–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0279]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 11 to December 24, 2014. The last biweekly notice was published on December 23, 2014.

DATES: Comments must be filed by February 5, 2015. A request for a hearing must be filed by March 9, 2015.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0279. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; 301–415–1384, *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0279 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–2014–0279.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0279 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. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity to Request a Hearing and Petition for Leave to Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

B. Electronic Submissions (E-Filing).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 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/getting-started.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 (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time 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 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)-(iii).

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: September 2, 2014. A publicly-available version is in ADAMS under Accession No. ML14261A091.

Description of amendment request: The proposed amendment would revise or add technical specification (TS) surveillance requirements (SRs) that require verification that the Emergency Core Cooling System (ECCS), the Residual Heat Removal (RHR)/Shutdown Cooling (SDC) System, the Containment Spray (CS) System, and the Reactor Core Isolation Cooling (RCIC) System are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. The changes are being made to address the concerns discussed in Generic Letter 2008–01, ''Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems.'' The proposed TS changes are based on NRC-approved TS Task Force (TSTF) Traveler TSTF–523, Revision 2, ''Generic Letter 2008–01, Managing Gas Accumulation,'' dated February 21, 2013 (ADAMS Accession No. ML13053A075). The NRC staff issued a Notice of Availability for TSTF–523, Revision 2, for plant-specific adoption using the consolidated line item improvement process, in the **Federal Register** on January 15, 2014 (79 FR 2700).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises or adds SRs that require verification that the Emergency Core Cooling System (ECCS), the Shutdown Cooling (SDC), Residual Heat Removal (RHR), and the Reactor Core Isolation Cooling (RCIC) Systems are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. Gas accumulation in the subject systems is not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The proposed SRs ensure that the subject systems continue to be capable to perform their assumed safety function and are not rendered inoperable due to gas accumulation. Thus, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of

accident from any accident previously evaluated?

Response: No.

The proposed change revises or adds SRs that require verification that the ECCS, the RHR, SDC, and the RCIC Systems are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. The proposed change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the proposed change does not impose any new or different requirements that could initiate an accident. The proposed change does not alter assumptions made in the safety analysis and is consistent with the safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises or adds SRs that require verification that the ECCS, the RHR, SDC, and the RCIC Systems are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. The proposed change adds new requirements to manage gas accumulation in order to ensure the subject systems are capable of performing their assumed safety functions. The proposed SRs are more comprehensive than the current SRs and will ensure that the assumptions of the safety analysis are protected. The proposed change does not adversely affect any current plant safety margins or the reliability of the equipment assumed in the safety analysis. Therefore, there are no changes being made to any safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Douglas A. Broaddus.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant (PNP), Van Buren County, Michigan

Date of amendment request: June 25, 2013, as supplemented by letters dated August 7, 2013, February 13, July 16, and December 9, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML13176A405, ML13220A008, ML14044A059, ML14199A101, and ML14343A581, respectively.

Description of amendment request: This license amendment was originally noticed in the **Federal Register** on March 18, 2014 (79 FR 15148). This no significant hazards consideration determination and opportunity for hearing is being reissued in its entirety to include additional revisions to the PNP Site Emergency Plan (SEP). Specifically, the amendment would modify staffing of the radiation protection (RP) technicians, increase certain Emergency Response Organization (ERO) positions with 30-minute staff augmentation response times to 60-minute response times, and would add monitoring teams as augmented responders.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not affect previously analyzed event probabilities or any parameters associated with plant operations. The changes affect the site response to radiological emergencies under the PNP SEP. The effect of the proposed changes on the ability of the ERO to responds adequately to radiological emergencies has been evaluated, and the proposed changes would not significantly affect the ability of the site to perform the required SEP tasks.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes have no effect on the plant design or on the normal operation of the plant, and do not affect how systems and components are operated under emergency conditions. The proposed changes affect the site response to radiological emergencies under the PNP SEP. The changes do not significantly affect the ability of the site to respond to radiological emergencies and perform required ERO functions, and do not affect the plant operating procedures which are performed by plant staff during plant conditions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect plant design, method of plant operation, or any protective boundaries. 10 CFR 50.47(b) and 10 CFR 50 Appendix E establish emergency planning standards and requirements for adequate staffing, satisfactory performance of key functional areas and critical tasks, and timely augmentation of the response capability. Since the PNP SEP was originally developed, there have been improvements in the technology used to support the SEP functions and the capabilities of onsite personnel. The proposed changes do not significantly affect the ability of the ERO to perform required SEP tasks. Thus, the proposed change does not adversely affect the ability to meet the emergency planning standards as described in 10 CFR 50.47(b) and the requirements in 10 CFR 50 Appendix E.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: David L. Pelton.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of amendment request: November 12, 2014. A publicly-available version is in ADAMS under Accession No. ML14316A370.

Description of amendment request: The amendment would approve the licensee's equivalent margin analysis, performed in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 50, Appendix G, which demonstrates that materials predicted to possess Charpy upper shelf energy values less than 50 ft-lbs will provide margins of safety against fracture, equivalent to those required by Appendix G of Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This amendment request is for approval of an equivalent margins analysis (EMA) in accordance with 10 CFR 50 Appendix G, Section IV, ''Fracture Toughness Requirements.'' The EMA is to demonstrate that reactor vessel beltline material predicted to possess Charpy Upper Shelf Energy (USE) values less than 50 ft-lb will provide margins of safety against fracture equivalent to those required by Appendix G of Section XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code.

The EMA does not involve a significant increase in the probability or consequences of an accident, and does not result in physical alteration of a plant structure, system or component (SSC) or installation of new or different types of equipment. The EMA does not affect plant operation or any design function. The EMA verifies the capability of a [SSC] to perform a design function. Further, the EMA does not significantly affect the probability of accidents previously evaluated in the Updated Final Safety Analysis Report (UFSAR), or cause a change to any of the does analyses associated with the UFSAR accidents because accident mitigation functions would remain unchanged.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No.

The amendment request is for approval of an EMA in accordance with 10 CFR 50 Appendix G, Section IV. The EMA is to demonstrate that reactor vessel beltline material predicted to possess Charpy USE values less than 50 ft-lb will provide margins of safety against fracture equivalent to those required by Appendix G of Section XI of the ASME Boiler and Pressure Vessel Code. The EMA does not change the design function, operation, or integrity of the reactor vessel, and does not challenge the performance or integrity of any safety-related systems. No physical plant alterations are made as a result of the proposed change. The EMA will not create the possibility of a new or different kind of accident due to credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing basis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The amendment request is for approval of an EMA in accordance with 10 CFR 50 Appendix G, Section IV. The EMA is to demonstrate that reactor vessel beltline material predicted to possess Charpy USE values less than 50 ft-lb will provide margins of safety against fracture equivalent to those required by Appendix G of Section XI of the ASME Boiler and Pressure Vessel Code. As such, there is no significant reduction in the margin of safety as a result of the EMA. No design bases or safety limits are exceeded or altered due to the EMA. The margin of safety associated with the acceptance criteria of accidents previously evaluated in the UFSAR is unchanged. The proposed change has no effect on the availability, operability, or performance of the safety-related systems and components.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: David L. Pelton.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: November 21, 2014. A publicly-available version is in ADAMS under Accession No. ML14330A246.

Description of amendment request: The amendment would revise the Technical Specifications for reactor coolant system (RCS) heatup, cooldown, and inservice leak hydrostatic test pressure/temperature (P/T) limitations, as well as the setpoints for the low temperature overpressure protection (LTOP) system, to reflect unit operation to a maximum of 54 effective full power years (EFPYs). The current limits are applicable up to 31 EFPYs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will revise the heatup, cooldown, and inservice leak hydrostatic test limitations for the Reactor Coolant System (RCS) to a maximum of 54 Effective Full Power Years (EFPY) in accordance with 10 CFR 50, Appendix G. This is the end of the period of extended operation. Further, the proposed amendment revises the enable temperature and the lift setpoint for Low Temperature Overpressurization Protection (LTOP) requirements to reflect the revised P/T limits of the reactor vessel. The P/T limits were developed in accordance with the requirements of 10 CFR 50, Appendix G, utilizing the analytical methods and flaw acceptance criteria of Topical Report BAW–10046A, Revision 2, and American Society of Mechanical Engineers (ASME) [Boiler and Pressure Vessel] Code, Section XI, Appendix G. These methods and criteria are the previously NRC approved standards for the preparation of P/T limits. Updating the P/T limits for additional EFPYs maintains the level of assurance that reactor coolant pressure boundary integrity will be maintained, as specified in 10 CFR 50, Appendix G.

The proposed changes do not adversely affect accident initiators or precursors, and do not alter the design assumptions, conditions, or configuration of the plant or the manner in which the plant is operated and maintained. The ability of structures, systems, and components to perform their intended safety functions is not altered or prevented by the proposed changes, and the assumptions used in determining the radiological consequences of previously evaluated accidents are not affected.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes incorporate methodologies that either have been approved or accepted for use by the NRC (provided that any conditions/limitations are satisfied). The P/T limits and LTOP limits will provide the same level of protection to the reactor coolant pressure boundary as was previously evaluated. Reactor coolant pressure boundary integrity will continue to be maintained in accordance with 10 CFR 50, Appendix G, and the assumed accident performance of plant structures, systems and components will not be affected. These changes do not involve any physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed), and installed equipment is not being operated in a new or different manner. Thus, no new failure modes are introduced.

Therefore, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect the function of the reactor coolant pressure boundary or its response during plant transients. By calculating the P/T limits and associated LTOP limits using NRC-approved methodology, adequate margins of safety relating to reactor coolant pressure boundary integrity are maintained. The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are

determined. These changes will ensure that protective actions are initiated and the operability requirements for equipment assumed to operate for accident mitigation are not affected.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Acting Branch Chief: Eric R. Oesterle.

NextEra Energy Seabrook LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 24, 2014, as supplemented by letter dated December 11, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML14273A012 and ML14349A645, respectively.

Description of amendment request: The proposed amendment would change the Facility Operating License and Technical Specifications (TSs). The proposed changes will revise License Condition 2.K and delete the functional unit ''Cold Leg Injection, P–15'' from TS 3.3.2, ''Engineered Safety Features Actuation System Instrumentation.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, along with NRC edits in square brackets, is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change deletes from the TS functional unit 10.d ''Cold Leg Injection, P–15,'' which would prevent opening of the high-head safety injection valves until reactor coolant system pressure decreases below the P–15 setpoint. This feature has not been installed in the plant, and the TS requirements for permissive P–15 have not been implemented. Eliminating a feature that has not been implemented in the plant is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The proposed change has no impact on equipment required to be operable for accident mitigation; consequently, the change does not significantly increase the consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change because no physical changes are made to the plant. Therefore, the proposed change to the TS does not create the possibility of a new or different kind of accident from any accident previously evaluated[.]

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The ability of any operable SSC [structure, system or component] to perform its designated safety function is unaffected by the proposed change. The proposed change does not alter any safety analyses assumptions, safety limits, limiting safety system settings, or method of operating the plant. The change does not adversely impact plant operating margins or the reliability of equipment credited in the safety analyses.

The Seabrook analysis for inadvertent operation of the emergency core cooling system credits operator to terminate safety injection flow. The addition of permissive P–15 to the plant design and TS was initiated to increase the time available for the operators to terminate an inadvertent safety injection actuation. However, the amendment is still within the implementation period and the TS change and associated design change have not been implemented. Currently, without the P–15 function, the operators are capable of terminating safety injection flow within the assumed time limits, and performance meets Seabrook's administrative limit for completing time critical actions within 80% of the required time.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William Blair, Managing Attorney, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Meena Khanna.

South Carolina Electric and Gas Company, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: October 30, 2013. A publicly-available version is in ADAMS under Accession No. ML14303A448.

Description of amendment request: The proposed change would amend Combined License Nos. NPF–93 and NPF–94 for the VCSNS Units 2 and 3 by departing from the plant-specific Design Control Document (DCD) Tier 1 (and corresponding Combined License Appendix C information) and Tier 2 material by making changes to specify the use of latching control relays in lieu of breakers to open the control rod drive mechanism (CRDM) motor generator (MG) set generator field on a diverse actuation system (DAS) signal.

Because, this proposed change requires a departure from Tier 1 information in the Westinghouse Advanced Passive 1000 DCD, the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with 10 CFR 52.63(b)(1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to use field control relays in lieu of field circuit breakers to de-energize the CRDM MG Set excitation field does not result in a change to the basic MG Set design function, which is to supply reliable electrical power to the CRDMs while providing a trip function on a DAS signal, allowing the control rods to drop. The Probabilistic Risk Assessment (PRA) is not adversely affected. No safety-related structure, system, or component (SSC) or function is adversely affected. The change does not involve nor interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the UFSAR [Updated Final Safety Analysis Report] are not affected. Because the change maintains the CRDM MG set trip function used to mitigate an accident, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There is no safety-related SSC or function adversely affected by this proposed change to use control relays instead of breakers to de-energize the CRDM MG set generator field on demand. This proposed change does not change any equipment qualification or

fission product barrier. The change does not result in a new failure mode, malfunction or sequence of events that could affect safety or safety-related equipment. This activity will not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that would result in significant fuel cladding failures.

Therefore, this activity does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

There is no safety-related SSC or function adversely affected by this proposed change to use relays instead of breakers to control the CRDM MG set generator field. The function to trip the MG set generator field on a DAS signal, allowing the control rods to drop, is not adversely affected by the use of relays as the device to de-energize the generator field. The proposed change does not affect any safety-related design code, function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested change, thus, no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Lawrence J. Burkhart.

South Carolina Electric and Gas Company, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: September 18, 2014. A publicly-available version is in ADAMS under Accession No. ML14261A360.

Description of amendment request: The proposed license amendment would depart from VCSNS Units 2 and 3 plant-specific Design Control Document (DCD) Tier 2* material contained within the Updated Final Safety Analysis Report (UFSAR) by relocating fire area rated fire barriers due to changes to the layout of the switchgear rooms and office area in the turbine building.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed reconfiguration of the turbine building switchgear rooms, the control system cabinet room, the new electrical equipment room, and the associated heating, ventilation, and air conditioning (HVAC) room would not adversely affect any safety-related equipment or function. The modified configuration will maintain the fire protection function (*i.e.,* barrier) as evaluated in Updated Final Safety Analysis Report (UFSAR) Appendix 9A, thus, the probability of a spread of a fire from these areas is not significantly increased. The safe shutdown fire analysis is not affected, and the fire protection analysis results are not adversely affected. The proposed changes affect nonsafety-related electrical switchgear and do not involve any accident, initiating event, or component failure; thus, the probabilities of the accidents previously evaluated are not affected. The proposed changes do not interface with or affect any system containing radioactivity or affect any radiological material release source terms; thus, the radiological releases in the accident analyses are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the fire zones in the turbine building related to the turbine building switchgear rooms, the control system cabinet room, the new electrical equipment room, the associated HVAC room, and stairway will maintain the fire barrier fire protection function as evaluated in the UFSAR Appendix 9A. The changes to the fire areas and fire zones do not affect the function of any safety-related structure, system, or component, and thus, do not introduce a new failure mode. The affected turbine building areas and equipment do not interface with any safety-related equipment or any equipment associated with radioactive material and, thus, do not create a new fault or sequence of events that could result in a new or different kind of accident.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed reconfiguration of the fire zones associated with the turbine building switchgear rooms, the electrical equipment room, and the associated HVAC room will maintain the fire barrier fire protection function as evaluated in the UFSAR Appendix 9A. The fire barriers and equipment in the turbine building do not interface with any safety-related equipment or affect any safety-related function. The changes to the area barriers associated with the turbine building switchgear and associated HVAC continue to comply with the existing design codes and regulatory criteria, and do not affect any safety analysis.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Lawrence J. Burkhart.

Southern California Edison Company (SCE), et al., Docket Nos. 50–206, 50–361, 50–362, and 72–041, San Onofre Nuclear Generating Station (SONGS), Units 1, 2 and 3, and Independent Spent Fuel Storage Installation, San Diego County, California

Date of amendment request: March 31, 2014, as supplemented by letter dated October 21, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML14092A249 and ML14297A016, respectively.

Description of amendment request: The proposed amendment would modify the SONGS facility operating license by revising the emergency action level (EAL) scheme consistent with the SONGS permanent shutdown and defueled status. On June 12, 2013, SCE submitted a certification of permanent cessation of power operations pursuant to 10 CFR 50.82(a)(1)(i), stating that SCE had decided to permanently cease power operation of SONGS effective June 7, 2013. With the docketing of subsequent certifications for permanent removal of fuel from the reactor vessels pursuant to 10 CFR 50.82(a)(1)(ii) on June 28, 2013, and July 22, 2013, for Units 3 and 2, respectively, the 10 CFR part 50 license for SONGS Units 2 and 3 no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2). SONGS Unit 1 was permanently shut down in 1993 and is in the decommissioning phase. The proposed changes to the EAL scheme are being submitted to the NRC for approval prior to implementation, as required under 10 CFR 50.54(q)(4) and

10 CFR part 50, Appendix E, Section IV.B.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

[Response: No.]

San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 have permanently ceased operation. The proposed amendment would replace the existing EAL scheme with an EAL scheme that reflects the permanently shut-down status of the plant. The proposed Emergency Action Level Scheme is based on NEI [Nuclear Energy Institute] 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' Appendix C for permanently defueled stations. The proposed amendment has no effect on structures, systems, and components (SSCs) and no effect on the capability of any plant SSC to perform its design function. The proposed amendment would not increase the likelihood of the malfunction of any plant SSC.

The spent fuel pool and its support systems are used for spent fuel storage. It is expected that SONGS will remain in a wet fuel storage configuration for approximately five years. In this condition, the spectrum of postulated accidents is much smaller than for an operational plant. As a result of the certifications submitted by SCE in accordance with 10 CFR 50.82(a)(1), and the consequent removal of authorization to operate the reactor or to place or retain fuel in the reactor in accordance with 10 CFR 50.82(a)(2), most of the accident scenarios postulated in the SONGS Final Safety Analysis Report are no longer possible, and there is no significant increase in consequences of previously postulated accidents.

The proposed license amendment will not significantly increase the probability of occurrence of previously evaluated accidents, since most previously analyzed accidents can no longer occur and the probability or consequences of the few remaining are unaffected by the proposed amendment.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

[Response: No.]

The proposed amendment does not involve any change in the plant's design, configuration, or operation. The proposed changes have no impact on facility SSCs affecting the safe storage of irradiated fuel, or in the methods of operation of such SSCs, or on the handling and storage of irradiated fuel itself. The proposed EAL scheme is for the plant's defueled condition. There is no impact on the prevention, diagnosis, or mitigation of accidents previously evaluated. Accidents cannot result in different or more adverse failure modes or accidents than those previously evaluated because the reactors are permanently shut down and defueled and SONGS is no longer authorized to operate the reactors.

The proposed EAL scheme does not make changes to the systems credited in the remaining relevant accident analyses. No changes are being made to parameters within which the plant is normally operated or in the setpoints which initiate protective or mitigating actions, and no new failure modes are being introduced or new accident precursors that could initiate a new or different kind of accident. Proper control and monitoring of safety significant parameters and activities such as dose assessments to determine any radiological releases and provisions for communications and coordination with offsite organizations will be maintained.

The proposed amendment does not introduce a new mode of plant operation or new accident precursors, does not involve any physical alterations to plant configuration, or make changes to system setpoints that could initiate a new or different kind of accident.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

[Response: No.]

The proposed amendment to the EAL scheme will provide thresholds for initiation of Emergency Planning actions that are commensurate with the permanently defueled condition of the station. The proposed amendment does not involve a change in the plant's design, configuration, or operation. The proposed amendment does not affect either the way in which the plant SSCs perform their safety function or its design and licensing bases.

Because the 10 CFR part 50 licenses for SONGS no longer authorize operation of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer possible. The proposed amendment does not adversely affect the inputs or assumptions of any of the design basis analyses that impact the applicable postulated accidents.

The proposed changes to the SONGS EAL scheme do not impact the safe storage of irradiated fuel. The revised scheme does not affect any requirements for SSCs credited in the remaining analyses of applicable postulated accidents; and as such, does not significantly reduce the margin of safety associated with these accident analyses. Postulated design basis accidents involving the reactor are no longer possible because the reactor is permanently shut down and defueled and SONGS is no longer authorized to operate the reactors.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Walker A. Matthews, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Douglas A. Broaddus.

Southern Nuclear Operating Company, Inc. Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant Units 3 and 4, Burke County, Georgia

Date of amendment request: November 21, 2014. A publicly-available version is in ADAMS under Accession No. ML14325A835.

Description of amendment request: The proposed changes would revise the Combined Licenses (COLs) changing the description and scope of the Initial Test Program. Because this proposed change requires a departure from Tier 1 information in the Westinghouse Advanced Passive 1000 Design Control Document (DCD), the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 52.63(b)(1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment is related to the conduct of the Initial Test Program. The proposed changes are made in compliance with the applicable regulatory guides, are only related to the general aspects of how the program is executed and do not change any technical content for preoperational or startup tests. No changes are made to any design aspect of the plant.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment is related to the conduct of the Initial Test Program. The proposed changes are made in compliance with the applicable regulatory guides, are

only related to the general aspects of how the program is executed and do not change any technical content for preoperational or startup tests. These changes do not affect the design or analyzed operation of any system.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment is related to the conduct of the Initial Test Program. The proposed changes are made in compliance with the applicable regulatory guides, are only related to the general aspects of how the program is executed and do not change any technical content for preoperational or startup tests. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, thus no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Lawrence J. Burkhart.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: January 28, 2014.

Brief description of amendments: The amendments modified Technical Specification (TS) 3.4.12. Specifically, the change removes a reference to Condition E when entering Condition G.

Date of issuance: December 11, 2014.

Effective date: This license amendment is effective as of its date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: Unit 1—275 and Unit 2—255. A publicly-available version is in ADAMS under Accession No. ML14332A790; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the licenses and Technical Specifications.

Date of initial notice in ***Federal Register*** April 1, 2014 (79 FR 18330).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 11, 2014.

No significant hazards consideration comments received: No.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 28, 2013, as supplemented by letter dated May 8, 2014.

Brief description of amendment: The amendment revised Technical Specification (TS) 2.1.1, ''Reactor Core SLs [Safety Limits],'' to reduce the reactor dome pressure from 785 pounds per square inch gauge (psig) to 685 psig. These changes resolve a calculational defect reported under 10 CFR part 21 concerning a potential to momentarily violate the reactor safety limits in TSs 2.1.1.1 and 2.1.1.2 during a Pressure Regulator Failure-Open transient as reported by General Electric Nuclear Energy.

Date of issuance: December 11, 2014.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 182. A publicly-available version is in ADAMS under Accession No. ML14192A831; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2013 (78 FR 47788). The supplemental letter dated May 8, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 2014.

No significant hazards consideration comments received: No.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 4, 2013.

Brief description of amendment: The amendment revised Technical Specification (TS) Sections 3.6.4.3, ''Standby Gas Treatment (SGT) System,'' 3.6.4.7, ''Fuel Building Ventilation System—Fuel Handling,'' 3.7.2, ''Control Room Fresh Air (CRFA) System,'' and 5.5.7, ''Ventilation Filter Testing Program (VFTP).'' Specifically, the amendment eliminates the operability and Surveillance Requirements for the heaters in the safety-related charcoal filter trains in those systems, and revises certain charcoal test specifications.

Date of issuance: December 12, 2014.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 183. A publicly-available version is in ADAMS under

Accession No. ML14225A444; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register:*** March 4, 2014 (79 FR 12243).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 2014.

No significant hazards consideration comments received: No.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (RBS), West Feliciana Parish, Louisiana

Date of amendment request: February 25, 2014.

Brief description of amendment: The amendment approved a change to the facility operating license for RBS. The change revised the date for implementation of Milestone 8 of the Cyber Security Plan (CSP) Implementation Schedule and the existing license conditions in the facility operating license. Milestone 8 of the CSP implementation schedule concerns the full implementation of the CSP.

Date of issuance: December 12, 2014.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 184. A publicly-available version is in ADAMS under Accession No. ML14304A181; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License.

*Date of initial notice in **Federal Register:*** July 8, 2014 (79 FR 38576).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 2014.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket Nos. 50–003, 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 1, 2 and 3, Westchester County, New York

Date of amendment request: January 30, 2014, as supplemented by letter dated June 12, 2014.

Brief description of amendment): The amendments revised the Cyber Security Plan Milestone 8 full implementation date and the existing Physical Protection license conditions by extending the full implementation date to June 30, 2016.

Date of issuance: December 11, 2014.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment Nos.: 57, 279, and 254. A publicly-available version is in ADAMS under Accession No. ML14316A526; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–5, DPR–26, and DPR–64: The amendment revised the Provisional Operating License for Unit No. 1 and the Facility Operating Licenses for Unit Nos. 2 and 3.

*Date of initial notice in **Federal Register:*** May 6, 2014 (79 FR 25899). The supplemental letter dated June 12, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 2014.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station (Pilgrim), Plymouth County, Massachusetts

Date of amendment request: January 31, 2014, as supplemented by letter dated July 1, 2014.

Brief description of amendment: The amendment revised the Pilgrim operating license by modifying the Physical Protection license condition, related to the Cyber Security Plan (CSP). The CSP Milestone 8 full implementation date was changed from December 15, 2014, to June 30, 2016.

Date of issuance: December 11, 2014.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 241. A publicly-available version is in ADAMS under Accession No. ML14336A661; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–35: The amendment revised the License.

*Date of initial notice in **Federal Register:*** August 5, 2014 (79 FR 45487). The supplemental letter dated July 1, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 2014.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: October 31, 2013, as supplemented by letters dated April 24, 2014, July 16, 2014, and December 5, 2014.

Description of amendment request: The amendment revised and removed certain requirements from the Section 6.0, ''Administrative Controls,'' portions of the Vermont Yankee Technical Specifications that are no longer applicable to the facility in a permanently defueled condition.

Date of Issuance: December 22, 2014.

Effective date: The license amendment becomes effective upon the licensee's submittal of the certifications required by 10 CFR 50.82(a)(1)(i) and (ii).

Amendment No.: 260. A publicly-available version is in ADAMS under Accession No. ML14217A072; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. DPR–28: Amendment revised the License.

*Date of initial notice in **Federal Register:*** February 19, 2014 (79 FR 9494). The supplemental letters dated April 24, July 16, and December 5, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 22, 2014.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 4, 2014.

Brief description of amendment: The amendment approved a change to the

facility operating license for Waterford Steam Electric Station, Unit 3. The change revised the date for implementation of Milestone 8 of the Cyber Security Plan (CSP) Implementation Schedule and the existing license conditions in the facility operating license. Milestone 8 of the CSP implementation schedule concerns the full implementation of the CSP.

Date of issuance: December 10, 2014.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 241. A publicly-available version is in ADAMS under Accession No. ML14321A713; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License.

*Date of initial notice in **Federal Register:*** October 7, 2014 (79 FR 60518).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 2014.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: December 19, 2013, as supplemented by letter dated June 11, 2014.

Brief description of amendment: The amendment approved a change to the Grand Gulf Nuclear Station, Unit 1 facility operating license to revise the date for implementation of Milestone 8 of the Cyber Security Plan (CSP) Implementation Schedule and the existing license conditions in the facility operating license. Milestone 8 of the CSP implementation schedule concerns the full implementation of the CSP.

Date of issuance: December 12, 2014.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No: 200. A publicly-available version is in ADAMS under Accession No. ML14311A479; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–29: The amendment revised the Facility Operating License.

*Date of initial notice in **Federal Register:*** July 8, 2014 (79 FR 38576). The supplemental letter dated June 11, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 2014.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352, 50–353, and 72–65, Limerick Generating Station, Unit 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, et al., Docket Nos. 50–219 and 72–15, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–171, 50–277, 50–278, and 72–29, Peach Bottom Atomic Power Station, Units 1, 2 and 3, York and Lancaster Counties, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–289 and 50–320, Three Mile Island Nuclear Station, Units 1 and 2, Dauphin County, Pennsylvania

Date of application for amendments: October 30, 2013, as supplemented by letter dated June 13, 2014.

Brief description of amendments: The amendments revised the Emergency Plan definition of Annual Training from ''Retraining is performed on an annual basis, which is defined as every 12-months + 3 months (25% grace period),'' to ''Retraining is performed once per year not to exceed 18-months between training sessions.''

Date of issuance: December 24, 2014.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 212, 173, 283, 12, 294, 297, and 283. A publicly-available version is in ADAMS under Accession No. ML14226A940; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–39, NPF–85, DPR–16, DPR–12, DPR–44, DPR–56, DPR–50, and DPR–73: The amendments revised the Emergency Plan.

*Date of initial notice in **Federal Register**:* April 1, 2014 (79 FR 18333). The supplemental letter dated June 13, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 24, 2014.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: January 10, 2014, as supplemented by letter dated May 27, 2014.

Brief description of amendments: The amendments revised the schedule for full implementation of the cyber security plan (CSP) and Paragraph 2.D of Renewed Facility Operating License Nos. DPR–58 and DPR–74 for CNP, Units 1 and 2, respectively. The CSP and associated implementation schedule for CNP, Units 1 and 2 was previously approved by NRC staff letter dated July 28, 2011, as supplemented by changes approved in a letter dated December 13, 2012

Date of issuance: December 18, 2014.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 325 and 308. A publicly-available version is in ADAMS under Accession No. ML14317A551; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Renewed Facility Operating Licenses.

*Date of initial notice in **Federal Register**:* July 8, 2014 (79 FR 38579). The supplemental letter dated May 27, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 2014.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station (CNS), Nemaha County, Nebraska

Date of amendment request: March 14, 2014, as supplemented by letter dated July 28, 2014.

Brief description of amendment: The amendment revised the CNS Cyber Security Plan (CSP) Milestone 8 full implementation date as set forth in the CSP Implementation Schedule. The amendment also revised the physical protection license condition in the renewed facility operating license.

Date of issuance: December 12, 2014.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 249. A publicly-available version is in ADAMS under Accession No. ML14323A644; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–46: Amendment revised the renewed facility operating license.

*Date of initial notice in **Federal Register**:* July 8, 2014 (79 FR 38580). The supplemental letter dated July 28, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 2014.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 31, 2014.

Brief description of amendment: The amendment revised Technical Specification 2.5, ''Steam and Feedwater Systems,'' to allow a 7-day completion time for restoration of the turbine-driven auxiliary feedwater pump if it becomes inoperable following a refueling outage and if Mode 2 has not yet been entered, based on Technical Specification Task Force (TSTF) Traveler TSTF–340, Revision 3.

Date of issuance: December 22, 2014.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment No.: 278. A publicly-available version is in ADAMS under Accession No. ML14328A814; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–40: The amendment revised the license and Technical Specifications.

*Date of initial notice in **Federal Register**:* July 8, 2014 (79 FR 38592).

The Commission's related evaluation of the amendment is contained in a safety evaluation dated December 22, 2014.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 5, 2013.

Brief description of amendment: The amendment relocates the operability and surveillance requirements for flood protection from the Technical Specifications to the Technical Requirements Manual.

Date of issuance: December 18, 2014.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 196. A publicly-available version is in ADAMS under Accession No. ML14108A399; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License No. NPF–57: Amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* April 15, 2014 (79 FR 21299).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 2014.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–354, 50–272, and 50–311, Hope Creek Generating Station and Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: December 24, 2013, as supplemented by letters dated June 23, 2014, and August 18, 2014.

Brief description of amendment: The amendments revised the Hope Creek Generating Station and Salem Nuclear Generating Station, Unit Nos. 1 and 2, Cyber Security Plan (CSP) Milestone 8 full implementation date, as set forth in the CSP implementation schedule and the existing License Condition 2.E in the Renewed Facility Operating Licenses NPF–57, DPR–70, and DPR–75.

Date of issuance: December 23, 2014.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 197, 306, and 288. A publicly-available version is in ADAMS under Accession No. ML14323A974; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–57, DPR–70, and DPR–75: Amendments revised the Renewed Facility Operating Licenses.

*Date of initial notice in **Federal Register**:* September 9, 2014 (79 FR 53461). The supplemental letters dated June 23, 2014, and August 18, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 2014.

No significant hazards consideration comments received: No.

South Carolina Electric and Gas Company, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: December 4, 2013 and September 8, 2014.

Brief description of amendment: The amendment revised various technical specifications (TS) to upgrade the VCSNS TS to improve operator usability by more closely aligning the TS with the latest form and content of standard TS.

Date of issuance: November 12, 2014.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 20. A publicly available version is in ADAMS under Accession No. ML14265A072; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Combined Licenses No. NPF–93 and NPF–94: Amendment revised the Facility Combined Licenses.

*Date of initial notice in **Federal Register**:* April 1, 2014 (79 FR 18334).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 12, 2014.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of application for amendments: January 16, 2014, as supplemented by letters dated May 2 and July 22, 2014.

Brief description of amendments: The amendments revised Technical Specification 3.7.5, Control Room Air Conditioning System, to provide new Required Actions (RAs) for one, two, or three main control room AC subsystems inoperable, and make other required corresponding changes.

Date of issuance: December 10, 2014.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: Unit 1—270 and Unit 2—214. A publicly-available version is in ADAMS under Accession No. ML14279A261; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the licenses and the Technical Specifications.

*Date of initial notice in **Federal Register**:* August 19, 2014 (79 FR 49110). The supplemental letter dated May 2 and July 22, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 10, 2014.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of application for amendments: December 21, 2012, as supplemented by letter dated June 21, 2013.

Brief description of amendments: The amendments revised the Renewed Operating Licenses to incorporate a degraded voltage protection modification schedule into the Hatch licenses.

Date of issuance: December 16, 2014.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1—271 and Unit 2—215. A publicly-available version is in ADAMS under Accession No. ML14328A323; documents related to this these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the licenses.

*Date of initial notice in **Federal Register**:* September 3, 2013 (78 FR 54289).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 16, 2014.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 29th day of December 2014.

For the Nuclear Regulatory Commission.

George A. Wilson,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–30966 Filed 1–5–15; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2014–0262]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of four amendment requests. The amendment requests are for Turkey Point Nuclear Generating, Units 3 and 4; Duane Arnold Energy Center; Point Beach Nuclear Plant, Units 1 and 2; and Edwin I. Hatch Nuclear Plant, Unit 2. The NRC proposes to determine that each amendment request involves no significant hazards consideration. In addition, each amendment request contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by February 5, 2015. A request for a hearing must be filed by March 9, 2015. Any potential party as defined in § 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by January 16, 2015.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0262. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Beverly A. Clayton, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3475, email: *Beverly.Clayton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0262 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0262.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public

Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.

- 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–2014–0262 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. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below. The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends

to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.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 (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time 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 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the

document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Florida Power & Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: October 7, 2014. A publicly-available version is in ADAMS under Accession No. ML14308A054.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the Renewed Facility Operating License condition to reference a change to the implementation schedule for Milestone 8 of the Cyber Security Plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan implementation schedule is administrative in nature. The change does not alter accident analysis assumptions, add any initiators or affect the function of plant systems or the manner in which systems are operated, maintained, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability or the structures, systems and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan implementation schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems and a component relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions of operation, limiting safety systems settings and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan implementation schedule is administrative in nature. Because there is no change in these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William S. Blair, Managing Attorney—Nuclear, Florida Power & Light, 700 Universe Blvd., MS LAW/JB, Juno Beach, Florida 33408–0420.

Acting NRC Branch Chief: Lisa M. Regner.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: August 28, 2014. A publicly-available version is in ADAMS under Accession No. ML14245A375.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguard information (SUNSI). The amendment would revise the Cyber Security Plan (CSP) Milestone 8 full implementation date as set forth in the CSP Implementation schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan implementation schedule is administrative in nature. The change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability or the structures, systems, and components relied upon to

mitigate the consequences of postulated accidents and have no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Cyber Security Plan implementation schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions of operation, limiting safety systems settings, and safety limits specified in the technical specifications. The proposed change to the Cyber Security Plan implementation schedule is administrative in nature. Because there is no change in these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Blair, P.O. Box 14000 Juno Beach, Florida, 33408–0420.

NRC Branch Chief: David L. Pelton.

NextEra Energy Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowac County, Wisconsin

Date of amendment request: July 18, 2014. A publicly-available version is in ADAMS under Package Accession No. ML14202A574.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise the Cyber Security Plan (CSP) Milestone 8 completion date as set forth in the CSP Implementation Schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents, and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents, and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the Technical Specifications. The proposed change to the CSP Implementation Schedule does not change these established safety margins as a result of this change, [and] the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William Blair, Managing Attorney—Nuclear, Florida Power & Light Company, P.O. Box 14000, 700 Universe Boulevard, Juno Beach, Florida, 33408–0420.

NRC Branch Chief: David L. Pelton.

Southern Nuclear Operating Company (SNC), Docket No. 50–366, Edwin I. Hatch Nuclear Plant (HNP), Unit 2, Appling County, Georgia

Date of amendment request: August 8, 2014, as supplemented by letters dated September 8 and October 24, 2014. A publicly-available versions are in ADAMS under Accession Nos. ML14223A793, ML14223A794, ML14251A579, and ML14302A159.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment(s) would change the Technical Specification values of the Safety Limit Minimum Critical Power Ratio (SLMCPR) to support operation in the next fuel cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, SNC has reviewed the proposed change and concludes that the change does not involve a significant hazards consideration since the proposed change satisfies the criteria in 10 CFR 50.92(c). . . . The discussion below addresses each of these criteria and demonstrates that the proposed amendment does not constitute a significant hazard. The proposed change does not involve a significant hazards consideration because:

1. The operation of HNP Unit 2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Safety Limit Minimum Critical Power Ratio (SLMCPR) ensures that, 99.9% of the fuel rods in the core will not be susceptible to boiling transition during normal operation or the most limiting postulated design-basis transient event. The new SLMCPR values preserve the existing margin to the onset of transition boiling; therefore, the probability of fuel damage is not increased as a result of this proposed change. The determination of the revised HNP Unit 2 SLMCPRs has been performed using NRC-approved methods of evaluation. These plant-specific calculations are performed each operating cycle and may

require changes for future cycles. The revised SLMCPR values do not change the method of operating the plant; therefore, they have no effect on the probability of an accident initiating event or transient.

Based on the above, SNC has concluded that the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of HNP Unit 2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes result only from a specific analysis for the HNP Unit 2 core reload design. These changes do not involve any new or different methods for operating the facility. No new initiating events or transients result from these changes. Based on the above, SNC has concluded that the proposed change will not create the possibility of a new or different kind of accident from those previously evaluated.

3. The operation of HNP Unit 2 in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The new SLMCPRs have been calculated using NRC-approved methods of evaluation with plant and cycle-specific input values for the fuel and core design for the upcoming cycle of operation. The SLMCPR values ensure that 99.9% of the fuel rods in the core will not be susceptible to boiling transition during normal operation or the most limiting postulated design-basis transient event. The operating MCPR limit is set appropriately above the safety limit value to ensure adequate margin when the cycle-specific transients are evaluated. Accordingly, the margin of safety is maintained with the revised values.

As a result, SNC has determined that the proposed change will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Leigh D. Perry, SVP & General Counsel, Southern Nuclear Operating Company, 40 Inverness Center Parkway, Birmingham, Alabama, 35242.

NRC Branch Chief: Robert Pascarelli.

Florida Power & Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating Units 3 and 4, Miami-Dade County, Florida

NextEra Energy Point Beach, LLC., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

NextEra Energy Point Beach, LLC., Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowac County, Wisconsin

Southern Nuclear Operating Company, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation.

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland, 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 11th day of December, 2014.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Acting, Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2014–29580 Filed 1–5–15; 8:45 am]

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[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–23 and CP2015–29; Order No. 2314]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Global Expedited Package Services–Non-Published Rates Contract 5 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 7, 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:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* and Order Nos. 630,[1] 1625,[2] and 1959,[3] the Postal Service filed a formal request and associated supporting information to add Global Expedited Package Services–Non-Published Rates Contract 5 (GEPS–NPR 5) to the competitive product list.[4] The Postal Service states the addition of GEPS–NPR 5 to the competitive products list is necessary due to its creation of both a Management Analysis of the Prices and Methodology for Determining Prices for Negotiated Service Agreements under Global Expedited Package Services–Non-Published Rates 5 (GEPS–NPR 5 Management Analysis), and an accompanying financial model that revises the previously filed GEPS–NPR 4 Version 2 Management Analysis and its financial model. Request at 3.

To support its Request, the Postal Service filed the following attachments:

- Attachment 1, an application for non-public treatment of materials filed under seal;
- Attachment 2A, a redacted version of Governors' Decision No. 11–6;
- Attachment 2B, a revised version of the Mail Classification Schedule section 2510.8 GEPS–NPR;
- Attachment 2C, a redacted version of GEPS–NPR 5 Management Analysis;
- Attachment 2D, a list of Maximum and Minimum Prices for Priority Mail Express International (PMEI), and Priority Mail International (PMI), and Global Express Guaranteed (GXG);
- Attachment 2E, a certified statement concerning the prices for applicable negotiated service agreements under GEPS–NPR 5, as required by 39 CFR 3015.5(c)(2);
- Attachment 3, a Statement of Supporting Justification, similar to the Statement of Supporting Justifications used to support the classification of GEPS–NPR 3 and GEPS–NPR 4, and which is filed pursuant to 39 CFR 3020.32; and
- Attachment 4, a redacted version of the GEPS–NPR 5 model contract.

In a Statement of Supporting Justification, Giselle Valera, Managing Director and Vice President, Global Business, asserts the product is designed to increase efficiency of the Postal Service's process, as well as enhance its ability to compete in the marketplace. Request, Attachment 3 at 1. She contends GEPS–NPR 5 belongs on the competitive product list as it is part of a market over which the Postal Service does not exercise market dominance,[5] is not subsidized by market dominant products, covers costs attributable to it, and does not cause competitive products as a whole to fail to make the appropriate contribution to institutional costs. *Id.* at 1, 3.

The Postal Service included a redacted version of the GEPS–NPR 5 model contract with the Request. *Id.* Attachment 4. The Postal Service represents the GEPS–NPR 5 model contract is a slight modification of the GEPS–NPR 4 Version 2 model contract approved by the Commission in Order No. 1959.[6]

The Postal Service represents it will notify each GEPS–NPR 5 customer of the contract's effective date no later than 30 days after receiving the signed agreement from the customer. *Id.* Attachment 4 at 4. Each contract will expire the later of one year from the effective date or the last day of the month which falls one calendar year from the effective date, unless terminated sooner. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). Request at 11; *id.* Attachment 4.

The Postal Service filed much of the supporting materials, including the related model contract, under seal. Request, Attachment 1. It maintains that the redacted portions of the materials should remain confidential as sensitive business information. *Id.* at 4. This information includes sensitive commercial information concerning the incentive discounts and their formulation, applicable cost-coverage, non-published rates, as well as some customer-identifying information. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure for ten years after the date of filing with the Commission, unless an order is entered to extend the duration of that status. *Id.* at 9.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–23 and CP2015–29 to consider the Request pertaining to the proposed Global Expedited Package Services—Non-Published Rates 5 product and the related model contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than January 7, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–23 and CP2015–29 to

[1] Docket No. CP2011–45, Order Adding Global Expedited Package Services–Non-Published Rates 2 to the Competitive Product List, December 30, 2010 (Order No. 630).

[2] Docket Nos. MC2013–27 and CP2013–35, Order Adding Global Expedited Package Services-Non-Published Rates 4 (GEPS–NPR 4) to the Competitive Product List, January 16, 2013 (Order No. 1625).

[3] Docket Nos. MC2013–27 and CP2014–22, Order Approving Change in Prices for Global Package Services–Non-Published Rates 4 (GEPS–NPR 4), January 10, 2014 (Order No. 1959).

[4] Request of the United States Postal Service to Add Global Expedited Package Services—Non-Published Rates 5 (GEPS—NPR 5) to the Competitive Product List and Notice of Filing GEPS—NPR 5 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, December 24, 2014 (Request).

[5] The Postal Service claims it does not exercise sufficient market power to set the price of PMEI, PMI, and GXG substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products. *Id.* at 4; 39 U.S.C. 3642(b).

[6] See Order No. 1959.

consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than January 7, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–30968 Filed 1–5–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73960; File No. SR–NASDAQ–2014–127]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the Tuttle Tactical Management U.S. Core ETF of ETFis Series Trust I

December 30, 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 December 19, 2014, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to list and trade the shares of the Tuttle Tactical Management U.S. Core ETF (the ''Fund''), a series of ETFis Series Trust I (the ''Trust''), under Nasdaq Rule 5735 (''Managed Fund Shares'').[3] The shares of the Fund are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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 list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[4] on the Exchange. The Fund will be an actively managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Delaware statutory trust on September 20, 2012.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[6] The Fund is a series of the Trust.

Etfis Capital LLC will be the investment adviser (''Adviser'') to the Fund. Tuttle Tactical Management, LLC will be the investment sub-adviser (''Sub-Adviser'') to the Fund. ETF Distributors LLC (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon (''BNY Mellon'') will act as the administrator, accounting agent, custodian, and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008) 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). There are already multiple actively-managed funds listed on the Exchange; *see e.g.,* Securities Exchange Act Release No. 72411 (June 17, 2014), 79 FR 35598 (June 23, 2014) (SR–NASDAQ–2014–40) (order approving listing and trading of Calamos Focus Growth ETF). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act (the ''Exemptive Order''). *See* Investment Company Act Release No. 30607 (July 23, 2013). In compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

[6] *See* Registration Statement on Form N–1A for the Trust filed on July 24, 2014 (File Nos. 333–187668 and 811–22819). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser, the Sub-Adviser and their 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.

the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser and Sub-Adviser are not registered as broker-dealers; however the Adviser (but not the Sub-Adviser) is affiliated with a broker-dealer and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/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. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition and/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.

Tuttle Tactical Management U.S. Core ETF

Principal Investments

The Fund's investment objective will be to provide long-term capital appreciation while maintaining a secondary emphasis on capital preservation, primarily through investments in the U.S. equity market. The Fund will be an actively managed ETF that seeks to achieve its investment objective by utilizing a long-only, multi-strategy, tactically-managed exposure to the U.S. equity market. To obtain such exposure, the Sub-Adviser will invest, under normal circumstances, not less than 80% of its assets in exchange-traded funds (''ETFs''),[8] exchange-traded notes (''ETNs''),[9] exchange-traded trusts that hold commodities (''ETTs'') (collectively, ETFs, ETNs and ETTs are referred to hereinafter as ''exchange-traded products'' or ''ETPs''), individually selected U.S. exchange-traded common stocks (when the Sub-Adviser determines that is more efficient or otherwise advantageous to do so), money market funds, U.S. treasuries or money market instruments.[10] To the extent that the Fund invests in ETFs or money market funds to gain domestic exposure, the Fund is considered, in part, a ''fund of funds.''

The Sub-Adviser will employ four tactical models in seeking to achieve the Fund's investment objective: ''S&P 500 Absolute Momentum,'' ''Relative Strength Equity,'' ''Beta Opportunities,'' and ''Short-Term S&P 500 Counter Trend.'' While the Sub-Adviser will generally seek to maintain an equal weighting among these four tactical models, market movements may result in the Fund being overweight or underweight one or more of the tactical models.

Other Investments

In order to seek its investment objective, the Fund does not employ other strategies outside of the above-described ''Principal Investments.'' However, the Fund may, from time to time, take temporary defensive positions that are inconsistent with the Fund's principal investment strategies in an attempt to respond to adverse market, economic, political, or other conditions. In such circumstances, the Fund may also hold up to 100% of its portfolio in cash or other short-term, highly liquid investments, such as money market instruments, U.S. government obligations, commercial paper, repurchase agreements or other cash equivalents. When the Fund takes a temporary defensive position, the Fund may not be able to achieve its investment objective.

Investment Restrictions

Under normal market conditions, the Fund will invest not less than 80% of its total assets in shares of ETPs, individually selected U.S. exchange-traded common stocks (when the Sub-Adviser determines that is more efficient or otherwise advantageous to do so), money market funds, U.S. treasuries or money market instruments. The Fund will not purchase securities of open-end or closed-end investment companies except in compliance with the 1940 Act. The Fund will not use derivative instruments, including options, swaps, forwards and futures contracts, both listed and over-the-counter (''OTC''). Under normal circumstances, the Fund will not invest more than 25% of its total assets in leveraged ETPs.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities and other illiquid assets (calculated at the time of investment). 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 securities or other illiquid assets. Illiquid securities and other 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.[11]

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under SubChapter M of the Internal Revenue Code.[12]

[8] As described in the Registration Statement, an ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country and region indexes. ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in leveraged ETFs (*e.g.,* 2X or 3X), the Fund will not invest in inverse or inverse leveraged ETFs. The shares of ETFs in which a Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

[9] The ETNs are limited to those described in Nasdaq Rule 5710.

[10] Such securities will include securities that are issued or guaranteed by the U.S. Treasury, by various agencies of the U.S. government, or by various instrumentalities, which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the ''full faith and credit'' of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

[11] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), FN 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[12] 26 U.S.C. 851.

Under the 1940 Act, the Fund's investment in investment companies will be limited to, subject to certain exceptions: (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund's total assets with respect to any one investment company, and (iii) 10% of the Fund's total assets with respect to investment companies in the aggregate.

The Fund's investments will be consistent with its investment objective. In pursuing its investment objective, the Fund may utilize instruments that have a leveraging effect on the Fund. This effective leverage occurs when the Fund's market exposure exceeds the amounts actually invested. Any instance of effective leverage will be covered in accordance with guidance promulgated by the Commission and its staff. [13] The Fund does not presently intend to engage in any form of borrowing for investment purposes, and will not be operated as a ''leveraged ETF'', *i.e.,* it will not be operated in a manner designed to seek a multiple of the performance of an underlying reference index.

Net Asset Value

The Fund's net asset value (''NAV'') will be determined as of the close of trading (normally 4:00 p.m., Eastern time (''E.T.'')) on each day the New York Stock Exchange (''NYSE'') is open for business. NAV will be calculated for the Fund by taking the market price of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Board or its delegate.

The Fund's investments will be valued at market value (*i.e.,* the price at which a security is trading and could presumably be purchased or sold) or, in the absence of market value with respect to any investment, at fair value in accordance with valuation procedures adopted by the Board and in accordance with the 1940 Act. Common stocks and equity securities (including shares of ETPs) will be valued at the last sales price on that exchange. Portfolio securities traded on more than one securities exchange will be valued at the last sale price or, if so disseminated by an exchange, the official closing price, as applicable, at the close of the exchange representing the principal exchange or market for such securities on the business day as of which such value is being determined. U.S. Treasuries are valued using quoted market prices, and money market funds are valued at the net asset value reported by the funds. For all security types in which the Fund may invest, the Fund's primary pricing source is IDC; its secondary source is Reuters; and its tertiary source is Bloomberg.

Certain securities may not be able to be priced by pre-established pricing methods. Such securities may be valued by the Board or its delegate at fair value. The use of fair value pricing by the Fund will be governed by valuation procedures adopted by the Board and in accordance with the provisions of the 1940 Act. These securities generally include, but are not limited to, restricted securities (securities which may not be publicly sold without registration under the Securities Act of 1933) for which a pricing service is unable to provide a market price; securities whose trading has been formally suspended; a security whose market price is not available from a pre-established pricing source; a security with respect to which an event has occurred that is likely to materially affect the value of the security after the market has closed but before the calculation of the Fund's net asset value or make it difficult or impossible to obtain a reliable market quotation; and a security whose price, as provided by the pricing service, does not reflect the security's ''fair value.'' As a general principle, the current ''fair value'' of a security would appear to be the amount which the owner might reasonably expect to receive for the security upon its current sale. The use of fair value prices by the Fund generally results in the prices used by the Fund that may differ from current market quotations or official closing prices on the applicable exchange. A variety of factors may be considered in determining the fair value of such securities.

Creation and Redemption of Shares

The Trust will issue and sell Shares of the Fund only in Creation Unit aggregations, and only in aggregations of 50,000 Shares, on a continuous basis through the Distributor, without a sales load, at the NAV next determined after receipt, on any business day, of an order in proper form.

The consideration for purchase of Creation Unit aggregations of the Fund will consist of (i) a designated portfolio of securities determined by the Adviser that generally will conform to the holdings of the Fund consistent with its investment objective (the ''Deposit Securities'') per each Creation Unit aggregation and generally an amount of cash (the ''Cash Component'') computed as described below, or (ii) cash in lieu of all or a portion of the Deposit Securities, as defined below. Together, the Deposit Securities and the Cash Component (including the cash in lieu amount) will constitute the ''Fund Deposit,'' which will represent the minimum initial and subsequent investment amount for a Creation Unit aggregation of the Fund.

The consideration for redemption of Creation Unit aggregations of the Fund will consist of (i) a designated portfolio of securities determined by the Adviser that generally will conform to the holdings of the Fund consistent with its investment objective per each Creation Unit aggregation (''Fund Securities'') and generally a Cash Component, as described below, or (ii) cash in lieu of all or a portion of the Fund Securities as defined below.

The Cash Component is sometimes also referred to as the Balancing Amount. The Cash Component will serve the function of compensating for any differences between the NAV per Creation Unit aggregation and the Deposit Amount (as defined below). For example, for a creation the Cash Component will be an amount equal to the difference between the NAV of Fund Shares (per Creation Unit aggregation) and the ''Deposit Amount''—an amount equal to the market value of the Deposit Securities and/or cash in lieu of all or a portion of the Deposit Securities. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit aggregation exceeds the Deposit Amount), the Authorized Participant (defined below) will deliver the Cash Component. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit aggregation is less than the Deposit Amount), the Authorized Participant will receive the Cash Component.

BNY Mellon, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, prior to the opening of business of the Exchange (currently 9:30 a.m., E.T.), the list of the names and the quantity of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day). Such Fund Deposit will be applicable, subject to any adjustments as described below, in order to effect creations of Creation Unit aggregations of the Fund until such time as the next-announced composition of the Deposit Securities is made available. BNY Mellon, through the NSCC, will also make available on each business day, prior to the opening of business of the Exchange (currently 9:30 a.m., E.T.), the list of the names and the quantity of

[13] *In re* Securities Trading Practices of Investment Companies, SEC Rel. No. IC–10666 (April 27, 1979).

each security to be included (based on information at the end of the previous business day), subject to any adjustments as described below, in order to affect redemptions of Creation Unit aggregations of the Fund until such time as the next-announced composition of the Fund Securities is made available.

The Trust will reserve the right to permit or require the substitution of an amount of cash, *i.e.,* a ''cash in lieu'' amount, to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or which might not be eligible for trading by an Authorized Participant or the investor for which it is acting or other relevant reason. To the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of a Fund Deposit, BNY Mellon, through the NSCC, will also make available on each business day, the estimated Cash Component, effective through and including the previous business day, per Creation Unit aggregation of the Fund.

To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the continuous net settlement system of the NSCC or (ii) a Depository Trust Company (''DTC'') Participant (a ''DTC Participant''). In addition, each Participating Party or DTC Participant (each, an ''Authorized Participant'') must execute an agreement that has been agreed to by the Distributor and BNY Mellon with respect to purchases and redemptions of Creation Units.

All orders to create Creation Unit aggregations must be received by the Distributor no later than 3:00 p.m., E.T., an hour earlier than the closing time of the regular trading session on the Exchange (ordinarily 4:00 p.m., E.T.), in each case on the date such order is placed in order for creations of Creation Unit aggregations to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

In order to redeem Creation Units of the Fund, an Authorized Participant must submit an order to redeem for one or more Creation Units. All such orders must be received by the Distributor in proper form no later than 3:00 p.m., E.T., an hour earlier than the close of regular trading on the Exchange (ordinarily 4:00 p.m., E.T.), in order to receive that day's closing NAV per Share.

Availability of Information

The Fund's Web site (*www.tuttlefunds.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include the Fund's ticker, Cusip [sic] and exchange information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) Daily trading volume, the prior business day's reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price'') [14] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session [15] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'' as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[16]

On a daily basis, the Fund will disclose for each portfolio security and other asset of the Fund the following information on the Fund's Web site (if applicable): Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; 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.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service [17] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Price information regarding the ETPs, equity securities, U.S. treasuries, money market instruments and money market Funds [sic] held by the Fund will be available through the U.S. exchanges trading such assets, in the case of exchange-traded securities, as well as automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. For all security types in which the Fund may invest, the Fund's primary pricing source is IDC; its secondary source is Reuters; and its tertiary source is Bloomberg.

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.

Investors will also be able to obtain the Fund's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen

[14] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[15] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

[16] 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''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. 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.

[17] 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.

or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via 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 and any underlying exchange-traded products.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes will be included in the Registration Statement.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 [18] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt 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 may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and other assets constituting 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. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[19] 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.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of the ISG [20] and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG,[21] or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Fund's net assets that are invested in exchange-traded equities, including ETPs and common stock, will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

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: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose

[18] *See* 17 CFR 240.10A–3.

[19] 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.

[20] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[21] *Id.*

the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) 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, and to remove impediments to and perfect the mechanism of a free and open market and in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. The Fund's investments will be consistent with the Fund's investment objective. FINRA may obtain information via ISG from other exchanges that are members of ISG. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes all U.S. and some foreign securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio of the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information 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 and any underlying exchange-traded products. Intra-day price information will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes all U.S. and some foreign securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Furthermore, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of 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. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2014–127 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–NASDAQ–2014–127. 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–NASDAQ–2014–127 and should be submitted on or before January 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30896 Filed 1–5–15; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73966; File No. SR–FINRA–2014–038]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Adoption of FINRA Rule 3110(e) (Responsibility of Member To Investigate Applicants for Registration) in the Consolidated FINRA Rulebook

December 30, 2014.

I. Introduction

On September 18, 2014, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD Rule 3010(e) relating to background investigations as FINRA Rule 3110(e) in the consolidated FINRA rulebook (''Consolidated FINRA Rulebook''). The proposed rule change was published for comment in the **Federal Register** on October 3, 2014.[3] The Commission received 10 comment letters in response to the Notice.[4] On December 8, 2014, FINRA filed Amendment No.1 responding to these comments and proposing amendments in response to the comments.[5] The Commission is publishing this notice to solicit comments from interested persons on the filing as amended by Amendment No.1 and is approving the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment No. 1

As part of the process of developing the Consolidated FINRA Rulebook, FINRA is proposing to adopt NASD Rule 3010(e) (Qualifications Investigated) relating to background investigations as FINRA Rule 3110(e). According to FINRA, the proposed rule change streamlines and clarifies the rule language. For instance, NASD Rule 3010(e) currently provides that ''[e]ach member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications, and experience of any person prior to making such a certification in the application of such person for registration with this Association,'' whereas proposed FINRA Rule 3110(e) provides that ''[e]ach member shall ascertain by investigation the good character, business reputation, qualifications and experience of an applicant before the member applies to register that applicant with FINRA and before making a representation to that effect on the application for registration.'' Further, proposed FINRA Rule 3110(e) clarifies that a firm is required to review a copy of an applicant's most recent Form U5 (Uniform Termination Notice for Securities Industry Registration) if the applicant previously has been registered with FINRA or another self-regulatory organization.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73238 (September 26, 2014), 79 FR 59884 (October 3, 2014) (Notice of Filing of SR–FINRA–2014–038) (''Notice'').

[4] *See* Letters to Brent J. Fields, Secretary, Commission, from Joseph C. Peiffer, Executive Vice President and President-Elect, Public Investors Arbitration Bar Association, dated October 16, 2014 (''PIABA Letter''); William A. Jacobson, Clinical Professor of Law, Cornell University Law School, dated October 20, 2014 (''Cornell Letter''); William Beatty, President, North American Securities Administrators Association, Inc., dated October 22, 2014 (''NASAA Letter''); Kyle Ortiz and Kathryn Hespe, Law Student Clinicians, Investor Advocacy Clinic, Michigan State University College of Law, dated October 23, 2014 (''Michigan State Letter''); John Astarita and Olivia Darius, Student Interns, John Jay Legal Services, Inc., Pace University School of Law, dated October 24, 2014 (''Pace Letter''); Kevin Zambrowicz, Associate General Counsel and Managing Director, the Securities Industry and Financial Markets Association, dated October 24, 2014 (''SIFMA Letter''); Michele Van Tassel, President, Association of Registration Management, dated October 24, 2014 (''ARM Letter''); Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, dated October 24, 2014 (''Wells Fargo Letter''); and David T. Bellaire, Executive Vice President and General Counsel, the Financial Services Institute, dated October 24, 2014 (''FSI Letter''). *See also* email from Suzanne Shatto, dated October 6, 2014 (''Shatto Letter''). Comment Letters are available at: *http://www.sec.gov/comments/sr-finra-2014-038/finra2014038.shtml.*

[5] *See* SR–FINRA–2014–038, Amendment No. 1, dated December 8, 2014, (''Amendment No. 1''). Amendment No. 1 is described below in Section II and the text of Amendment No. 1 is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[6] FINRA also is proposing to re-label current FINRA Rule 3110(e) (Definitions) as FINRA Rule 3110(f) (Definitions) and update the cross-references in FINRA Rule 3110 to reflect this change.

In addition, the proposed rule change adds to FINRA Rule 3110(e) a requirement that firms adopt written procedures that are reasonably designed to verify the accuracy and completeness of the information contained in an applicant's Form U4 (Uniform Application for Securities Industry Registration or Transfer) no later than 30 calendar days after the form is filed with FINRA. The proposed requirement would apply to an initial or a transfer Form U4 for an applicant for registration, not to amendments to Form U4. Proposed FINRA Rule 3110(e) would also require that a firm's written procedures, at a minimum, provide for a national search of reasonably available public records to verify the accuracy and completeness of the information contained in an applicant's Form U4. The requirement to conduct a public records search must be satisfied no later than 30 calendar days after the initial or transfer Form U4 is filed with FINRA. Further, the proposed rule change adds Supplementary Material .15 to FINRA Rule 3110 to establish a temporary program to refund Late Disclosure Fees, subject to specified conditions.[7]

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change as modified by Amendment No. 1, the comments submitted, and FINRA's response to the comments, and believes that FINRA has responded adequately to the concerns raised by the commenters.[8] For the reasons discussed below, the Commission finds that the proposal is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules 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. By streamlining and clarifying members' obligations relating to background investigations of registered personnel and adding a requirement to adopt written procedures to verify the accuracy and completeness of the information contained in an applicant's Form U4, including the requirement to conduct a public records search, the proposal should result in complete and accurate information in CRD,[10] which is critical from both a regulatory and an investor protection standpoint. Finally, the proposed temporary program under proposed FINRA Rule 3110.15 to refund Late Disclosure Fees under certain circumstances should incentivize members to more accurately and completely report information relating to judgments and liens. Having complete and accurate information in CRD is important to regulators, the industry, and the public.

As noted above, the Commission received ten comment letters in response to the proposed rule change, all of which support the proposal.[11] For example, one commenter states the proposal ''will contribute to ensuring the accuracy and completeness of the information disclosed in Form U4.'' [12] ''[A]ccurate [Form] U4 information,'' adds another commenter, ''is critical to FINRA's own regulatory review of an applicant, as well as for customers, whose primary source of public information . . . is through FINRA's BrokerCheck.'' [13] Another commenter states that requiring ''written procedures for Form U4 verification . . . will enable the member firm to conduct more consistent—and hopefully more thorough—background checks on applicants [for registration].'' [14] One commenter ''supports the additional requirements'' aimed at enhancing the accuracy of information on Form U4 because ''the Form U4 serves as the primary avenue through which investors obtain important information about brokers.'' [15] The same commenter also supports the temporary refund program because it ''creates an incentive for firms to make the required updated filings'' which in turn would ''increase the completeness of information contained in CRD.'' [16]

Three commenters supported the proposal without qualifications.[17] Three commenters provided suggestions, including extending the scope of the proposed public records search to foreign jurisdictions, specifying that members unable to comply with all verification requirements must demonstrate ''reasonable efforts'' to do so,[18] clarifying the term ''reasonably available public records,'' [19] and limiting the proposed refund program to a one-time program.[20] Two of these commenters also requested additional clarification regarding the requirements under proposed FINRA Rule 3110(e).[21] One commenter supported the consolidation of NASD Rule 3010(e) and NYSE Rule 345.11 as proposed FINRA Rule 3110(e), but (1) requested further clarification regarding the investigation and verification requirements; (2) suggested changes to the verification requirement, to the implementation date of the proposal and to the sunset date of the refund program; and (3) requested clarification regarding Questions 14K and 14M on the Form U4.[22] Finally, two commenters supported the purpose of the verification requirement, but requested additional clarification regarding its scope, as well as its relationship to the investigation requirement, suggested changes to the 30-day post-submission verification period,[23] as well as to the refund program, and sought clarification on procedures for obtaining reimbursement.[24] One of these commenters also requested clarification regarding Questions 14K and 14M on the Form U4.[25]

1. Relationship Between Investigation and Verification Requirements

Several commenters requested that FINRA clarify the relationship between the investigation and verification requirements under proposed FINRA Rule 3110(e).[26] Two of these commenters also asked whether the investigation and verification requirements are duplicative, whether firms can use any of the information obtained in the investigation process to comply with the verification process, and whether firms are required to conduct the verification process after the Form U4 has been filed and separate from the investigation process.[27]

FINRA responded that although the requirements are closely related, the requirements are complementary, not duplicative, in nature. FINRA states that proposed FINRA Rule 3110(e) requires

[7] The proposed rule change would delete NASD Rule 3010(f) because it has been rendered obsolete. The proposed rule change would also delete Incorporated NYSE Rule 345.11 and NYSE Rule Interpretation 345.11/01 and/02 as they are substantially similar to proposed FINRA Rule 3110(e), addressed by other rules or otherwise rendered obsolete by the approach reflected in proposed FINRA Rule 3110(e). For convenience, the proposed rule change refers to Incorporated NYSE Rules as NYSE Rules.

[8] 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).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] The information in BrokerCheck is a subset of the information in CRD.

[11] *See supra* note 4.

[12] *See* NASAA Letter.

[13] *See* PIABA Letter.

[14] *See* Cornell Letter.

[15] *See* NASAA Letter.

[16] *Id.*

[17] *See* Shatto Letter, NASAA Letter and Michigan State Letter.

[18] *See* PIABA Letter.

[19] *See* Cornell Letter.

[20] *See* Pace Letter.

[21] *See* PIABA Letter and Cornell Letter.

[22] *See* SIFMA Letter and Wells Fargo Letter.

[23] *See* ARM Letter.

[24] *See* FSI Letter.

[25] *Id.*

[26] *See* PIABA Letter, Cornell Letter, SIFMA Letter and ARM Letter.

[27] *See* SIFMA Letter and ARM Letter.

that each member ascertain by investigation the good character, business reputation, qualifications and experience of an applicant before the member applies to register that applicant with FINRA and before making a representation to that effect on the application for registration.[28] FINRA also states that if an applicant has been previously registered with FINRA or another self-regulatory organization, proposed FINRA Rule 3110(e) requires that a firm review a copy of the applicant's most recent Form U5, including any amendments, within 60 days of the filing date of the applicant's Form U4.[29] FINRA states that, if the firm is unable to review the Form U5, the firm must demonstrate it has made reasonable efforts to do so.[30]

Proposed FINRA Rule 3110(e) requires that a firm establish and implement written procedures reasonably designed to verify the accuracy and completeness of the information contained in an applicant's Form U4 no later than 30 calendar days after an initial or a transfer Form U4 is filed with FINRA. While this is a new requirement, FINRA explains that it is based on an existing requirement in the Form U4 that the person signing the form certify that he has taken appropriate steps to verify the accuracy and completeness of the information contained in that form. FINRA also states that proposed FINRA Rule 3110(e) expressly requires that a firm's written procedures specify the firm's process for verifying the information in the Form U4 and that the firm complete that verification process no later than 30 calendar days after the Form U4 is filed. FINRA notes that the verification process for some of the information in the Form U4 is embedded in the form itself.[31]

FINRA states that under proposed FINRA Rule 3110(e), firms must complete the verification process no later than 30 calendar days after the Form U4 is filed with FINRA. The Rule 3110(e) does not require firms to conduct the verification process only during the 30-day window after the Form U4 has been filed or base the verification on information that is obtained only in the 30-day window after the form has been filed. Rather, FINRA states, the 30-day window is intended to accommodate firms that may find it difficult to conduct the verification process before filing an applicant's Form U4, such as where an applicant is hired immediately to fill a needed role at the firm. For most applicants, FINRA expects that firms will conduct the investigation and verification process concurrently using some of the same information and before filing the Form U4. FINRA also encourages firms to complete the verification process before filing the Form U4. FINRA notes that, with respect to amended filings, a firm will incur a Late Disclosure Fee if the disclosure event should have been reported on the initial or transfer Form U4, regardless of whether the firm completes the verification process within the 30-day window in proposed FINRA Rule 3110(e).

FINRA also recognizes that there will on occasion be circumstances beyond a firm's control that prevent completion of the verification process within the 30-day window after the Form U4 is filed with FINRA. FINRA explains, for example, that a firm may not be able to comply with the proposed 30-day window where the firm is relying on fingerprint results for verifying criminal information, and the FBI determines the fingerprints to be ''illegible'' and requires resubmission of the fingerprints. In such circumstances, FINRA points-out, the firm's procedures should provide that the verification must be completed as soon as practical and the firm should document the basis for the delay.

Finally, FINRA states that proposed FINRA Rule 3110(e) requires that a firm's verification process must, at a minimum, provide for a national search of reasonably available public records to verify the accuracy and completeness of the information contained in an applicant's Form U4. As FINRA explains, similar to the overall verification process, the requirement to conduct a public records search must be satisfied by no later than 30 calendar days after an initial or a transfer Form U4 is filed with FINRA. FINRA also states that the public records search is a new requirement; it is a component of the overall verification process described above. As FINRA explains, public records include, but are not limited to: General information, such as name and address of individuals; criminal records; bankruptcy records; civil litigations and judgments; liens; and business records. FINRA explains, however, that the proposed rule only requires a national search of reasonably available public records.[32]

2. Member's Obligation To Adopt Written Procedures for Verification of Information in the Form U4

Two commenters asked whether firms are required to verify all of the information in the Form U4, stating that it may not be feasible or practical to do so in some cases.[33] In response, FINRA states it does not expect firms to verify all of the information in the Form U4 where such verification is not feasible or practical. In such cases, FINRA states that a firm should document that the information could not be verified and document the reason that it could not be verified.

One commenter recommended that the proposed verification requirement, including the minimum public records search requirement, be removed altogether.[34] Alternatively, the commenter requested that firms be given 90 days to complete a public records search and any necessary follow ups and asked whether firms are required to complete the entire verification process within the proposed 30-day window. One commenter requested that firms be given a 60- or 90-day period to complete the verification process.[35] Another commenter suggested that FINRA amend the proposed rule to require that a firm's written procedures provide that if the firm is unable to complete the verification process within the 30-day window, it must demonstrate to FINRA that it has made reasonable efforts to do

[28] FINRA notes this is a principle-based requirement that is substantially similar to the current requirement under NASD Rule 3010(e), and explains that firms are required to complete the investigation process before filing the Form U4. *See* FINRA, Regulatory Notice 07–55, *Personnel Background Investigations,* (November 2007) *available at https://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p037480.pdf.* Firms must also comply with MSRB Rule G–7 (Information Concerning Associated Persons) for those applicants engaged solely in municipal securities activities. *See* Municipal Securities Rulemaking Board, *Rule Book,* Rule G–7 (October 2014) available at *http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-7.aspx.*

[29] If the applicant has been recently employed by a Futures Commission Merchant or an Introducing Broker that is notice-registered with the SEC pursuant to Section 15(b)(11) of the Act, the registering firm also is required to review a copy of the individual's most recent CFTC Form 8–T.

[30] FINRA expects firms to use this provision in very limited circumstances, such as where the previous firm fails to file a Form U5 or goes out of business before filing a Form U5.

[31] FINRA states that the verification process could vary firm by firm, *e.g.,* one firm may verify an applicant's identity and name by checking a valid state-issued driver's license whereas another firm may do so by reviewing a valid government-issued passport.

[32] FINRA notes this is a minimum or base requirement, and a firm may find it necessary to conduct a more in-depth search of public records depending on the applicant's job function, responsibilities or position at the firm.

[33] *See* SIFMA Letter and ARM Letter.

[34] *See* SIFMA Letter.

[35] *See* ARM Letter.

so and explain the cause for the delayed verification.[36]

In response, FINRA states it is retaining the proposed Form U4 verification requirement and the requirement to conduct a public records search, indicating it continues to believe that the proposed requirements will enhance the accuracy of the information in CRD and ultimately in BrokerCheck. FINRA also clarifies that as described above, firms must complete the verification process by no later than 30 calendar days after the Form U4 is filed with FINRA. FINRA expects that for the majority of applicants, firms will conduct the proposed verification process, including the public records search, before filing the Form U4, a practice that FINRA encourages.

FINRA does not believe that it is necessary to extend the period by which firms must complete the verification process because under FINRA By-Laws, a firm is obligated to file an amended Form U4 no later than 30 calendar days after learning of the facts or circumstances giving rise for the need to file an amendment.[37] Therefore, FINRA states, if a firm completes its verification process during the 30-day window in proposed FINRA Rule 3110(e) and learns of facts or circumstances that require the filing of an amended Form U4, the firm will have 30 calendar days from the date it learns of such facts or circumstances to file an amended Form U4; the firm will be subject to any applicable Late Disclosure Fees.

FINRA recognizes that there will on occasion be circumstances beyond a firm's control that prevent completion of the verification process within the 30-day window. In such cases, FINRA states, the firm's procedures should provide that the verification be completed as soon as practical, and the firm should document the basis for the delay. FINRA does not believe that it is necessary to amend the proposed rule text to clarify this point.

One commenter requested that FINRA confirm that the proposed verification requirement, including the public records search, applies to an initial Form U4 filed with FINRA through CRD requesting registration with FINRA and that the proposed requirement does not apply to a Form U4 filed by an affiliate of a member or a registration transferred through the mass transfer process.[38] The commenter also suggested that FINRA replace the term ''transfer Form U4'' as used in the proposed FINRA Rule 3110(e) with the term ''relicense Form U4'' and amend the proposed rule text to include a reference to ''an applicant's initial or relicense Form U4.''

In response, FINRA states that the proposed verification requirement, including the public records search, applies to an initial Form U4 or a transfer Form U4. The term ''initial Form U4'' refers to the Form U4 filing required when an individual is registering with a FINRA member for the first time, including in the context of dual registration, or is registering with a FINRA member after more than two years have passed since the individual was last registered with a FINRA member. The term ''transfer Form U4'' refers to the Form U4 filing required when a registered person transfers from one FINRA member to another FINRA member. FINRA is not replacing the term ''transfer Form U4''. With respect to a Form U4 filed by a member that is an affiliate of another member, FINRA further states that the verification requirement would apply to the filing to the extent that it is considered an initial or a transfer Form U4 (*e.g.,* a dual registration). The proposed verification requirement would not apply to the mass transfer process because that process does not require the filing of a Form U4. FINRA is proposing to clarify that the verification requirement, including the public records search, applies to an applicant's initial or transfer Form U4.

3. Member's Obligation To Conduct a Search of Reasonably Available Public Records

One commenter suggested that the public records search should extend to foreign jurisdictions in some circumstances, such as where an applicant has been registered with a foreign securities regulator or has resided in a foreign jurisdiction.[39] In response, FINRA states that it is often difficult to assess the comparability of a foreign country's laws, rules and regulations to those in the United States, particularly as it relates to the purposes of this proposed rule, and therefore, the requirement should be limited to a national search of reasonably available public records.[40] One commenter recommended that FINRA clarify the term ''reasonably available public records'' so that firms have an objective standard for compliance purposes.[41] One commenter stated that FINRA should revise the proposed rule text to specifically identify the information in the Form U4 that firms are expected to verify through a public records search or define the term ''public records'' so the scope of the requirement is less uncertain.[42] The commenter noted that business records are listed as an example of public records, but many business records (*e.g.,* business formation documents) are not maintained in a comprehensive national database and may not be offered by a third-party service provider. In response, FINRA states that while public records include, among other records, business records, proposed FINRA Rule 3110(e) only requires a national search of reasonably available public records. FINRA further states that, as indicated above, the scope of what is considered reasonably available public records may change over time. Therefore, rather than define the term ''reasonably available public records,'' FINRA believes that it is more useful for compliance purposes to specify the public records that are currently considered reasonably available, which include criminal records, bankruptcy records, judgments and liens.

One commenter asked FINRA to confirm that, to the extent that the proposed rule requires firms to obtain an investigative consumer report for an applicant, firms can rely on the applicant's consent on a Form U4 for purposes of complying with applicable laws, rules and regulations requiring an applicant's consent to obtain such reports, otherwise firms will need to implement additional procedures to ensure compliance with such laws, rules and regulations in each jurisdiction.[43] In response, FINRA states that the proposed rule does not require firms to obtain investigative consumer reports to comply with the requirements of the rule and that, with regard to the Form U4 or any similar report the firm may rely upon, it is the responsibility of the registering firm to determine whether consent on the Form U4 or any other document is in compliance with the laws, rules and regulations of the particular jurisdiction in which the firm and the applicant are operating.

4. Implementation Date

One commenter requested that FINRA extend the implementation date of proposed FINRA Rule 3110(e) from December 1, 2014, to December 1, 2015, so that firms have sufficient time to establish or revise their written

[36] *See* PIABA Letter.

[37] *See* FINRA By-Laws, Article V, Section 2(c).

[38] *See* SIFMA Letter.

[39] *See* PIABA Letter.

[40] FINRA notes, however, that firms may find it necessary to conduct a search of public records in a foreign jurisdiction as part of their verification process and, where appropriate, should ensure such a search is consistent with applicable foreign laws, rules and regulations.

[41] *See* Cornell Letter.

[42] *See* SIFMA Letter.

[43] *Id.*

procedures and address the operational issues resulting from the proposed rule.[44] In response, FINRA states that it expects firms to have an existing process in place to verify the information contained in an applicant's Form U4 noting that currently the person signing the form on behalf of the firm must certify that he has taken appropriate steps to verify the accuracy and completeness of the information contained in the form. FINRA also states it understands that most firms already conduct some form of public records search;[45] consequently, the proposed new requirements should not create an unreasonable burden for firms.

FINRA recognizes that the proposed rule imposes an affirmative obligation on firms to establish and implement written procedures to comply with the Form U4 verification process to the extent they currently do not have such procedures, and that such procedures must include a search of reasonably available public records. Thus, to accommodate any potential operational issues resulting from the proposed new requirements, FINRA is proposing to extend the implementation date of proposed FINRA Rule 3110(e) from December 1, 2014 to July 1, 2015.

5. Temporary Program To Address Underreported Form U4 Information

One commenter recommended that the refund program should be a one-time program and stated that FINRA should not use such programs in the future for late disclosure reporting because it may provide firms with negative reinforcement for untimely Form U4 reporting.[46] In response, FINRA states that the refund program under proposed FINRA Rule 3110.15 is intended to incentivize members to report underreported information and save FINRA the time and regulatory resources expended in contacting firms and requesting that such information be reported. FINRA also states that program is intended to run concurrent with FINRA's one-time search of specific financial public records, and thus is of limited duration. FINRA notes it may find it necessary to provide such programs in the future depending on the circumstances, but it will do so judiciously and only where appropriate.

Another commenter requested that FINRA consider adopting a more permanent refund program or extending the sunset date from March 31, 2015 to December 1, 2015.[47] FINRA states that the refund program is intended to run concurrent with FINRA's one-time search of specific financial public records on all registered persons, which FINRA expects to complete on or before August 2015. FINRA is thus proposing to extend the sunset date of the program from March 31, 2015 to July 31, 2015. One commenter suggested that Question 14M on the Form U4 is ambiguous and open to interpretation and requested that FINRA revise the eligibility conditions under the refund program to address this perceived ambiguity.[48] According to the commenter, Question 14M on the Form U4 is confusing because one could argue that if an unsatisfied judgment or lien is satisfied within the 30-day window of having to file an amended Form U4, the firm would not have to amend the Form U4 to mark ''yes'' because the lien was satisfied before the filing deadline. The commenter also stated that if a firm learns of an unreported satisfied lien, the language of Question 14M suggests that the firm does not have to report such lien because it is not currently unsatisfied. The commenter stated that FINRA should modify the program to refund Late Disclosure Fees to members if the judgment or lien (1) occurred while the individual was registered with a prior firm; (2) is more than five years old; or (3) is under $5,000. The commenter also asked whether the refund will be automated or whether firms have the burden to prove that they satisfy the conditions of the program to receive a refund.

FINRA is proposing to revise the refund program to address concerns regarding the assessment of the Late Disclosure Fee in circumstances where the unsatisfied judgment or lien has been satisfied, and at the time it was unsatisfied was of a relatively low amount (under $5,000) and was reportable before the introduction of the procedures regarding the application of the Late Disclosure Fee to the reporting of judgments and liens on the Form U4 that became effective on August 13, 2012.[49] FINRA states the proposed revisions also address circumstances where the failure to report related to a mistaken belief that satisfying the judgment or lien shortly after learning it was unsatisfied (within 30 calendar days of when it became unsatisfied) obviated the need to report the matter.[50]

As revised, the members will receive a refund of Late Disclosure Fees assessed for the late filing of responses to Form U4 Question 14M (unsatisfied judgments or liens) if the Form U4 amendment is filed between April 24, 2014, and July 31, 2015, and one of the following conditions is met: (1) The judgment or lien has been satisfied, and at the time it was unsatisfied, it was under $5,000 and the date the judgment or lien was filed with a court (as reported on Form U4 Judgment/Lien DRP, Question 4.A.) was on or before August 13, 2012; or (2) the unsatisfied judgment or lien was satisfied within 30 days after the individual learned of the judgment or lien (as reported on Form U4 Judgment/Lien DRP, Question 4.B.). The program has a retroactive effective date of April 24, 2014, and as revised it will sunset on July 31, 2015. With respect to refund procedures, FINRA explains that firms initially will be charged a Late Disclosure Fee and subsequently receive a refund in their FINRA Flex-Funding Account if they can establish, or if FINRA otherwise determines, that the conditions of the revised program have been satisfied.

6. Clarification of Questions 14K and 14M on the Form U4

One commenter requested that FINRA file with the Commission as part of a proposed rule change its FAQ statement[51] that a compromise with creditors is a compromise with one or more creditors for purposes of Question 14K on the Form U4.[52] The commenter also noted that Question 14M on the Form U4 is confusing because it asks ''Do you have any unsatisfied judgments or liens against you,'' which could imply that a ''yes'' response is required only if an applicant currently has an outstanding unsatisfied judgment or lien. To clarify this point, the commenter suggested model language for FINRA's consideration. Similarly, another commenter requested that

[44] *Id.*

[45] NASAA stated that ''firms usually have in place a review process to verify the information contained in the Form U4 for most registration applicants'' and, as such, the requirement formalizes an industry best practice. *See* NASAA letter.

[46] *See* Pace Letter.

[47] *See* SIFMA Letter.

[48] *See* FSI Letter.

[49] *See* FINRA, Information Notice, *Late Disclosure Fee Related to Reporting of Judgment/Lien Events* (August 2012), *available at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p152106.pdf.*

[50] FINRA believes that there is a misconception regarding the obligation to report unsatisfied judgments and liens under Question 14M on the Form U4. The obligation to amend a Form U4 arises on the date a registered person receives notice or learns that he is subject to an unsatisfied judgment or lien, and an amended Form U4 should be filed no later than 30 calendar days from that date, regardless of whether the registered person satisfies the judgment or lien in the interim period before the 30-day deadline for filing a Form U4 amendment.

[51] *See* FINRA, *Form U4 and U5 Interpretive Questions and Answers* (January 2013), *available at http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p119944.pdf.*

[52] *See* SIFMA Letter.

FINRA clarify Question 14M on the Form U4 to remove any confusion regarding its scope.[53] In addition, the commenter stated that FINRA should clarify that it will not fine firms in instances where they did not treat a short sale as a compromise with creditors under Question 14K on the Form U4 prior to FINRA's guidance on the subject. In response, FINRA states it believes that these comments are outside the scope of the proposed rule change, and should be addressed in the context of changes to the Form U4 or its interpretations.

IV. Accelerated Approval

The Commission finds good cause to approve the proposed rule change, as amended by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The amendment responds to issues raised by commenters and makes minor modifications in response to the comments. Accelerated approval would allow FINRA to implement the amended proposal without delay. The proposal will provide firms with an incentive to determine if additional disclosures on Form U4 are required for their registered personnel, ultimately resulting in more complete and accurate information in WebCRD, and as a consequence in BrokerCheck. As noted by FINRA and the commenters, WebCRD is an important tool used by regulators, as well as the public to get information about registered persons with whom they may wish to do business. Therefore, implementing the proposal without delay is in the public interest. Accordingly, the Commission believes that good cause exists, pursuant to Section 19(b)(2) of the Act,[54] to approve the proposed rule change, as amended by Amendment No. 1, on an accelerated basis.

V. 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–2014–038 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–2014–038. 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 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 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–2014–038 and should be submitted on or before January 27, 2015.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)[55] of the Act, that the proposed rule change (SR–FINRA–2014–038) be and hereby is approved, as amended, on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30902 Filed 1–5–15; 8:45 am]

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[53] *See* FSI Letter.

[54] 15 U.S.C. 78s(b)(2).

[55] *Id.*

[56] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73963; File No. SR–NYSEArca–2014–141]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Bylaws of the Exchange's Ultimate Parent Company, Intercontinental Exchange, Inc., To Designate Its Chief Strategic Officer, Chief Technology Officer and General Counsel as ''Senior Officers'' of ICE

December 30, 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 December 29, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Bylaws (the ''ICE Bylaws'') of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. (''ICE''), to designate its Chief Strategic Officer, Chief Technology Officer and General Counsel as ''Senior Officers'' of ICE. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks approval for its ultimate parent entity ICE [3] to amend the ICE Bylaws to designate its Chief Strategic Officer, Chief Technology Officer and General Counsel (each, a ''Designated Officer'' and together, the ''Designated Officers'') as ''Senior Officers'' of ICE. Each Designated Officer was a Senior Officer under the ICE Bylaws prior to the acquisition by ICE of NYSE Euronext in 2013 because each also was a Senior Vice President. Under the ICE Bylaws, all Senior Vice Presidents are Senior Officers. As Senior Officers, the Designated Officers were entitled under Article X, Section 10.6 of the ICE Bylaws to indemnification by ICE against certain actions, suits and proceedings.

Upon consummation of the acquisition of NYSE Euronext, the three titles were streamlined and the term ''Senior Vice President'' was eliminated. Specifically, the officer whose former title was ''Senior Vice President, Chief Strategic Officer'' is now ''Chief Strategic Officer''; the officer whose former title was ''Senior Vice President, Chief Technology Officer'' is now ''Chief Technology Officer''; and the officer whose title was formerly ''Senior Vice President, General Counsel'' is now ''General Counsel''. The proposed amendment to the ICE Bylaws would assure that the Designated Officers continue to be identified as ''Senior Officers'' of ICE and therefore eligible for indemnification under Article X, Section 10.6 of the ICE Bylaws. The proposed rule change would not extend the indemnification provisions of the ICE Bylaws to any officers that were not historically indemnified nor would it alter the scope of the indemnity provided.[4]

Under the proposed amendment, Section 5.1 of the ICE Bylaws would be amended to identify by title additional officers that the board of directors may choose, specifically a Chief Strategic Officer, a Chief Technology Officer and a General Counsel (the ''Designated Officers''). Section 5.1 would also be amended to expand the definition of the term ''Senior Officer'' to include the Designated Officers and any other officer designated a ''Senior Officer'' by the Board or the Compensation Committee of the Board from time to time in its sole discretion. The amendments also would provide that any employee deemed an officer of the Corporation under Section 16 of the Exchange Act [5] will be deemed a Senior Officer for purposes of the Bylaws.[6]

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b) of the Exchange Act,[7] in general, and Section 6(b)(5) of the Exchange Act,[8] in particular, because the proposed rule change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The clarification of the right to indemnification will enhance the ability of the Designated Officers to carry out their responsibilities as officers of ICE, including their responsibilities under the Exchange 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 Exchange Act. The proposed rule change is not designed to address any competitive issue in the U.S. or European securities markets or have any impact on competition in those markets; rather, the clarification of the right to indemnification will enhance the ability of the Designated Officers to carry out their responsibilities as such, including their responsibilities under the Exchange Act.

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) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the clarification of the right to indemnification may enhance the ability of the relevant officers of ICE to carry out their responsibilities as such, including their responsibilities under the Exchange Act, without delay. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[14]

[3] ICE owns 100% of the equity interest in ICE Holdings, Inc. (''ICE Holdings''), which in turn owns 100% of the equity interest in NYSE Holdings, LLC (''NYSE Holdings''). NYSE Holdings owns 100% of the equity interest of NYSE Group, Inc., which in turn directly or indirectly owns 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations—the Exchange, the New York Stock Exchange, LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'').

[4] The Exchange's affiliates the NYSE and NYSE MKT have also submitted the same proposed rule filing in connection with the ICE Bylaw amendment.

[5] 15 U.S.C. 78p.

[6] A copy of the proposed amendment to the ICE Bylaws is attached as Exhibit 5A. An extract from the resolutions adopted by the ICE board of directors on February 28, 2014 authorizing the proposed amendment is attached as Exhibit 5B.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the 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 Commission has waived the five-day prefiling requirement in this case.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–141 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–2014–141. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–141, and should be submitted on or before January 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

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proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73954; File No. SR–FINRA–2014–037]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change to FINRA Rules 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation) and 2040 (Payments to Unregistered Persons) in the Consolidated FINRA Rulebook, and Amend FINRA Rule 8311 (Effect of a Suspension, Revocation, Cancellation, or Bar)

December 30, 2014.

I. Introduction

On September 10, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''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 streamline provisions of NASD Rule 2410 (Net Prices to Persons Not in Investment Banking or Securities Business), NASD Rule 2420 (Dealing with Non-Members), NASD IM–2420–1 (Transactions Between Members and Non-Members), NASD IM–2420–2 (Continuing Commissions Policy), Incorporated NYSE Rule 353 (Rebates and Compensation), Incorporated NYSE Rule Interpretation 345(a)(i)/01 (Compensation to Non-Registered Persons) and Incorporated NYSE Rule Interpretation 345(a)(i)/02 (Compensation Paid for Advisory Solicitations), which would be deleted from the current FINRA rulebook. The proposed rule change would also adopt the requirements of NASD Rule 1060(b) (Persons Exempt from Registration) and Incorporated NYSE Rule Interpretation 345(a)(i)/03 (Compensation to Non-Registered Foreign Persons Acting as Finders), as FINRA Rule 2040(c) (Nonregistered Foreign Finders) in the consolidated FINRA rulebook without material change. In addition, the proposed rule change would amend FINRA Rule 8311 (Effect of a Suspension, Revocation, Cancellation, or Bar), add new Supplementary Material .01 (Remuneration Accrued Prior to Effective Date of Sanction or Disqualification), and adopt the requirements of NASD IM–2420–1(a) (Non-members of the Association), as FINRA Rule 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation).

The proposed rule change was published for comment in the **Federal Register** on October 1, 2014.[3] The Commission received seven comment letters in response to the Notice of Filing.[4] On November 10, 2014, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to December 30, 2014.[5] On December 23,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 73210 (Sept. 25, 2014), 79 FR 59322 (Oct. 1, 2014) (Notice of Filing of a Proposed Rule Change to Adopt FINRA Rules 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation) and 2040 (Payments to Unregistered Persons) in the Consolidated FINRA Rulebook, and Amend FINRA Rule 8311 (Effect of a Suspension, Revocation, Cancellation, or Bar)) (''Notice of Filing''). The comment period closed on October 22, 2014.

[4] William A. Jacobson, Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic (Oct. 17, 2014) (''Cornell''); Peter J. Chepucavage, Esq., GC Plexus Consulting Group (Oct. 21, 2014) (''Plexus''); William Beatty, President, North American Securities Administrators Association and Washington Securities Commissioner (Oct. 22, 2014) (''NASAA''); Howard Spindel, Senior Managing Director, and Cassondra E. Joseph, Managing Director, Integrated Management Solutions USA LLC (Oct. 22, 2014) (''IMS''); Paul J. Tolley, Senior Vice President, Chief Compliance Officer, Commonwealth Financial Network (Oct. 22, 2014) (''Commonwealth''); Kevin Zambrowicz, Associate General Counsel & Managing Director, Securities Industry and Financial Markets Association (Oct. 22, 2014) (''SIFMA''); and Catherine T. Dixon, Chair, Federal Regulation of Securities Committee, Business Law Section, American Bar Association (Nov. 5, 2014) (''ABA'').

[5] Letter from Kosha K. Dalal, Associate Vice President and Associate General Counsel, FINRA to Katherine England, Assistant Director, Division of Trading and Markets, Securities and Exchange Commission, dated Nov. 10, 2014.

2014, FINRA filed a letter responding to these comments.[6]

This order approves the proposed rule change.

II. Description of the Proposed Rule

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[7] FINRA is proposing to adopt FINRA Rule 2040 (Payments to Unregistered Persons) regarding the payment of transaction-based compensation by members to unregistered persons, and Supplementary Material .01 (Reasonable Support for Determination of Compliance with Section 15(a) of the Exchange Act). The proposed rule change would streamline provisions of NASD Rule 2410 (Net Prices to Persons Not in Investment Banking or Securities Business), NASD Rule 2420 (Dealing with Non-Members), NASD IM–2420–1 (Transactions Between Members and Non-Members), NASD IM–2420–2 (Continuing Commissions Policy), NYSE Rule 353 (Rebates and Compensation), NYSE Rule Interpretation 345(a)(i)/01 (Compensation to Non-Registered Persons) and NYSE Rule Interpretation 345(a)(i)/02 (Compensation Paid for Advisory Solicitations), which would be deleted from the current FINRA rulebook. The proposed rule change also would adopt the requirements of NASD Rule 1060(b) (Persons Exempt from Registration) and NYSE Rule Interpretation 345(a)(i)/03 (Compensation to Non-Registered Foreign Persons Acting as Finders), as FINRA Rule 2040(c) (Nonregistered Foreign Finders) in the Consolidated FINRA Rulebook without material change. In addition, the proposed rule change would amend FINRA Rule 8311 (Effect of a Suspension, Revocation, Cancellation, or Bar), add new Supplementary Material .01 (Remuneration Accrued Prior to Effective Date of Sanction or Disqualification), and adopt the requirements of NASD IM–2420–1(a) (Non-members of the Association), as FINRA Rule 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation).

A. Background

NASD Rule 1060(b) (Persons Exempt from Registration), NASD Rule 2410 (Net Prices to Persons Not in Investment Banking or Securities Business), NASD Rule 2420 (Dealing with Non-Members), NASD IM–2420–1 (Transactions Between Members and Non-Members), and NASD IM–2420–2 (Continuing Commissions Policy) (collectively, the ''NASD Non-Member Rules'') govern payments by members to unregistered persons. The NASD Non-Member Rules (other than NASD Rule 1060(b)) were developed in an era when a registered broker-dealer could engage in an over-the-counter securities business and elect not to be a member of a registered securities association.[8] An original purpose of the NASD Non-Member Rules was to encourage non-members to become members by generally prohibiting members from providing commissions or discounts/concessions to non-members.[9] Since the adoption of the NASD Non-Member Rules, the laws governing broker-dealers have changed, and today virtually all broker-dealers doing business with the public are FINRA members.[10]

As a result, FINRA generally has interpreted the provisions of the NASD Non-Member Rules, through interpretive letters and other guidance, to prohibit the payment of commissions or fees derived from a securities transaction to any non-member that may be acting as an unregistered broker-dealer. Section 15(a)(1) of the Exchange Act generally requires any broker-dealer effecting transactions in securities to be registered with the SEC. FINRA has refrained from providing interpretive guidance on whether a person is acting as an unregistered broker-dealer, as the authority to interpret Section 15(a) of the Exchange Act rests with the SEC. Registration as a broker-dealer provides a framework of rules to regulate the conduct of persons who receive transaction-based compensation, the receipt of which can create potential incentives for abusive sales practices. SEC guidance states that receipt of securities transaction-based compensation is an indication that a person is engaged in the securities business and that such person generally should be registered as a broker-dealer.

B. Proposed FINRA Rule 2040

FINRA is proposing to adopt new FINRA Rule 2040 (Payments to Unregistered Persons), which eliminates the current NASD Non-Member Rules and related NYSE Non-Member Rules (discussed further below) and replaces them with a more straightforward rule. The proposed rule expressly aligns with Section 15(a) of the Exchange Act and its related guidance to determine whether registration as a broker-dealer is required for certain persons to receive transaction-related compensation. As further discussed in Item II.C. below, the proposed rule change was published for comment in *Regulatory Notice* 09–69.[11] FINRA received seven comment letters. A significant number of the commenters expressed concern regarding the potential regulatory burden of obtaining SEC no-action letters to determine whether particular activities would require registration of persons as broker-dealers under Section 15(a) of the Exchange Act, and the proposed deletion of NASD Rule 1060(b) and NYSE Rule Interpretation 345(a)(i)/03 relating to payments to foreign finders. In an effort to respond to these concerns, FINRA is proposing to adopt Supplementary Material .01

[6] Letter from Kosha K. Dalal, Associate Vice President and Associate General Counsel, FINRA to Brent J. Fields, Secretary, Securities and Exchange Commission, dated Dec. 23, 2014 (''FINRA Response'').

[7] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules''). 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''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[8] *See* Maloney Act of 1938, Pub. L. 75–719, 52 Stat. 1070, which added Section 15A of the Exchange Act to provide for the establishment of national securities associations with authority, subject to SEC review, to supervise the over-the-counter securities market and promulgate rules governing voluntary membership of broker-dealers.

[9] Section 15A(e)(1) of the Exchange Act states that ''[t]he rules of a registered securities association may provide that no member thereof shall deal with any nonmember professional (as defined in paragraph (2) of this subsection) except at the same prices, for the same commissions or fees, and on the same terms and conditions as are by such member accorded to the general public.'' Section 15A(e)(2) of the Exchange Act defines ''nonmember professional'' as ''(A) with respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of a registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, and commercial bills, and (B) with respect to transactions in municipal securities, any municipal securities dealer (other than a bank or division or department of a bank) who is not a member of any registered securities association and any municipal securities broker who is not a member of any such association.'' The legislative reports from Congress on this provision state that exclusion from membership would in effect be a form of economic sanction on such non-members. *See* S. Rep. No. 1455 and H. R. Rep. No 2307, 75th Cong., 3rd Sess. (1938).

[10] Section 15(b)(8) of the Exchange Act provides that ''[i]t shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to Section 15A of this title or effects transactions in securities solely on a national securities exchange of which it is a member.''

[11] *See Regulatory Notice* 09–69 (December 2009).

(Reasonable Support for Determination of Compliance with Section 15(a) of the Exchange Act) to proposed FINRA Rule 2040 to provide guidance to members regarding the manner in which they can reasonably support a determination that an unregistered person is not required to be registered under Section 15(a) of the Exchange Act by reason of receiving payments from the member and the activities related thereto. FINRA is also proposing to retain NASD Rule 1060(b) and NYSE Rule Interpretation 345(a)(i)/03 relating to foreign finders as proposed FINRA Rule 2040(c). The proposed rule sets forth the following requirements:

• *Payments to Unregistered Persons*

FINRA is proposing to adopt new FINRA Rule 2040(a), which prohibits members or associated persons from, directly or indirectly, paying any compensation, fees, concessions, discounts, commissions or other allowances to:

(1) Any person that is not registered as a broker-dealer under Section 15(a) of the Exchange Act but, by reason of receipt of any such payments and the activities related thereto, is required to be so registered under applicable federal securities laws and Exchange Act rules and regulations; or

(2) any appropriately registered associated person, unless such payment complies with all applicable federal securities laws, FINRA rules and Exchange Act rules and regulations.

The proposed change would make the rule consistent with FINRA staff interpretations under NASD Rule 2420 and SEC rules and regulations under Section 15(a) of the Exchange Act.[12] Under the proposal, persons would look to SEC rules and regulations to determine whether the activities in question require registration as a broker-dealer under Section 15(a) of the Exchange Act. Persons may also rely on related published guidance issued by the SEC or its staff in the form of releases, no-action letters or interpretations. The proposal would align the rule with SEC staff guidance that states that receipt of securities transaction-based compensation is an indication that a person is engaged in the securities business and that such person generally should be registered as a broker-dealer. The proposed change also prohibits payments to appropriately registered associated persons unless such payments comply with applicable federal securities laws, FINRA rules and Exchange Act rules and regulations.

FINRA is proposing to adopt Supplementary Material .01 (Reasonable Support for Determination of Compliance with Section 15(a) of the Exchange Act) to proposed FINRA Rule 2040 to provide guidance to members. In applying the proposed rule, FINRA will expect members to determine that their proposed activities would not require the recipient of the payments to register as a broker-dealer and to reasonably support such determination. Members that are uncertain as to whether an unregistered person may be required to be registered under Section 15(a) of the Exchange Act by reason of receiving payments from the member and the activities related thereto can derive support for their determination by, among other things, (1) reasonably relying on previously published releases, no-action letters or interpretations from the Commission or Commission staff that apply to their facts and circumstances; (2) seeking a no-action letter from the Commission staff; or (3) obtaining a legal opinion from independent, reputable U.S. licensed counsel knowledgeable in the area. The member's determination must be reasonable under the circumstances and should be reviewed periodically if payments to the unregistered person are ongoing in nature. In addition, a member must maintain books and records that reflect the member's determination.

• *Retiring Representatives*

FINRA is also proposing to adopt new FINRA Rule 2040(b), which codifies existing FINRA staff guidance on the payment by members of continuing commissions to retiring registered representatives.[13] The proposal permits members to pay continuing commissions to retiring registered representatives of the member, after they cease to be associated with the member, that are derived from accounts held for continuing customers of the retiring registered representative regardless of whether customer funds or securities are added to the accounts during the period of retirement, provided that: (1) A bona fide contract between the member and the retiring registered representative providing for the payments was entered into in good faith while the person was a registered representative of the member and such contract, among other things, prohibits the retiring registered representative from soliciting new business, opening new accounts or servicing the accounts generating the continuing commission payments; and (2) the arrangement complies with applicable federal securities laws and SEA rules and regulations.

The proposal defines the term ''retiring registered representative'' to mean an individual who retires from a member (including as a result of a total disability) and leaves the securities industry.[14] In the case of death of the retiring registered representative, the retiring registered representative's beneficiary designated in the written contract or the retiring registered representative's estate if no beneficiary is so designated may be the beneficiary of the respective member's agreement with the deceased representative.

FINRA believes this proposal is consistent with staff guidance on the payment of compensation to retiring representatives.[15]

• *Nonregistered Foreign Finders*

In light of comments raised in response to *Regulatory Notice* 09–69, FINRA is proposing to transfer NASD Rule 1060(b) (Persons Exempt from Registration) and NYSE Rule Interpretation 345(a)(i)/03 (Compensation to Non-Registered Foreign Persons Acting as Finders) with minor technical changes into the Consolidated FINRA Rulebook as FINRA Rule 2040(c).[16] As approved by the SEC in 1993 and 1995, respectively, NYSE Rule Interpretation 345(a)(i)/03 and NASD Rule 1060(b) are largely

[12] *See* FINRA Interpretative Letters issued under NASD Rule 2420: Letter to Richard Schultz, Triad Securities Corp., dated December 28, 2007; Letter to Jonathan K. Lagemann, Esq., Law Offices of Jonathan Kord Lagemann, dated June 27, 2001; Letter to Jay Adams Knight, Esq., Musick, Peeler & Garrett LLP, dated March 8, 2001; and Letter to Michael R. Miller, Esq., Kunkel Miller & Hament, dated May 31, 2000 (available at *http://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/ConductRules/index.htm*).

[13] *See* FINRA Interpretative Letters issued under NASD IM–2420–2: Letter to Name Not Public, dated November 27, 2012; Letter to Ted A. Troutman, Esquire, Muir & Troutman, dated February 4, 2002; Letter to Joe Tully, Commonwealth Financial Network, dated August 9, 2001; and Letter to Peter D. Koffer, Esq, Twenty-First Securities Corporation, dated January 21, 2000 (available at *http://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/ConductRules/index.htm*).

[14] *See* SEC No-Action Letter to the Securities Industry and Financial Markets Association, 2008 SEC No-Act. LEXIS 695, November 20, 2008. The letter provides that ''[t]he retiring representative must sever association with the Firm and with any municipal securities dealer, government securities dealer, investment adviser or investment company affiliates (except as may be required to maintain any licenses or registrations required by any state) and, is not permitted to be associated with any other broker, dealer, municipal securities dealer, government securities dealer, investment adviser or investment company, during the term of his or her agreement. The retiring representative also may not be associated with any bank, insurance company or insurance agency (affiliated with the Firm or otherwise) during the term of his or her agreement if the retiring representative's activities relate to effecting transactions in securities.'' *See also* SEC No-Action Letter to Amy Lee, Chief Compliance Officer, Co-CEO, Packerland Brokerage Services, 2013 SEC No-Act. LEXIS 237, March 18, 2013.

[15] *See supra* note 14.

[16] *See supra* note 11.

identical provisions and provide that members and persons associated with a member may pay transaction-related compensation to nonregistered foreign finders, based upon the business of customers such persons direct to members, subject to identified conditions. FINRA is proposing non-substantive, technical changes to the proposed rule text to make it easier to read. Specifically, proposed FINRA Rule 2040(c) would provide that a member may pay to a nonregistered foreign finder (the ''finder'') transaction-related compensation based upon the business of customers the finder directs to the member if the following conditions are met (''foreign finders exception''):

(1) The member has assured itself that the finder who will receive the compensation is not required to register in the United States as a broker-dealer nor is subject to a disqualification as defined in Article III, Section 4 of FINRA's By-Laws, and has further assured itself that the compensation arrangement does not violate applicable foreign law;

(2) The finder is a foreign national (not a U.S. citizen) or foreign entity domiciled abroad;

(3) the customers are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities;

(4) customers receive a descriptive document, similar to that required by Rule 206(4)–3(b) of the Investment Advisers Act of 1940 (''Investment Advisers Act''), that discloses what compensation is being paid to finders;

(5) customers provide written acknowledgment to the member of the existence of the compensation arrangement and such acknowledgment is retained and made available for inspection by FINRA;

(6) records reflecting payments to finders are maintained on the member's books, and actual agreements between the member and the finder are available for inspection by FINRA; and

(7) the confirmation of each transaction indicates that a referral or finders fee is being paid pursuant to an agreement.

The rule provides that if all the conditions set forth in the rule are satisfied, members can pay transaction-related compensation to nonregistered foreign finders based on the business of non-U.S. customers that finders refer to members. Specifically, the rule permits compensation to ''be made on an ongoing basis and tied to such variables as the level of business generated or assets under control, notwithstanding the fact that the foreign finders' sole involvement would be the initial referral to a member.'' [17] The SEC Foreign Finders Approval Order states that ''[t]he provision was intended to give members the opportunity to enhance their competitive position in foreign countries where new accounts are frequently opened on a referral basis with ongoing compensation for such referral.'' [18]

Proposed FINRA Rule 2040(c) would have the same scope as the current rule and continue to allow ongoing transaction-based payments to nonregistered foreign finders under the limited circumstances set forth in the current rule. As in the current rule, ''[w]hile the foreign finders' *sole involvement* would be the initial referral to a member or member organization [of non-U.S. customers to the firm], compensation could be made on an ongoing basis and tied to such variables as the level of business generated or assets under control. All accounts referred by such foreign finders would be carried on the books of the member.'' [19] Similar to NASD Rule 1060(b), any activities beyond the initial referral of non-U.S. customers and payment of transaction-based compensation for any such activities would not be within the permissible scope of the foreign finders exception as set forth in proposed FINRA Rule 2040(c). Based solely on its activities in compliance with proposed FINRA Rule 2040(c), the foreign finder would not be considered an associated person of the member. However, unless otherwise permitted by the federal securities laws or FINRA rules, a person who receives commissions or other transaction-based compensation in connection with securities transactions generally has to be a registered broker-dealer or an appropriately registered associated person of a broker-dealer who is supervised by a broker-dealer. Members that engage foreign finders would be required to have reasonable procedures that appropriately address the limited scope of activities permissible under such arrangements.[20]

C. Amendments to FINRA Rule 8311

• *FINRA Rule 8311*

FINRA is proposing amendments to FINRA Rule 8311 to eliminate duplicative provisions in NASD IM–2420–2 and to clarify the scope of the rule on payments by members to persons subject to suspension, revocation, cancellation, bar (each a ''sanction'') or other disqualification. The proposed rule provides that if a person is subject to a sanction or other disqualification, a member may not allow such person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity. The proposed rule further provides that a member may not pay or credit to any person subject to a sanction or disqualification, during the period of the sanction or disqualification or any period thereafter, any salary, commission, profit, or any other remuneration that the person might accrue, not just earn, during the period of the sanction or disqualification. However, a member may make payments or credits to a person subject to a sanction that are consistent with the scope of activities permitted under the sanction where the sanction solely limits an associated person from conducting specified activities (such as a suspension from acting in a principal capacity) or to a disqualified person that has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member.

Specifically, the proposal clarifies that:

(1) Other disqualifications, not just suspensions, revocations, cancellations or bars, are subject to the rule (and the rule is not limited to orders issued by FINRA or the SEC);

(2) a member may not allow a person subject to a sanction or disqualification to ''be'' associated with such member in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity, not simply ''remain'' associated as provided in the current rule;

(3) a member may not pay any remuneration to a person subject to a sanction or disqualification, not just payments that result directly or indirectly from any securities transaction; and

[17] *See* Securities Exchange Act Release No. 32431 (June 8, 1993), 58 FR 33128 (June 15, 1993) (Order Approving File No. SR–NYSE–92–33 Relating to an Interpretation to NYSE Rule 345 (Employees—Registration, Approval, Records)) (''SEC Approval Order of NYSE Rule 345 Interpretation''). *See also* Securities Exchange Act Release No. 35361 (February 13, 1995), 60 FR 9417 (February 17, 1995) (Order Approving File No. SR–NASD–94–51) (''SEC Foreign Finders Approval Order'').

[18] *See supra* note 13.

[19] *See* Securities Exchange Act Release No. 34941 (November 4, 1994), 59 FR 56102 (November 10, 1994) (Notice of Filing of File No. SR–NASD–94–51). *See also* SEC Approval Order of NYSE Rule 345 Interpretation.

[20] *See* SEC Foreign Finders Approval Order. FINRA notes that the scope of permissible activities and associated regulatory requirements differ between foreign finders and foreign associates, who are registered persons of the member. *See also* NASD Rule 1100 (Foreign Associates).

(4) the rule applies to any salary, commission, profit or remuneration that the associated person might ''accrue,'' not just ''earn'' during the period of a sanction or disqualification, not just suspension.

FINRA is also proposing to add a new paragraph to the rule that would expressly permit a member to pay to any person subject to a sanction or disqualification any remuneration pursuant to an insurance or medical plan, indemnity agreement relating to legal fees, or as required by an arbitration award or court judgment. FINRA believes that these exceptions strike the correct balance by permitting certain key payments.

• *Proposed Supplementary Material .01*

In addition, FINRA is proposing to add new Supplementary Material .01 (Remuneration Accrued Prior to Effective Date of Sanction or Disqualification) that relates to commissions accrued by a person prior to the effective date of a sanction or disqualification. The proposed supplementary material would permit a member to pay a person that is subject to a sanction or disqualification remuneration that the member can evidence accrued to the person prior to the effective date of the sanction or disqualification. However, a member may not pay any remuneration that accrued to the person that relates to or results from the activity giving rise to the sanction or disqualification, and any such payment or credit must comply with applicable federal securities laws. FINRA believes that adopting this new provision is necessary to address questions by the industry on a member's ability to pay commissions and other remuneration that was accrued by the person prior to a sanction or disqualification going into effect. FINRA also believes the supplementary material, together with the proposed amendments discussed above, clarify that a member may not pay trail commissions to a person that may accrue during the period of the sanction or disqualification; rather, the member can only make such payments where the member can evidence that they accrued to the person prior to the effective date of the sanction or disqualification.

D. Adoption of New General Standard—FINRA Rule 0190

In addition, FINRA is proposing to adopt a new general standard, proposed FINRA Rule 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation), that is based largely on provisions of NASD IM–2420–1(a) and would provide that a member will be treated as a non-member of FINRA from the effective date of any order or notice from FINRA or the SEC issuing a revocation, cancellation, expulsion or suspension of its membership. In the case of suspension, a member will be automatically reinstated to membership in FINRA at the termination of the suspension period.

E. NASD and NYSE Rules To Be Deleted

FINRA proposes to eliminate the following NASD and NYSE Rules and related interpretations because FINRA believes that proposed FINRA Rule 2040 simplifies and clarifies the meaning of such rules consistent with Section 15(a) of the Exchange Act. Specifically, NASD Rule 2410, NASD Rule 2420, NASD IM–2420–1, NASD IM–2420–2, NYSE Rule 353, NYSE Rule Interpretation 345(a)(i)/01 and NYSE Rule Interpretation 345(a)(i)/02 will be consolidated into proposed FINRA Rule 2040, providing members with one concise rule that outlines the applicable requirements for payments to non-members.

• *NASD Rule 2410*

NASD Rule 2410 (Net Prices to Persons Not in Investment Banking and Securities Business) prohibits payments or concessions by members to ''any person not actually engaged in the investment banking or securities business.''

• *NASD Rule 2420*

NASD Rule 2420 (Dealing with Non-Members) generally prohibits members from dealing with, or making payments to, non-member broker-dealers, except at the same prices, fees or concessions offered to the general public. NASD Rule 2420(b) specifically prohibits members from joining any non-member broker-dealer syndicate or group in connection with the sale of securities. NASD Rule 2420(c) provides that members may pay concessions and fees to a non-member broker or dealer in a foreign country who is not eligible for membership, provided the member obtains an agreement from such foreign broker or dealer in making sales of securities within the United States that such foreign broker or dealer will act in accordance with the general requirements of the rule to prohibit the payment of concessions or discounts to non-members that are not allowed to the general public. NASD Rule 2420(d) provides restrictions on payments by or to persons that have been suspended or expelled.

• *NASD IM–2420–1*

NASD IM–2420–1 (Transactions between Members and Non-Members) provides certain exemptions from the general prohibition on arrangements with non-members set forth in NASD Rule 2420. For example, the rule provides exemptions for arrangements with certain non-members relating to transactions in ''exempted securities,'' or transactions on a national securities exchange. The rule further clarifies that a firm that is suspended or expelled from FINRA membership, or whose registration is revoked by the SEC, is to be considered a non-member for purposes of the rule.

• *NASD IM–2420–2*

NASD IM–2420–2 (Continuing Commissions Policy) allows members to pay continuing commissions to former registered representatives after they cease to be employed by a member, if, among other things, a bona fide contract between the member and the registered representative calling for the payments was entered into in good faith while the person was a registered representative of the employing member. The rule states that such contracts cannot permit the solicitation of new business or the opening of new accounts by persons who are not registered, and must conform with all applicable laws and regulations. The rule also provides that NASD Rule 2830(c) (Investment Company Securities, Conditions for Discounts to Dealers) should not be interpreted to require a sales agreement for a dealer to receive commissions on direct payments by clients or automatic dividend reinvestments. The rule further contains a prohibition on the payment of any kind by a member to any person who is not eligible for FINRA membership or eligible to be associated with a member because of any disqualification, such as revocation, expulsion or suspension that is still in effect. The rule recognizes the validity of contracts entered into in good faith to allow retired representatives to receive continuing compensation on their accounts or to designate a widow or other beneficiary; however, the rule states that members are not required to enter into such contracts and FINRA will not specify the terms of such contracts.

• *NYSE Rule 353*

NYSE Rule 353 (Rebates and Compensation) prohibits a member, principal executive, registered representative or officer from, directly or indirectly, rebating to any person any part of the compensation he receives from the solicitation of orders for the purchase or sale of securities or other similar instruments for the accounts of customers of the member, or pay such compensation, or any part thereof, as a bonus, commission, fee or other consideration for business sought or procured for him or for any other

member. NYSE Rule 353(b) further provides that a member, principal executive, registered representative or officer cannot be compensated for business done by or through his employer after the termination of his employment except as may be permitted by the NYSE.

• *NYSE Rule Interpretations 345(a)(i)/01 and/02*

NYSE Rule Interpretation 345(a)(i)/01 (Compensation to Non-Registered Persons) prohibits a member from paying to nonregistered persons compensation based upon the business of customers they direct to the member if such compensation is, among other things, formulated as a direct percentage of commissions generated and is other than on an isolated basis.

NYSE Rule Interpretation 345(a)(i)/02 (Compensation Paid for Advisory Solicitations) provides that a member that is also registered with the SEC as an investment adviser may enter into arrangements that comply with Rule 206(4)–3 (Cash Payments for Client Solicitations) of the Investment Advisers Act.

III. Description of Comments on the Proposal and FINRA's Response

As noted above, the Commission received seven comment letters in response to the Notice of Filing.[21] Four commenters generally supported FINRA's efforts to consolidate and streamline rules relating to payments to unregistered persons.[22] Several commenters suggested changes to the proposed rules, which are discussed further below.

A. Proposed FINRA Rule 2040(a) and the Focus on Receipt of Transaction Based Compensation

One commenter stated that it supports proposed Rule 2040(a) but seeks clarity on proposed Supplementary Material .01 (Reasonable Support for Determination of Compliance with Section 15(a) of the Exchange Act), which is discussed in detail in Section III.D. below.[23] One commenter expressed concern that, without a clear regulatory framework in place, the receipt of transaction-based compensation will lead to abusive practices.[24] As such, the commenter believed that registration should be required for individuals that receive transaction-based compensation because ''such registration is integral to the regulation of firms and individuals . . . and exceptions to this principle should be rare, and when implemented they should be highly prescriptive.'' [25]

One commenter disagreed with FINRA's focus on the ''receipt of transaction-based compensation'' as the main factor for determining whether registration as a broker-dealer is required.[26] The commenter specifically cited recent case law pointing to other factors.[27] The commenter stated that FINRA should consider all of the relevant factors before FINRA and the SEC adopt any new rule by which a firm can determine whether a person must register in accordance with Section 15(a) of the Exchange Act.[28] The commenter suggested that FINRA either withdraw the proposed rule change or make substantial modifications to it to address these concerns.[29]

FINRA disagrees that the proposed rule focuses only on the receipt of transaction-based compensation as the determinative factor for who is required to register as a broker-dealer under the Exchange Act.[30] FINRA states that while the proposed rule change does specifically include ''receipt of any such payments,'' as a factor, the proposed text also expressly includes ''and the activities related thereto.'' [31] FINRA recognizes that SEC guidance in this area provides that certain activities may be deemed (alone or in combination) to confer ''broker'' status,[32] and the receipt of transaction-based compensation coupled with these activities may trigger the requirement to register as a broker-dealer under the Exchange Act.[33] FINRA believes the proposed rule change is consistent with current SEC rules and guidance.[34]

B. Proposed FINRA Rule 2040(b)—Retiring Representatives

Three commenters supported FINRA's proposed creation of a concise regulatory framework regarding the payment of continuing commissions to retiring registered representatives by member firms and noted that the proposed rule effectively consolidates existing guidance.[35] In contrast, one commenter stated that the proposal should be more explicit on the restrictions surrounding continuing compensation that can be paid to retired representatives.[36] The commenter noted that FINRA makes reference to and asserts a similarity between its current proposal and the prior SEC no-action letter issued to SIFMA on the topic, but NASAA believed that the staff guidance contains a more detailed discussion of the topic.[37] While the proposed rule does not expressly list each condition set forth in prior SEC no-action letters, FINRA believes that the proposed rule change incorporates the prior guidance issued by the SEC staff by expressly requiring that any proposed arrangement with a retiring representative must comply with federal securities laws and Exchange Act rules and regulations.[38]

C. Proposed FINRA Rule 2040(c)—Non Registered Foreign Finders

1. Support for Retaining NASD Rule 1060(b)

In Regulatory Notice 09–69, FINRA had initially proposed to delete NASD Rule 1060(b) because it believed the activity should be governed by the general requirements of proposed FINRA Rule 2040(a). However, based on the comments received in response to Regulatory Notice 09–69, FINRA proposed to transfer NASD Rule 1060(b) unchanged into the consolidated FINRA rulebook. One commenter largely supported the proposed rule change, but seeks clarification of certain language.[39] Three commenters expressed concern that FINRA missed the opportunity to provide much needed clarity in the area of foreign finders and the compensation they can be paid.[40] One commenter expressed concern that proposed Rule 2040(c) and Supplementary Material .01 ''create overly broad and vaguely defined safe havens for nonregistered individuals that receive payments related to securities transactions.'' [41]

2. Clarification That Foreign Finder Under Rule 2040(c) Is Not a ''Person Associated With a Member''

One commenter urged FINRA to clarify that a foreign finder is not a ''person associated with a member,'' as that term is defined under the FINRA

[21] See note 4, *supra.*

[22] SIFMA, NASAA, Cornell and ABA.

[23] SIFMA.

[24] NASAA.

[25] *Id.*

[26] Commonwealth.

[27] *Id.* (citing *SEC* v. *Kramer,* 778 F. Supp. 2nd 1320 (M.D. Fla. 2011) and *SEC* v. *John J. Bravata, et al.,* Civil Action No. 09–cv–12950 (E.D. Mich.) (Lawson, J.).

[28] Commonwealth.

[29] *Id.*

[30] FINRA Response at 4.

[31] *Id.*

[32] *See* Paul Anka, SEC No-Action Letter (available July 24, 1991). *See also* Muni Auction Inc., SEC No-Action Letter (available March 13, 2000) and Bond Globe, Inc., SEC No-Action Letter (available February 6, 2001).

[33] FINRA Response at 4.

[34] *Id.*

[35] SIFMA, ABA and IMS.

[36] NASAA.

[37] *Id.*

[38] FINRA Response at 4.

[39] SIFMA.

[40] IMS, Plexus and Commonwealth.

[41] Cornell.

By-Laws.[42] The commenter expressed concern that by relocating this provision, which is currently contained in NASD Rule 1060(b) to new FINRA Rule 2040, FINRA may not have fully incorporated existing guidance and may have ''changed the character of the provision from a registration 'safe harbor' to a prescriptive rule that sets forth the only permissible basis on which transaction-based compensation may be paid to a foreign finder.'' [43]

3. Proposed Changes to Rule Text

One commenter recommended that proposed Rule 2040(c)(1) be amended to eliminate the use of a subjective ''assurance'' standard by revising the language to read: ''the finder who will receive the compensation is not required to register in the United States as a broker dealer nor is subject to disqualification as defined in Article III, Section 4 of FINRA's By-Laws, and the compensation arrangement does not violate applicable foreign law.'' [44] The commenter stated that the ''assurance'' standard is unacceptably subjective because it depends on a specific member's knowledge, resources, and discretion and institutional investment firms may be able to hire outside counsel to determine whether a given transaction would violate foreign law, whereas a smaller firm may perform its own research and (incorrectly) conclude that the same transaction does not violate foreign law.[45]

One commenter suggested that proposed Rule 2040(c)(2) and (3) should be amended to permit members to focus on the residency, instead of the citizenship, of customers as this provides a ''brighter and more enforceable line for all concerned and that the Commission has recognized residency as a better policy guide for the proper application of the broker-dealer registration requirements, except in very limited circumstances.'' [46] The commenter believed that the requirements in the proposed rule change that finders not be U.S. citizens and customers be foreign nationals (not U.S. citizens) impose an undue burden.[47]

One commenter stated that the conditions a firm must satisfy to rely on proposed Rule 2040(c) (*e.g.,* determining whether the finder is not required to register as a U.S. broker-dealer and not subject to a disqualification under FINRA's By-Laws, the compensation arrangement does not violate applicable foreign law, etc.) will increase compliance costs for firms, particularly when outside counsel has to be retained.[48] In addition, the commenter noted that the additional disclosure requirements and recordkeeping requirements would be costly for firms, especially for small firms.[49]

3. Scope of Foreign Finders Proposal Is Not Comprehensive

Two commenters expressed concern that the scope of the proposed rule change appears to be too restrictive.[50] Both commenters stated that as a result of language in the Proposing Release that proposed Rule 2040(c) permits compensation when the foreign finder's sole involvement is the initial referral to the member, any activities beyond the initial referral of non-U.S. customers and payment of transaction-based compensation for any such activities ''would not be within the permissible scope of the foreign finders exception as set forth in proposed FINRA Rule 2040(c).'' [51]

One commenter stated that the Existing Nonregistered Foreign Finder Rules include NASD Rule 1060(b) and NYSE Rule Interpretation 345(a)(i)/03 as a safe harbor, not as an exclusive means of compliance with the Existing Nonregistered Foreign Finder Rules, and requested that the proposed rule language be clarified with the use of the phrase ''unless otherwise permitted by the federal securities laws or FINRA rules,'' because there may be other permissible activities, beyond the initial referral, that would be within the permissible scope of the foreign finders exception.[52] One commenter recommended that FINRA clarify the proposed rule text to permit the payment of compensation to foreign finders so long as the activities of the foreign finder are otherwise permitted.[53] The commenter also argued that the inclusion of the word ''sole'' in the Proposing Release is unnecessarily restrictive and anti-competitive.[54]

One commenter requested additional guidance to assist in the implementation and operation of proposed Rule 2040(c).[55] Specifically, the commenter noted that proposed Rule 2040(c)(4) requires that ''customers receive a descriptive document, similar to that required by Rule 206(4)–3(b) of the Investment Advisers Act, that discloses what compensation is being paid to finders.'' [56] The commenter stated that investment advisers must disclose the additional amount that will be charged to the investment advisory fee (normally expressed as a percent of assets under management) and the differential attributable to the finder arrangement and, in general, the nature of fees between an investment adviser and its clients differ from the nature of fees between a broker-dealer and its customers.[57] Therefore, the commenter believed that it would be useful to have examples of how the condition would operate.[58]

One commenter believed that the proposed rule would provide the SEC with an opportunity to provide clarity in the area of finders and, moreover, argued that allowing FINRA to adopt the SEC's standard is not efficient.[59] The commenter expressed concern about the certain staff guidance, in particular the Paul Anka SEC no-action letter, which it argued narrowed the issue to whether a transaction fee is paid.[60] The commenter further stated that the industry believes it is safe to pay fixed fees to employees or finder/consultants and urged the Commission to provide clarity on the Paul Anka letter and the transaction fee test.[61]

4. FINRA Response

FINRA responds that it has proposed to transfer NASD Rule 1060(b) unchanged into the consolidated rulebook in response to comments it received on Regulatory Notice 09–69.[62] FINRA states that the proposed rule change does not seek to address all circumstances under which payments may be made by U.S. broker dealers to foreign finders.[63] In addition, the proposed rule carries over a narrow safe harbor that permits a firm to pay on-going compensation to a foreign finder under the conditions set forth in the provision.[64] FINRA recognizes that the proposed rule change does not address all open issues with respect to the payment of transaction-based compensation to foreign finders, but believes that this type of comprehensive rulemaking or guidance is outside the

[42] ABA.
[43] *Id.*
[44] Cornell.
[45] *Id.*
[46] ABA.
[47] *Id.*
[48] IMS.
[49] *Id.*
[50] SIFMA and ABA.
[51] *Id.*
[52] SIFMA.
[53] ABA.
[54] *Id.*
[55] SIFMA.
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] Plexus.
[60] *Id.*
[61] *Id.*
[62] FINRA Response at 7.
[63] *Id.*
[64] *Id.*

scope of this proposal.[65] To the extent that additional interpretive issues remain, FINRA plans to work with SEC staff on issuing related guidance, as appropriate.[66]

FINRA declines to amend the proposed rule text or provide examples as suggested by the commenters as it is not proposing to make any substantive changes to the provision.[67] FINRA does not intend to change the meaning or scope of the proposed provision or its related guidance by relocating the provision from the Series 1000 rules of the NASD rulebook to the Series 2000 rules of the FINRA rulebook. Similar to NASD Rule 1060(b) and NYSE Rule Interpretation 345(a)(i)/03, proposed Rule 2040(c) is not intended to be the only means by which a member may pay compensation to a foreign finder. FINRA states that members may rely on other applicable federal securities laws and regulations where the activities of a foreign finder go beyond the scope permitted by the proposed rule (*e.g.,* the initial referral of a customer to the member).[68]

FINRA also reiterates that, as stated in the Proposing Release, based solely on its activities in compliance with proposed FINRA Rule 2040(c), the foreign finder would not be considered an associated person of the member.[69] Further, FINRA believes the word ''solely'' is critical and that any activities by the foreign finder beyond the initial referral of the customer would no longer allow a firm to rely on the ''safe harbor'' established by the proposed rule and may require registration under Section 15(a) of the Exchange Act or result in association with the member under the FINRA By-Laws.[70] Therefore, FINRA maintains that the inclusion of this restriction is not new and has always been understood to be part of the provision.

D. Proposed FINRA Rule Supplementary Material .01 (Reasonable Support for Determination of Compliance With Section 15(a) of the Exchange Act)

1. Requests To Clarify Scope and Terms

Four commenters had concern with the scope and requirements of proposed Supplementary Material .01.[71] Specifically, these commenters expressed concern with the third prong of the proposed rule that allows a firm to obtain a ''legal opinion'' from independent and reputable U.S. licensed counsel.[72] The commenters stated that seeking SEC no-action letters or opinions of ''outside'' ''reputable'' and ''knowledgeable'' counsel will be burdensome and costly, especially for small firms. One commenter argued that, among other burdens, the proposal would mean that in-house counsel is automatically disqualified from rendering such an opinion, even if that counsel is prepared and qualified, by reputation and knowledge, to issue an objective opinion.[73] One commenter urged FINRA to provide greater flexibility in the range of measures that a member firm may rely on to ''reasonably support'' its determination and suggested that proposed Rule 2040(a)(3) be amended to provide that a member firm support its determination based on ''advice of knowledgeable outside counsel'' and make clear that the enumerated bases for determining that the necessary ''reasonable support'' exists are not exclusive.[74]

One commenter stated that determining whether counsel is ''reputable'' or ''knowledgeable in the area'' depends on the market in which he or she practices and the member's discretion and requested clarification as to whether ''area'' refers to geography or legal practice.[75] One commenter stated that the concepts of ''reputable'' and ''knowledgeable'' are subjective and the costs of implementing ''these mandates are likely prohibitive and disproportionate to any economic benefit the firm might receive.'' [76] One commenter requested further guidance to illustrate the standard ''reasonable under the circumstances'' as well as guidance on the expected frequency of the periodic review.[77]

2. Other Comments

Three commenters believed that FINRA should provide greater clarity on when and under what circumstances payments to unregistered foreign finders are permitted.[78] One commenter objected to the proposed rule arguing that, instead of providing clarity, FINRA has imposed five additional conditions by proposing Supplementary Material .01.[79] The commenter further argued that FINRA did not address the impact of the proposed rule change on several activities that may be exempt from broker-dealer registration through SEC or FINRA guidance.[80]

One commenter asserted that the addition of this Supplementary Material .01 mitigates some of the concerns previously raised by them in response to Regulatory Notice 09–69, but they remain concerned with the complex issues surrounding the compensation of unregistered persons that they stated is largely unaddressed by the current proposal.[81]

One commenter stated that the ''reasonable reliance'' standard in Supplementary Material .01 depends almost entirely on the judgment of broker-dealers that have a financial incentive to interpret materials broadly.[82] Further, the commenter stated that although the Supplementary Material is intended to mitigate the burden of determining whether Section 15(a) requires registration, the uncertainty of a ''reasonable reliance'' standard invites a much costlier alternative: private dispute resolution, administrative hearings, or litigation.[83]

3. FINRA's Response

FINRA states that it is proposing to adopt Supplementary Material .01 because it recognizes the potential costs and burdens of obtaining a firm-specific, no-action letter from the SEC.[84] The proposed supplementary material is intended to clarify that firms may rely on other means to demonstrate compliance and provides firms with the flexibility to rely on other options that may be less costly and time consuming.[85]

FINRA does not intend proposed Supplementary Material .01 to be an exhaustive list by which firms can make a reasonable determination.[86] FINRA states that a legal opinion from independent, reputable U.S. licensed counsel knowledgeable in the area is not the only means available to firms. FINRA notes that firms may continue to rely on the advice of in-house counsel or foreign counsel under prong 1 that permits a firm to make a determination by ''reasonably relying on previously published releases, no-action letters or interpretations from the Commission or Commission staff that apply to its facts and circumstances.'' [87]

FINRA declines to define how frequently a firm must review its determination under the proposed rule

[65] *Id.*
[66] *Id.*
[67] FINRA Response at 8.
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *See* ABA, SIFMA, IMS and Cornell.
[72] *Id.*
[73] IMS.
[74] ABA.
[75] Cornell.
[76] IMS.
[77] SIFMA.
[78] IMS, Commonwealth, and Plexus.
[79] IMS.
[80] *Id.*
[81] NASAA.
[82] Cornell.
[83] *Id.*
[84] FINRA Response at 9.
[85] FINRA Response at 9–10.
[86] FINRA Response at 10.
[87] *Id.*

because the review must be reasonable based on the nature and scope of the activity in question and therefore requires a factual review. FINRA believes, however, that an annual review for on-going payments generally would be reasonable, absent evidence of activities by the recipient of the payments that raise red flags.[88]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposal, the comments received, and FINRA's responses to the comments. Based on its review of the record, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[89]

In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; and, in general, protect investors and the public interest.[90]

The proposed rule change will clarify and streamline several NASD and NYSE rules relating to payments to unregistered persons for adoption as FINRA Rules in the new Consolidated FINRA Rulebook. Specifically, proposed FINRA Rule 2040(a) aligns with Section 15(a) of the Exchange Act and its related guidance to determine whether registration as a broker-dealer is required for certain persons to receive transaction-related compensation; proposed FINRA Rule 2040(b) codifies existing FINRA guidance on the payment by members of continuing commissions to retiring registered representatives consistent with the Commission's guidance in this area; and proposed FINRA Rule 2040(c) adopts the foreign finders provisions of NASD Rule 1060(b) and NYSE Rule Interpretation 345(a)(i)/03 with technical changes. The amendments to FINRA Rule 8311 eliminate duplicate provisions in NASD IM–2420–2 and clarify the scope of the rule on payments by members to persons subject to sanctions. Commenters' suggestions that the SEC (or FINRA) provide additional guidance on ''finders'' are outside the scope of this rule filing, and thus outside the scope of this order.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[91] that the proposed rule change (SR–FINRA–2014–037) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[92]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30892 Filed 1–5–15; 8:45 am]

BILLING CODE 8011–01–P

[88] *Id.*

[89] In approving the proposal, as amended, the Commission has considered the impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[90] 15 U.S.C. 78o–3(b)(6).

[91] 15 U.S.C. 78s(b)(2).

[92] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73956; File No. SR–C2–2014–029]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for the C2 Book Depth Data Feed and Certain Other C2 Real-Time Data Feeds

December 30, 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 December 17, 2014, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') proposes to establish fees for the C2 Book Depth Data Feed and amend fees for certain other C2 real-time data feeds. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to: (1) Establish fees for the C2 Book Depth Data Feed; (2) amend fees for the C2 Complex Order Book (''COB'') Data Feed; and (3) establish fees for distribution of C2 data via a ''Display Only Service'' (as defined below). These data feeds are made available by C2's affiliate Market Data Express, LLC (''MDX'').

BBO, Book Depth and COB Data Feeds

BBO Data Feed: The BBO Data Feed is a real-time, low latency data feed that includes the following content: (i) Outstanding quotes and standing orders at the best available price level on each side of the market, with aggregate size (''BBO data''), and last sale data[3]; (ii) totals of customer versus non-customer contracts at the BBO, (iii) All-or-None contingency orders priced better than or equal to the BBO, (iv) BBO and last sale data for complex strategies (*e.g.,* spreads, straddles, buy-writes, etc.); (v) expected opening price (''EOP'') and expected opening size (''EOS'') information that is disseminated prior to the opening of the market and during trading rotations, (vi) end-of-day (''EOD'') summary messages that are disseminated after the close of a trading session that include summary information about trading in C2 listed options (*i.e.,* product name, opening price, high and low price during the trading session and last sale price), (vii) ''recap messages'' that are disseminated during a trading session any time there is a change in the open, high, low or last sale price of a C2 listed option, as well as product name and total volume

[3] ''Best bid and offer'' or ''BBO'' data is sometimes referred to as ''top-of-book'' data. Data with respect to executed trades is referred to as ''last sale'' data.

traded in the product during the trading session; and (viii) product IDs and codes for all C2 listed options contracts. The data in the BBO Data Feed is refreshed periodically during the trading session. The BBO and last sale data contained in the BBO Data Feed is identical to the data sent to the Options Price Reporting Authority (''OPRA'') for redistribution to the public.[4]

Book Depth Data Feed: The Book Depth Data Feed is a real-time, low latency data feed that includes all outstanding quotes and standing orders up to the first five price levels on each side of the market, with aggregate size (''Book Depth''). The Book Depth Data Feed includes all of the other data contained in the BBO Data Feed (as described above), including last sale, BBO and Book Depth data for complex strategies.[5]

COB Data Feed: The COB Data Feed is a subset of the Book Depth Data Feed. It is a real-time data feed that includes data regarding the Exchange's Complex Order Book and related complex order information. The COB Data Feed includes BBO, Book Depth and last sale data for all C2-traded complex order strategies and identifies customer orders and trades.

Fees

BBO Data Feed Fees: MDX currently charges a ''Data Fee'', payable by a Customer, of $1,000 per month for internal use and external redistribution of the BBO Data Feed.[6] The Data Fee entitles a Customer to provide the BBO Data Feed to an unlimited number of internal users and Devices [7] within the Customer. A Customer receiving the BBO Data Feed from another Customer is assessed the Data Fee by MDX pursuant to its own market data agreement with MDX, and is entitled to use the Data internally and/or distribute it externally.[8] All Customers have the same rights to utilize the data internally and/or distribute it externally as long as the Customer has entered into a written agreement with MDX for the data and pays the Data Fee.

The Exchange is not proposing to amend the Data Fee. The Exchange proposes to establish a ''User Fee'', payable by a Customer, of $50 per month per Device or user ID for use of data in the BBO Data Feed by ''Display Only Service'' users. A ''Display Only Service'' would allow a natural person end-user to view and manipulate data using a Customer's computerized service, but not to save, copy, export or transfer the data or any results of the manipulation to any other computer hardware, software or media, except for printing it to paper or other non-magnetic media. User fees would be payable only for ''external'' Display Only Service users (Devices or user IDs of users who are not employees or natural person independent contractors of the Customer, the Customer's affiliates or an authorized service facilitator).

The Exchange proposes to amend the definition of a ''Customer'' to make it uniformly applicable to the BBO Data Feed and the other C2 real-time data feeds described above. The term ''Customer'' would mean any person, company or other entity that, pursuant to a market data agreement with MDX, is entitled to receive data, either directly from MDX or through an authorized redistributor (*i.e.,* a Customer or an extranet service provider), whether that data is distributed externally or used internally. An entity or person that receives BBO data from a Customer through a Display Only Service is not a ''Customer'' unless it has a market data agreement in place with MDX.

Book Depth Data Feed Fees: The Exchange proposes to amend the MDX fee schedule to establish fees for the Book Depth Data Feed. MDX would charge a ''Data Fee'', payable by a Customer (as defined above), of $1,000 per month for internal use and external redistribution of the Book Depth Data Feed. The Data Fee for the Book Depth Data Feed would entitle a Customer to provide the Book Depth Data Feed to an unlimited number of internal users and Devices within the Customer. A Customer receiving the Book Depth Data Feed from another Customer would be assessed the Data Fee by MDX pursuant to its own market data agreement with MDX, and would be entitled to use the Data internally and/or distribute it externally. All Customers would have the same rights to utilize the Book Depth data internally and/or distribute it externally as long as the Customer has entered into a written agreement with MDX for the data and pays the Data Fee. BBO Data Feed Customers could upgrade to become Book Depth Data Feed Customers without paying any additional Data Fee.[9]

MDX would also charge a Book Depth Data Feed Customer a User Fee of $50 per month per Device or user ID for use of the data in the Book Depth Data Feed by Display Only Service users (as defined above). User Fees would be payable only for ''external'' Display Only Service Users (as defined above). An entity or person that receives Book Depth data from a Customer through a Display Only Service is not a ''Customer'' unless it has a market data agreement in place with MDX.

COB Data Feed Fees: MDX currently charges Customers of the COB Data Feed a Data Fee of $500 per month plus applicable User Fees.[10] The Data Fee for the COB Data Feed is waived for Customers of the BBO Data Feed.[11]

MDX currently charges a Customer User Fees of $25 per month per Device or user ID for receipt of the data by ''Professional Users'' [12] and $1 per month for receipt of the data by ''Non-Professional Users.'' [13] User Fees are

[4] MDX makes available to Customers the BBO data and last sale data that is included in the BBO Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

[5] *See* Securities Exchange Act Release No. 71773 (March 24, 2014), 79 FR 17611 (March 28, 2014).

[6] A BBO Data Feed ''Customer'' is currently defined as any entity that receives the BBO Data Feed either directly from MDX's system or through a connection to MDX provided by an approved redistributor (*i.e.,* a market data vendor or an extranet service provider) and distributes it externally or uses it internally. The MDX fee schedule for CBOE data is located at *https://www.cboe.org/MDX/CSM/OBOOKMain.aspx.*

[7] A ''Device'' means any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form.

[8] A Customer may choose to receive the data from another Customer rather than directly from MDX's system because it does not want to or is not equipped to manage the technology necessary to establish a direct connection to MDX.

[9] Such Customers would still be subject to Display Only Service User Fees as described below.

[10] A COB Data Feed Customer is currently defined as any entity that receives the COB Data Feed, either directly from MDX's system or through a connection to MDX provided by an approved redistributor (*i.e.,* a market data vendor or an extranet service provider), and distributes it externally or uses it internally, except that an entity or person that receives the COB Data Feed from a Customer and only uses it internally is not a ''Customer'' if it receives the COB Data Feed from a Customer subject to a form of ''Subscriber Agreement'' that has been approved by MDX.

[11] Such COB Data Feed Customers are still subject to User Fees as described below.

[12] A ''Professional User'' is any natural person recipient of Data who is not a Non-Professional User. User Fees for Professional Users are payable for both ''internal'' Professional Users (Devices or user IDs of employees of a Customer) and ''external'' Professional Users (Devices or user IDs of Professional Users who receive the Data from a Customer and are not employed by the Customer). (Non-Professional Users must be external since a person who uses the COB Data Feed for a commercial purpose cannot be a Non-Professional User.)

[13] A ''Non-Professional User'' is a natural person who uses the COB Data Feed only for personal purposes and not for any commercial purpose and who, if he or she works in the United States, is not: (i) Registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under

subject to a cap of $500 per month (*i.e.,* a Customer pays no more than $500 in User Fees for a given month).

The Exchange proposes to reduce the Data Fee from $500 per month to $100 per month. The Data Fee would be waived for Customers of the Book Depth Data Feed. The Exchange proposes to reduce the User Fee for Non-Professional Users from $1 per month to zero.[14] For the purpose of consistency, the Exchange proposes to amend the definition of a COB Data Feed Customer so that it is the same definition that is applicable to the BBO and Book Depth Data Feeds.

Systems Fees: MDX currently charges a Port Fee of $500 per data port per month for receipt of a data feed through a connection to MDX. The Exchange proposes to amend the MDX Fee Schedule to clarify how the Port Fee is assessed. First, the Exchange proposes to clarify that the Port Fee applies to the receipt of any data feed through a connection to MDX, not only for the receipt of the BBO Data Feed. Second, the Exchange proposes to amend the description of the fee to clarify that it is payable by any Customer that receives data through a direct connection to MDX or through a connection to MDX provided by an extranet service provider. Lastly, the Exchange proposes to clarify that the port fee applies to receipt of any data feed but is only assessed once per data port. For example, if a Customer receives two data feeds over the same port, the Port Fee is only assessed once for that port.

The Exchange also proposes to delete from the MDX Fee Schedule the statements that MDX will not charge fees for any of the data feeds (or the port fee) for any calendar month in which Customer commences receipt of the data after the 15th day of the month (or in the case of the port fee, establishes the connection after the 15th day of the month) or discontinues receipt of the data before the 15th day of the month (or in the case of the port fee, disconnects before the 15th day of the month). The Exchange believes it would be more appropriate for billing policies to be located within MDX's written agreement with Customers.

All of the proposed fee changes would be effective on January 1, 2015.

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.[15] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[16] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange also believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

BBO Data Fees

The Exchange believes the proposed Display Only Service User Fee for the BBO Data Feed is equitable and not unfairly discriminatory because it would apply equally to all Customers that distribute data via a Display Only Service. The Exchange believes the proposed User Fee is reasonable because it compares favorably to usage fees that other markets charge for similar products. For example, NASDAQ OMX PHLX charges a $40 per month Professional Subscriber Fee for use of its market data products by each of internal and external users. The International Securities Exchange charges a $20 per month Controlled Device Fee for use of its Top Quote Feed and a separate $25 per month Controlled Device Fee for use of its Spread Feed. NYSE charges a $50 per month Professional User Fee for use of each of its NYSE ArcaBook for Amex Options and NYSE ArcaBook for Arca Options market data products that include top-of-book and last sale data similar to the data in the BBO Data Feed.

The Exchange believes it is equitable and not unfairly discriminatory to charge a lower fee for use of BBO data via a Display Only Service because such use would be limited to display use only. The Display Only Service would only allow a natural person end-user to view and manipulate data using the Customer's computerized service, but not to save, copy, export or transfer the data or any results of the manipulation to any other computer hardware, software or media, except for printing it to paper or other non-magnetic media. The Exchange notes other exchanges charge fees for market data products based on distinctions between ''display'' and ''non-display'' usage.[18]

Book Depth Data Fees

The Exchange believes the proposed Data Fee for the Book Depth Data Feed is equitable and not unfairly discriminatory because it would apply equally to all Customers. All Customers would have the same rights to utilize the data (*i.e.,* use the data internally and/or distribute it externally) as long as the Customer has entered into a market data agreement with MDX for the data and pays the Data Fee.

The Exchange believes the proposed Data Fee is reasonable because it compares favorably to fees that other markets charge for similar products. For example, BATS BZX Exchange charges a $1,000 per month Internal Use Access Fee and a $5,000 per month External Distribution Access Fee for Multicast PITCH, which is its depth of market and last sale feed. NASDAQ OMX PHLX charges Internal Distributors a monthly fee of $4,000 and External Distributors a monthly fee of a $4,500 for its Depth of Market data feed that includes full depth of quotes and orders and last sale data for options listed on PHLX. NYSE charges a $3,000 per month Access Fee and $2,000 per month External Redistribution fee for each of its NYSE ArcaBook for Amex Options and NYSE

that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, if he or she works outside of the United States, does not perform the same functions as someone who would qualify as a Non-Professional User if he or she worked in the United States.

[14] The Exchange proposes to amend the definition of ''Non-Professional User'' so that it is consistent with the definition of ''Non-Professional User'' used by OPRA. *See* OPRA Addendum for Nonprofessionals, which is part of Attachments B–1 and B–2 to OPRA's Vendor Agreement. A ''Non-Professional User'' would mean a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) Registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] *Id.*

[18] *See e.g.,* Securities Exchange Act Release No. 69554 (May 10, 2013), 78 FR 28917 (May 16, 2013), (SR–NYSEArca–2013–47); Securities Exchange Act Release No. 69553 (May 10, 2013), 78 FR 28926 (May 16, 2013), (SR–NYSEMKT–2013–40); Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013), (SR–PHLX–2012–145); and Securities Exchange Act Release No. 64652 (June 13, 2011), 76 FR 35498 (June 17, 2011), (SR–NASDAQ–2011–45).

ArcaBook for Arca Options market data products that include top-of-book, last sale and depth of quote data.

The Exchange believes the proposal to allow BBO Data Feed Customers to upgrade to become Book Depth Data Feed Customers without any additional Data Fee is equitable and not unfairly discriminatory because it would apply equally to all BBO Data Feed Customers. BBO Data Feed Customers currently pay MDX $1,000 per month for the right to use and redistribute the data in the BBO Data Feed. The Book Depth Data Feed includes all of the data in the BBO Data Feed. The proposed fee arrangement would allow a Book Depth Data Feed Customer who has upgraded from a BBO Data Feed to use and redistribute Book Depth data for no additional charge, thereby incentivizing further redistribution of the data in the Book Depth Data Feed. The Exchange notes other exchanges offer similar fee arrangements.[19]

The Exchange believes the proposed Display Only Service User Fee for the Book Depth Data Feed is equitable and not unfairly discriminatory because it would apply equally to all Customers that distribute data via a Display Only Service. The Exchange believes the proposed User Fee is reasonable because it compares favorably to usage fees that other markets charge for similar products. For example, NASDAQ OMX PHLX charges a $40 per month Professional Subscriber Fee for use of its market data products by each of internal and external users. The International Securities Exchange charges a $50 per month Controlled Device Fee for use of its Depth of Market Feed. NYSE charges a $50 per month Professional User Fee for use of each of its NYSE ArcaBook for Amex Options and NYSE ArcaBook for Arca Options market data products.

The Exchange believes it is equitable and not unfairly discriminatory to charge a lower fee for use of Book Depth data via a Display Only Service because such use would be limited to display use only. The Display Only Service would only allow a natural person end-user to view and manipulate data using the Customer's computerized service, but not to save, copy, export or transfer the data or any results of the manipulation to any other computer hardware, software or media, except for printing it to paper or other non-magnetic media. As noted above, other exchanges charge fees for market data products based on distinctions between ''display'' and ''non-display'' usage.[20]

COB Data Fees: The Exchange believes the proposed reductions of the Data Fee and Non-professional User Fee for the COB Data Feed are equitable and not unfairly discriminatory because they would apply equally to all Customers of the COB Data Feed. The Exchange believes the proposed Data Fee is reasonable because it compares favorably to fees that other markets charge for similar products. For example, as noted above, the International Securities Exchange charges distributors of its Spread Feed a base monthly fee of $3,000. The proposed lower Data Fee may permit wider distribution of the COB Data Feed at a lower cost to Customers, and the reduced User Fee may make it less costly for Customers to distribute data to Non-professional Users, thereby benefitting both Customers and Non-professional Users, including public investors.

The Exchange believes the proposal to allow Book Depth Data Feed Customers to become COB Data Feed Customers without any additional Data Fee is equitable and not unfairly discriminatory because it would apply equally to all Book Depth Data Feed Customers. Book Depth Data Feed Customers would pay MDX $1,000 per month for the right to use and redistribute the data in the Book Depth Data Feed. The COB Data Feed is a subset of the Book Depth Data Feed. The proposed fee arrangement would allow a Book Depth Data Feed Customer to use and redistribute the COB Data Feed for no additional charge, thereby incentivizing further redistribution of the data in the COB Data Feed. The Exchange notes other exchanges offer similar fee arrangements.[21]

Systems Fees and Billing Policy: The Exchange believes the proposed changes to the description of the Port Fee are equitable, reasonable and not unfairly discriminatory because they would benefit all Customers by clarifying how the Port Fee is assessed. The Exchange believes removing the billing policy from the MDX Fee Schedule is equitable, reasonable and not unfairly discriminatory because MDX believes it would be more appropriate for billing policies to be located within MDX's written agreement with Customers along with other policies related to MDX's market data services.

For the reasons cited above, the Exchange believes the proposed fees for the BBO, Book Depth and COB Data Feeds are equitable, reasonable and not unfairly discriminatory. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed fees for the BBO, Book Depth and COB Data Feeds fail to meet the requirements of the Act.

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.

An exchange's ability to price its proprietary data feed products is constrained by (1) the existence of actual competition for the sale of such data, (2) the joint product nature of exchange platforms, and (3) the existence of alternatives to proprietary data.

The Existence of Actual Competition. The Exchange believes competition provides an effective constraint on the market data fees that the Exchange, through MDX, has the ability and the incentive to charge. C2 has a compelling need to attract order flow from market participants in order to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on C2 to act reasonably in setting its fees for market data, particularly given that the market participants that will pay such fees often will be the same market participants from whom C2 must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. C2 currently competes with eleven options exchanges (including C2's affiliate, Chicago Board Options Exchange) for order flow.[22]

In addition, in the case of products that are distributed through market data vendors, the market data vendors

[19] For example, the Exchange believes the NASDAQ Options Market charges only one distributor fee to allow a subscriber access to its ''NASDAQ ITCH-to-Trade Options'' (ITTO) and ''Best of NASDAQ Options'' (BONO) products. The Exchange believes NASDAQ OMX BX charges only one distributor fee to allow a subscriber access to its ''BX Options Depth of Market'' (BX Depth) and ''BX Options Top of Market'' (BX Top) products. In addition, the Exchange believes the International Securities Exchange charges no additional fee to subscribers of its ''Depth of Market'' Feed that also access its Top Quote Feed.

[20] *Supra* footnote 18.

[21] *Supra* footnote 19.

[22] The Commission has previously made a finding that the options industry is subject to significant competitive forces. *See e.g.,* Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR–ISE–2009–97) (order approving ISE's proposal to establish fees for a real-time depth of market data offering).

themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Internet portals, such as Google, impose price discipline by providing only data that they believe will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Similarly, Customers will not offer the BBO, Book Depth or COB Data Feeds unless these products will help them maintain current users or attract new ones. For example, a broker-dealer will not choose to offer the BBO, Book Depth or COB Data Feeds to its retail customers unless the broker-dealer believes that the retail customers will use and value the data and the provision of such data will help the broker-dealer maintain the customer relationship, which allows the broker-dealer to generate profits for itself. Professional users will not request any of these feeds from Customers unless they can use the data for profit-generating purposes in their businesses. All of these operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data quality, and price and distribution of their data products. The more trade executions a platform does, the more valuable its market data products become. The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's broker-dealer customers view the costs of transaction executions and market data as a unified cost of doing business with the exchange.

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products. Thus, because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 options self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

The Existence of Alternatives. C2 is constrained in pricing the BBO, Book Depth and COB Data Feeds by the availability to market participants of alternatives to purchasing these products. C2 must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. Other options exchanges can and have produced their own top-of-book, book depth and complex strategies market data products, and thus are sources of potential competition for MDX. For example, as noted above, BATS, ISE, NASDAQ OMX PHLX and NYSE offer market data products that compete with the BBO, Book Depth and COB Data Feeds. The large number of SROs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and BD is currently permitted to produce proprietary data products, and many currently do. In addition, the OPRA data feed is a significant competitive alternative to the BBO and last sale data included in the BBO and Book Depth Data Feeds.

Further, data products are valuable to professional users only if they can be used for profit-generating purposes in their businesses and valuable to non-professional users only insofar as they provide information that such users expect will assist them in tracking prices and market trends and making trading decisions.

The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [23] and paragraph (f) of Rule 19b–4 [24] 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

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f).

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–C2–2014–029 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–C2–2014–029. 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–C2–2014–029 and should be submitted on or before January 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30890 Filed 1–5–15; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73964; File No. SR–NYSEMKT–2014–107]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Bylaws of the Exchange's Ultimate Parent Company, Intercontinental Exchange, Inc., To Designate Its Chief Strategic Officer, Chief Technology Officer and General Counsel as ''Senior Officers'' of ICE

December 30, 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 December 22, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Bylaws (the ''ICE Bylaws'') of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. (''ICE''), to designate its Chief Strategic Officer, Chief Technology Officer and General Counsel as ''Senior Officers'' of ICE. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 seeks approval for its ultimate parent entity ICE[3] to amend the ICE Bylaws to designate its Chief Strategic Officer, Chief Technology Officer and General Counsel (each, a ''Designated Officer'' and together, the ''Designated Officers'') as ''Senior Officers'' of ICE. Each Designated Officer was a Senior Officer under the ICE Bylaws prior to the acquisition by ICE of NYSE Euronext in 2013 because each also was a Senior Vice President. Under the ICE Bylaws, all Senior Vice Presidents are Senior Officers. As Senior Officers, the Designated Officers were entitled under Article X, Section 10.6 of the ICE Bylaws to indemnification by ICE against certain actions, suits and proceedings.

Upon consummation of the acquisition of NYSE Euronext, the three titles were streamlined and the term ''Senior Vice President'' was eliminated. Specifically, the officer whose former title was ''Senior Vice President, Chief Strategic Officer'' is now ''Chief Strategic Officer''; the officer whose former title was ''Senior Vice President, Chief Technology Officer'' is now ''Chief Technology Officer''; and the officer whose title was formerly ''Senior Vice President, General Counsel'' is now ''General Counsel''. The proposed amendment to the ICE Bylaws would assure that the Designated Officers continue to be identified as ''Senior

[3] ICE owns 100% of the equity interest in ICE Holdings, Inc. (''ICE Holdings''), which in turn owns 100% of the equity interest in NYSE Holdings, LLC (''NYSE Holdings''). NYSE Holdings owns 100% of the equity interest of NYSE Group, Inc., which in turn directly or indirectly owns 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations—the Exchange, the New York Stock Exchange, LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'') [sic].

Officers'' of ICE and therefore eligible for indemnification under Article X, Section 10.6 of the ICE Bylaws. The proposed rule change would not extend the indemnification provisions of the ICE Bylaws to any officers that were not historically indemnified nor would it alter the scope of the indemnity provided.[4]

Under the proposed amendment, Section 5.1 of the ICE Bylaws would be amended to identify by title additional officers that the board of directors may choose, specifically a Chief Strategic Officer, a Chief Technology Officer and a General Counsel (the ''Designated Officers''). Section 5.1 would also be amended to expand the definition of the term ''Senior Officer'' to include the Designated Officers and any other officer designated a ''Senior Officer'' by the Board or the Compensation Committee of the Board from time to time in its sole discretion. The amendments also would provide that any employee deemed an officer of the Corporation under Section 16 of the Exchange Act[5] will be deemed a Senior Officer for purposes of the Bylaws.

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b) of the Exchange Act,[6] in general, and Section 6(b)(5) of the Exchange Act,[7] in particular, because the proposed rule change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The clarification of the right to indemnification will enhance the ability of the Designated Officers to carry out their responsibilities as officers of ICE, including their responsibilities under the Exchange 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 Exchange Act. The proposed rule change is not designed to address any competitive issue in the U.S. or European securities markets or have any impact on competition in those markets; rather, the clarification of the right to indemnification will enhance the ability of the Designated Officers to carry out their responsibilities as such, including their responsibilities under the Exchange Act.

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) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the clarification of the right to indemnification may enhance the ability of the relevant officers of ICE to carry out their responsibilities as such, including their responsibilities under the Exchange Act, without delay. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2014–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–107. 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

[4] The Exchange's affiliates the NYSE and NYSE Arca have also submitted the same proposed rule filing in connection with the ICE Bylaw amendment.

[5] 15 U.S.C. 78p.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the 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 Commission has waived the five-day prefiling requirement in this case.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSEMKT–2014–107, and should be submitted on or before January 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30900 Filed 1–5–15; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 73961; File No. SR–OCC–2014–23]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change To Clarify That OCC Would Not Treat a Futures Transaction That Is an Exchange-for-Physical or Block Trade as a Non-Competitively Executed Trade If the Exchange on Which Such Trade Is Executed has Provided OCC With Representations That it Has Policies or Procedures Requiring That Such Trades Be Executed at Reasonable Prices and That Such Price Is Validated by the Exchange

December 30, 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 December 19, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by OCC. 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. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to amend its Rules to permit OCC to add an interpretation and policy clarifying that OCC would not treat a futures transaction that is an exchange-for-physical or block trade as a non-competitively executed trade, and therefore subject to delayed acceptance for clearing, if the exchange on which such trade is executed has provided OCC with representations satisfactory to OCC that it has policies and procedures requiring such trades to be executed at reasonable prices and that such prices are validated by the exchange.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OCC is proposing to modify its By-Laws to add an interpretation and policy to Section 7 of Article XII of the By-Laws to clarify that OCC would not treat a futures transaction that is an exchange-for-physical (''EFP'')[3] or block trade[4] as a non-competitively executed trade, and therefore subject to delayed novation, if the exchange on which the futures EFP or block trade is executed has provided OCC with representations that it has rules, policies or procedures requiring that such trades be executed at reasonable prices and that such prices are validated by the exchange.

Background

Under OCC's By-Laws, the novation of confirmed trades (*i.e.,* transactions in options, futures, or other ''cleared contracts'' effected through an exchange and submitted to OCC for clearing) occurs at the ''commencement time'' for such transactions.[5] The ''commencement time'' for most confirmed trades is when daily position reports are made available to clearing members.[6] However, transactions in certain cleared products and certain types of transactions, including non-competitively executed EFP and block trades, have delayed commencement times that are tailored to address risks specific to such products or transactions,[7] such as the risks presented by off-market transactions.

When OCC began clearing EFP and block transactions, it established that the commencement time for such transactions is expressly conditioned upon the receipt by OCC of variation payments due from purchasing and selling clearing members because EFP and block trades could be executed away from the market and be executed at other than market prices. These factors were viewed as creating heightened exposure to OCC if a clearing member defaults on a trade executed at an off-market price and, as a result, Article XII, Section 7 of OCC's By-Laws establishes that the commencement time for a futures transaction that is identified as an EFP or block trade is the time of the first variation payment after the trade is reported to OCC (typically 9:00 a.m. Central Time the following business day).[8] OCC delays its novation of these non-competitively executed futures trades because OCC is bound to pay the first variation settlement amount to the counterparty once novation has occurred, and if the agreed-upon price at which the trade is entered differs from the competitive market price, there is an increased likelihood that OCC may experience a loss if it is required to close out a defaulting purchaser's position. Accordingly, OCC does not novate, and thereby become a counterparty to, a non-competitively executed trade if OCC fails to receive the first variation payment when due.

[3] An EFP is a transaction between two parties in which a futures contract on a commodity or security is exchanged for the actual physical good.

[4] A block trade is a trade involving a large number of shares being traded at an arranged price between parties, outside of the open markets, in order to lessen the impact of such a large trade being made public.

[5] Cleared Contracts and Commencement Time are defined terms set forth in Article 1, Section 1 of OCC's By-Laws.

[6] *See* OCC's By-Laws Article VI, Section 5. In a practical sense, however, most trades are novated upon proper submission to OCC for clearing since OCC's By-Laws, with limited exception, do not permit OCC to reject any confirmed trade due to the failure of the purchasing clearing member to pay any amount due to OCC at or before the settlement time. *See also* Securities Exchange Act Release No. 65990 (December 16, 2011), 76 FR 79731 (December 22, 2011) (SR–OCC–2011–17).

[7] *Id.*

[8] *See* Securities Exchange Act Release No. 44727 (August 20, 2001), 66 FR 45351 (August 28, 2001) (SR–OCC–2001–07).

EFP and Block Trades Subject to Price Checks

In the time since OCC adopted Article XII, Section 7 of its By-Laws, the Commodity Futures Trading Commission (''CFTC'') has adopted Regulation 1.73, which requires clearing futures commission merchants (''FCMs'') to establish certain risk controls, including risk based limits for bilaterally executed transactions and for block trades.[9] In light of this requirement and other proposed regulatory developments that may affect EFP and block trades in futures,[10] certain exchanges that permit such transactions have requested that OCC review its By-Laws regarding delayed novation of futures EFP and block trades (hereinafter, ''Block Trades''). Specifically, such exchanges have implemented rules, supported by policies and procedures, which require their market participants to execute Block Trades at reasonable prices that are verified by the exchange. These rules, policies and procedures leverage risk controls implemented by FCMs, as applicable. These exchanges have inquired as to whether Block Trades continue to present the same risk to OCC as they did before such rules, policies or procedures were in place. OCC reviewed its practices with respect to delayed novation of Block Trades and determined that it will novate Block Trades when daily position reports are made available provided that the exchange that submitted such Block Trades to OCC represents to OCC that the exchange has in place rules, policies and procedures to verify the reasonableness of the price of Block Trades it submits to OCC for clearance and settlement, and that such price is validated by the exchange.

OCC has determined that Block Trades that are subject to price reasonability checks do not present the same settlement risks discussed above in relation to non-competitively executed Block Trades. Specifically, should a clearing member that executed a reasonably priced Block Trades fail to pay its first variation payment to OCC in respect such trade, OCC expects to liquidate the futures positions at the prevailing market price and likely obtain sufficient funds, or have sufficient funds in its clearing fund, to pay, or reimburse itself for, the first variation settlement to the counterparty to the trade. This is the same risk management methodology OCC uses for all other competitively executed trades in cleared contracts that OCC accepts for clearance and settlement on a daily basis. Accordingly, OCC proposes to exclude Block Trades from the delayed novation provisions of Article XII, Section 7 by adding an interpretation and policy thereto that provides for the treatment of Block Trades as competitively executed trades provided that the Block Trades are reported by an exchange that represents to OCC that it performs a price reasonableness check on the trade, and that such price is validated by the exchange.

Verification of Exchange Rules, Policies and Procedures Related to Price Reasonableness

Before permitting an exchange to submit Block Trades that will not be subject to delayed novation, OCC will require an exchange to provide OCC with a certification that the exchange has rules, policies or procedures as they relate to verifying the reasonableness of the price of the Block Trade. Specifically, OCC will require an exchange to certify that its rules, policies or procedures provide that the price at which a Block Trade is executed must be fair and reasonable in light of: (i) The size of the Block Trade; (ii) the prices and sizes of other transactions in the same contract at the relevant time; and (iii) the prices and sizes of transactions in other relevant markets, including, without limitation, the underlying cash market or related futures markets, at the relevant time.[11] An exchange will also have to certify that its rules, policies or procedures require one or both parties to a Block Trade to report the trade details of the Block Trade to the exchange within a reasonable period of time (*i.e.,* within 10 minutes of the time of execution or, if the Block Trade is executed outside of regular trading hours, within 15 minutes of the commencement of trading on the next business day). OCC believes that it is appropriate to rely on price reasonableness checks performed by exchanges trading futures because they are self-regulatory organizations subject to regulatory oversight, including routine examinations. Moreover, OCC will presume that all Block Trades submitted by an exchange that represents that it has price reasonableness rules, policies or procedures in place will submit to OCC Block Trades that have undergone a price reasonableness check.

In addition to exchanges implementing rules, policies or procedures regarding the price reasonableness checks for Block Trades, exchanges are able to use existing authority to notify OCC to disregard, pursuant to Article VI, Section 7(c) of OCC's By-Laws, any Block Trade submitted to OCC that was executed at an unreasonable price, since such a trade could not be properly cleared under the proposed interpretation but instead would fall within the non-competitively executed category and therefore be subject to delayed novation. Such a notification would be delivered to OCC along with other trades ''busted'' by an exchange and in accordance with an operational process that currently occurs every day before daily position reports are distributed. OCC believes that this measure appropriately protects OCC in the event OCC receives a Block Trade at an unreasonable price. Moreover, OCC and the exchanges maintain an informal ongoing dialogue about operational matters, which OCC will use to confirm the continued application of price reasonableness controls.

2. Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[12] because the proposed rule change will ensure that the rules of OCC are designed to promote the prompt and accurate clearance and settlement of securities transactions as well as remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. As described above, the proposed rule change implements an Interpretation and Policy that sets forth the specific criteria that must be met by a futures exchange before OCC would consider a Block Trade submitted to OCC by such

[9] *See* 17 CFR 1.73. Specifically, Regulation 1.73 requires FCMs to: (1) Establish risk-based limits in the proprietary account and in each customer account based on position size, order size, margin requirements, or similar factors; (2) screen orders for compliance with the risk-based limits; and (3) monitor for adherence to the risk based limits intra-day and overnight.

[10] Specifically, the CFTC has proposed regulations requiring Designated Contract Markets (*i.e.,* futures exchanges) to determine whether or not the price of a block trade is fair and reasonable considering: (1) The size of the block trade, (2) the price and size of other block trades in any relevant markets at the applicable time, and (3) the circumstances of the market or the parties to the block trade. *See* proposed CFTC Regulation 38.503. 75 FR 80572, 80592. *See also* proposed Appendix B of part 38 of the CFTC's proposed regulations concerning Core Principle 9. 75 FR 80572, 80630. The CFTC has also proposed to adopt similar regulations concerning EFP trades. *See* proposed CFTC Regulation 38.505. 75 FR 80572, 80593.

[11] For example, OneChicago LLC (''OCX'') Rule 417 governs Block Trades executed on OCX and provides that such trades be executed on a designated trading platform that will automatically verify that Block Trades were executed at competitive prices by price verification software for price reasonableness.

[12] 15 U.S.C. 78q–1(b)(3)(F).

exchange to not be subject to the delayed novation time set forth in Article XII, Section 7 of OCC's By-Laws. The proposed rule change therefore ensures that OCC's rules explain the time at which OCC would novate Block Trades and thereby promotes the prompt and accurate clearance and settlement of securities transactions. In addition, as a result of OCC novating certain Block Trades at commencement time, the proposed rule change removes impediments to and perfects the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions because the time at which OCC novates trades submitted by exchanges for clearance and settlement will be more uniform across different product types. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.[13] The proposed rule change will provide that Block Trades executed at reasonable prices will not be subject to delayed novation by OCC. The proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because the proposed rule change would be applied uniformly to all Block Trade transactions, regardless of the identity of the clearing member for whose account the trade was reported and the exchange through which the trade is reported to OCC. Moreover, the proposed interpretation to Article XII, Section 7 will apply uniformly to all futures exchanges that submit trades to OCC for clearance and settlement.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

[13] 15 U.S.C. 78q–1(b)(3)(I).

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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2014–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2014–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_23.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2014–23 and should be submitted on or before January 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30897 Filed 1–5–15; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73962; File No. SR–NYSE–2014–67]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Bylaws of the Exchange's Ultimate Parent Company, Intercontinental Exchange, Inc., To Designate Its Chief Strategic Officer, Chief Technology Officer and General Counsel as ''Senior Officers'' of ICE

December 30, 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 December 22, 2014, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Bylaws (the ''ICE Bylaws'') of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. (''ICE''), to designate its Chief Strategic Officer, Chief Technology Officer and General

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Counsel as ''Senior Officers'' of ICE. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks approval for its ultimate parent entity ICE [3] to amend the ICE Bylaws to designate its Chief Strategic Officer, Chief Technology Officer and General Counsel (each, a ''Designated Officer'' and together, the ''Designated Officers'') as ''Senior Officers'' of ICE. Each Designated Officer was a Senior Officer under the ICE Bylaws prior to the acquisition by ICE of NYSE Euronext in 2013 because each also was a Senior Vice President. Under the ICE Bylaws, all Senior Vice Presidents are Senior Officers. As Senior Officers, the Designated Officers were entitled under Article X, Section 10.6 of the ICE Bylaws to indemnification by ICE against certain actions, suits and proceedings.

Upon consummation of the acquisition of NYSE Euronext, the three titles were streamlined and the term ''Senior Vice President'' was eliminated. Specifically, the officer whose former title was ''Senior Vice President, Chief Strategic Officer'' is now ''Chief Strategic Officer''; the officer whose former title was ''Senior Vice President, Chief Technology Officer'' is now ''Chief Technology Officer''; and the officer whose title was formerly ''Senior Vice President, General Counsel'' is now ''General Counsel''. The proposed amendment to the ICE Bylaws would assure that the Designated Officers continue to be identified as ''Senior Officers'' of ICE and therefore eligible for indemnification under Article X, Section 10.6 of the ICE Bylaws. The proposed rule change would not extend the indemnification provisions of the ICE Bylaws to any officers that were not historically indemnified nor would it alter the scope of the indemnity provided.[4]

Under the proposed amendment, Section 5.1 of the ICE Bylaws would be amended to identify by title additional officers that the board of directors may choose, specifically a Chief Strategic Officer, a Chief Technology Officer and a General Counsel (the ''Designated Officers''). Section 5.1 would also be amended to expand the definition of the term ''Senior Officer'' to include the Designated Officers and any other officer designated a ''Senior Officer'' by the Board or the Compensation Committee of the Board from time to time in its sole discretion. The amendments also would provide that any employee deemed an officer of the Corporation under Section 16 of the Exchange Act [5] will be deemed a Senior Officer for purposes of the Bylaws.[6]

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b) of the Exchange Act,[7] in general, and Section 6(b)(5) of the Exchange Act,[8] in particular, because the proposed rule change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The clarification of the right to indemnification will enhance the ability of the Designated Officers to carry out their responsibilities as officers of ICE, including their responsibilities under the Exchange 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 Exchange Act. The proposed rule change is not designed to address any competitive issue in the U.S. or European securities markets or have any impact on competition in those markets; rather, the clarification of the right to indemnification will enhance the ability of the Designated Officers to carry out their responsibilities as such, including their responsibilities under the Exchange Act.

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) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [12] normally does not become operative for 30 days after the date of its

[3] ICE owns 100% of the equity interest in ICE Holdings, Inc. (''ICE Holdings''), which in turn owns 100% of the equity interest in NYSE Holdings, LLC (''NYSE Holdings''). NYSE Holdings owns 100% of the equity interest of NYSE Group, Inc., which in turn directly or indirectly owns 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations—the Exchange, NYSE Arca, Inc. (''NYSE Arca'') and NYSE MKT LLC (''NYSE MKT'').

[4] The Exchange's affiliates NYSE Arca and NYSE MKT have also submitted the same proposed rule filing in connection with the ICE Bylaw amendment.

[5] 15 U.S.C. 78p.

[6] A copy of the proposed amendment to the ICE Bylaws is attached as Exhibit 5A. An extract from the resolutions adopted by the ICE board of directors on February 28, 2014 authorizing the proposed amendment is attached as Exhibit 5B.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the 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 Commission has waived the five-day prefiling requirement in this case.

[12] 17 CFR 240.19b–4(f)(6).

filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the clarification of the right to indemnification may enhance the ability of the relevant officers of ICE to carry out their responsibilities as such, including their responsibilities under the Exchange Act, without delay. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2014–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–67. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2014–67, and should be submitted on or before January 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30898 Filed 1–5–15; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73958; File No. SR–NYSEArca–2014–143]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of the SPDR® DoubleLine Total Return Tactical ETF Under NYSE Arca Equities Rule 8.600

December 30, 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 December 17, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 list and trade shares of the SPDR® DoubleLine Total Return Tactical ETF under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares: [4] SPDR® DoubleLine Total Return Tactical ETF (''Fund'').[5] The Shares will be offered by

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed

SSgA Active ETF Trust (the ''Trust''), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.[6] SSgA Funds Management, Inc. will serve as the investment adviser to the Fund (the ''Adviser'' or ''SSgA FM''). DoubleLine Capital L.P. will be the Fund's sub-adviser (''Sub-Adviser''). State Street Global Markets, LLC (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. State Street Bank and Trust Company (the ''Administrator'', ''Custodian'' or ''Transfer Agent'') will serve as administrator, custodian and transfer agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[7] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser and Sub-Adviser are not registered as a broker-dealer but the Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Sub-Adviser is not affiliated with a broker-dealer. In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

SPDR® DoubleLine Total Return Tactical ETF

Principal Investments

According to the Registration Statement, the investment objective of the Fund will be to maximize total return. Under normal circumstances,[8] the Fund will invest all of its assets in the SSgA DoubleLine Total Return Tactical Portfolio (the ''Portfolio''), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly in all of the securities and assets owned by the Portfolio.[9]

Under normal circumstances, the Portfolio will invest at least 80% of its net assets in a diversified portfolio of fixed income securities of any credit quality, as described further below.[10] Fixed income securities in which the Portfolio principally will invest include the following, as discussed further below: Securities issued or guaranteed by the U.S. government or its agencies, instrumentalities or sponsored corporations; inflation protected public obligations of the U.S. Treasury (commonly known as ''TIPS''); agency and non-agency residential mortgage-backed securities (''RMBS''); agency and non-agency commercial mortgage-backed securities (''CMBS''); agency and non-agency asset-backed securities

funds of the WisdomTree Trust); 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR–NYSEArca–2010–57) (order approving listing and trading of AdviserShares WCM/BNY Mellon Focused Growth ADR ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving listing and trading of Cambria Global Tactical ETF); 71540 (February 12, 2014), 79 FR 9515 (February 19, 2014) (SR–NYSEArca–2013–138) (order approving listing and trading of shares of the iShares Enhanced International Large-Cap ETF and iShares Enhanced International Small-Cap ETF).

[6] The Trust is registered under the 1940 Act. On May 30, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (''Securities Act'') (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–173276 and 811–22542) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29524 (December 13, 2010) (File No. 812–13487) (''Exemptive Order'').

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their 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.

[8] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] The Fund is intended to be managed in a ''master-feeder'' structure, under which the Fund invests substantially all of its assets in a corresponding Portfolio (*i.e.,* a ''master fund''), which is a separate mutual fund registered under the 1940 Act that has an identical investment objective. As a result, the Fund (*i.e.,* a ''feeder fund'') has an indirect interest in all of the securities and assets owned by the Portfolio. Because of this indirect interest, the Fund's investment returns should be the same as those of the Portfolio, adjusted for the expenses of the Fund. In extraordinary instances, the Fund reserves the right to make direct investments in securities and other assets. The Adviser and Sub-Adviser will manage the investments of the Portfolio. Under the master-feeder arrangement, and pursuant to the Investment Advisory Agreement between the Adviser and the Trust, investment advisory fees charged at the Portfolio level are deducted from the advisory fees charged at the Fund level. This arrangement avoids a ''layering'' of fees, *i.e.,* the Fund's total annual operating expenses would be no higher as a result of investing in a master-feeder arrangement than they would be if the Fund pursued its investment objective directly. In addition, the Fund may discontinue investing through the master-feeder arrangement and pursue its investment objective directly if the Fund's Board of Trustees (''Board'') determines that doing so would be in the best interests of shareholders.

[10] Generally, as used in this proposed rule change, the terms debt security, debt obligation, bond, fixed income instrument and fixed income security are used interchangeably. These terms should be considered to include any evidence of indebtedness, including, by way of example, a security or instrument having one or more of the following characteristics: A security or instrument issued at a discount to its face value, a security or instrument that pays interest at a fixed, floating, or variable rate, or a security or instrument with a stated principal amount that requires repayment of some or all of that principal amount to the holder of the security. These terms are interpreted broadly to include any instrument or security evidencing what is commonly referred to as an IOU rather than evidencing the corporate ownership of equity unless that equity represents an indirect or derivative interest in one or more debt securities. For this purpose, the terms also include instruments that are intended to provide one or more of the characteristics of a direct investment in one or more debt securities.

(''ABS''); [11] domestic corporate bonds; fixed income securities issued by foreign corporations and foreign governments including emerging markets; bank loans (primarily senior loans, including loan participations or assignments whose loan syndication exceeds $300 million), municipal bonds and other securities (such as perpetual bonds) bearing fixed interest rates of any maturity.

The Portfolio intends to invest at least 20% of its net assets in mortgage-backed securities of any maturity or type guaranteed by, or secured by collateral that is guaranteed by, the United States Government, its agencies, instrumentalities or sponsored corporations, or in privately issued mortgage-backed securities rated at the time of investment Aa3 or higher by Moody's Investor Service, Inc. (''Moody's'') or AA- or higher by Standard & Poor's Rating Service (''S&P'') or the equivalent by any other nationally recognized statistical rating organization (''NRSRO'') or in unrated securities that are determined by the Adviser to be of comparable quality.

The Portfolio may invest up to 20% of its net assets in the aggregate in non-agency RMBS, CMBS and ABS.

The Sub-Adviser will actively manage the Portfolio's asset class exposure using a top-down approach based on analysis of sector fundamentals. The Sub-Adviser will rotate Portfolio assets among sectors in various markets to attempt to maximize return. Individual securities within asset classes will be selected using a bottom up approach. Under normal circumstances, the Sub-Adviser will use a controlled risk approach in managing the Portfolio's investments. The techniques of this approach attempt to control the principal risk components of the fixed income markets and include consideration of security selection within a given sector; relative performance of the various market sectors; the shape of the yield curve; and fluctuations in the overall level of interest rates.

The Portfolio may invest in corporate bonds.[12] The investment return of corporate bonds reflects interest on the bond and changes in the market value of the bond. The market value of a corporate bond may be affected by the credit rating of the corporation, the corporation's performance and perceptions of the corporation in the market place. Such corporate bonds may be investment grade or may be below investment grade.

The Portfolio may invest in sovereign debt. Sovereign debt obligations are issued or guaranteed by foreign governments or their agencies. Sovereign debt may be in the form of conventional securities or other types of debt instruments such as loans or loan participations. Sovereign debt obligations may be either investment grade or below investment grade.

The Portfolio may invest up to 25% of its net assets in corporate high yield securities (commonly known as ''junk bonds''). Under normal circumstances, the combined total of corporate, sovereign, non-agency and all other debt rated below investment grade will not exceed 40% of the Fund's net assets. The Sub-Adviser will strive to allocate below investment grade securities broadly by industry and issuer in an attempt to reduce the impact of negative events on an industry or issuer. Below investment grade securities are instruments that are rated BB+ or lower by S&P or Fitch Inc. or Ba1 or lower by Moody's or, if unrated by a NRSRO, of comparable quality in the opinion of the Sub-Adviser.

The Portfolio may invest up to 15% of its net assets in securities denominated in foreign currencies, and may invest beyond this limit in U.S. dollar-denominated securities of foreign issuers. The Portfolio may invest up to 25% of its net assets in securities and instruments that are economically tied to emerging market countries.

The Sub-Adviser also will monitor the duration of the securities held by the Portfolio to seek to mitigate exposure to interest rate risk.[13] Under normal circumstances, the Sub-Adviser will seek to maintain an investment portfolio with a weighted average effective duration of no less than 1 year and no more than 8 years. The duration of the portfolio may vary materially from its target, from time to time.

The Portfolio may invest in U.S. Government obligations. U.S. Government obligations are a type of bond. U.S. Government obligations include securities issued or guaranteed as to principal and interest by the U.S. Government, its agencies or instrumentalities.

The Portfolio may invest in TIPS of the U.S. Treasury, as well as TIPS of major governments and emerging market countries, excluding the United States. TIPS are a type of security issued by a government that are designed to provide inflation protection to investors.

The Portfolio may invest a substantial portion of its assets in U.S. agency mortgage pass-through securities. The term ''U.S. agency mortgage pass-through security'' refers to a category of pass-through securities backed by pools of mortgages and issued by one of several U.S. Government-sponsored enterprises: Ginnie Mae, Fannie Mae or Freddie Mac.

The Portfolio will seek to obtain exposure to U.S. agency mortgage pass-through securities primarily through the use of ''to-be-announced'' or ''TBA transactions.'' ''TBA'' refers to a commonly used mechanism for the forward settlement of U.S. agency mortgage pass-through securities, and not to a separate type of mortgage-backed security. Most transactions in mortgage pass-through securities occur through the use of TBA transactions.[14]

The Portfolio may invest in bank loans, which include floating rate loans. Bank loan interests may be acquired from U.S. or foreign commercial banks, insurance companies, finance companies or other financial institutions that have made loans or are members of a lending syndicate or from other holders of loan interests. Bank loans typically pay interest at rates which are re-determined periodically on the basis of a floating base lending rate (such as the London Inter-Bank Offered Rate) plus a premium. Bank loans are typically of below investment grade quality. Bank loans generally (but not always) hold the most senior position in the capital structure of a borrower and are often secured with collateral. The Portfolio may invest in both secured and unsecured loans.

The Portfolio may invest in collateralized loan obligations (''CLOs''). A CLO is a financing company (generally called a Special Purpose

[11] The term asset-backed securities is used by the Fund to describe securities backed by installment contracts, credit-card receivables or other assets but does not include either residential or commercial mortgage-backed securities. Both asset-backed and commercial mortgage-backed securities represent interests in ''pools'' of assets in which payments of both interest and principal on the securities are made on a regular basis. Asset-backed securities also include institutionally traded senior floating rate debt obligations issued by asset-backed pools and other issues, and interests therein.

[12] The Adviser expects that, under normal circumstances, the Fund will generally seek to invest in corporate bond issuances that have at least $100,000,000 par amount outstanding in developed countries and at least $200,000,000 par amount outstanding in emerging market countries.

[13] Duration is a measure used to determine the sensitivity of a security's price to changes in interest rates. The longer a security's duration, the more sensitive it will be to changes in interest rates.

[14] TBA transactions generally are conducted in accordance with widely-accepted guidelines which establish commonly observed terms and conditions for execution, settlement and delivery. In a TBA transaction, the buyer and seller decide on general trade parameters, such as agency, settlement date, par amount, and price. The actual pools delivered generally are determined two days prior to settlement date.

Vehicle or ''SPV''), created to reapportion the risk and return characteristics of a pool of assets. While the assets underlying CLOs are typically bank loans, the assets may also include (i) unsecured loans, (ii) other debt securities that are rated below investment grade, (iii) debt tranches of other CLOs, and (iv) equity securities incidental to investments in bank loans. When investing in CLOs, the Portfolio will not invest in equity tranches, which are the lowest tranche. However, the Portfolio may invest in lower debt tranches of CLOs, which typically experience a lower recovery, greater risk of loss, or deferral or non-payment of interest than more senior debt tranches of the CLO. In addition, the Portfolio intends to invest in CLOs consisting primarily of individual bank loans of borrowers and not repackaged CLO obligations from other high risk pools. The underlying bank loans purchased by CLOs are generally performing at the time of purchase but may become non-performing, distressed or defaulted. CLOs with underlying assets of non-performing, distressed or defaulted loans are not contemplated to comprise a significant portion of the Portfolio's investments in CLOs.

Non-Principal Investments

While the Adviser and Sub-Adviser, under normal circumstances, will invest at least 80% of the Portfolio's net assets in fixed income securities as described above, the Adviser and Sub-Adviser may invest up to 20% of the Portfolio's net assets in other securities and financial instruments, as described below.

According to the Registration Statement, in certain situations or market conditions, the Fund may (either directly or through the corresponding Portfolio) temporarily depart from its normal investment policies and strategies provided that the alternative is consistent with the Fund's investment objective and is in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in times of extreme market stress.

The Fund may (either directly or through its investments in its corresponding Portfolio) invest in the following types of investments: Money market instruments, such as repurchase agreements, money market funds (including money market funds managed by the Adviser), and commercial paper.

The Portfolio may invest in preferred securities traded on an exchange or over-the-counter (''OTC''). Preferred securities pay fixed or adjustable rate dividends to investors, and have ''preference'' over common stock in the payment of dividends and the liquidation of a company's assets.

The Portfolio may invest in convertible securities traded on an exchange or OTC. Convertible securities are bonds, debentures, notes, preferred stocks or other securities that may be converted or exchanged (by the holder or by the issuer) into shares of the underlying common stock (or cash or securities of equivalent value) at a stated exchange ratio.

The Portfolio may conduct foreign currency transactions on a spot (*i.e.,* cash) or forward basis (*i.e.,* by entering into forward contracts to purchase or sell foreign currencies).

The Portfolio may invest in foreign corporate and sovereign bonds originating from issuers in emerging market countries. An ''emerging market country'' is a country that, at the time the Fund invests in the related fixed income instruments, is classified as an emerging or developing economy by any supranational organization such as the International Bank of Reconstruction and Development or any affiliate thereof (the ''World Bank'') or the United Nations, or related entities, or is considered an emerging market country for purposes of constructing a major emerging market securities index.

The Portfolio may invest in ''Restricted Securities''. Restricted Securities are securities that are not registered under the Securities Act, but which can be offered and sold to ''qualified institutional buyers'' under Rule 144A under the Securities Act.[15]

The Portfolio may invest in exchange traded products (''ETPs''), which include exchange traded funds (''ETFs'') registered under the 1940 Act; exchange traded commodity trusts; and exchange traded notes (''ETNs''). The Adviser may receive management or other fees from the ETPs (''Affiliated ETPs'') in which the Portfolio or Fund may invest, as well as a management fee for managing the Fund.[16]

The Portfolio may invest up to 20% of its net assets in one or more ETPs that are qualified publicly traded partnerships (''QPTPs'') and whose principal activities are the buying and selling of commodities or options, futures, or forwards with respect to commodities. Income from QPTPs is generally qualifying income. A QPTP is an entity that is treated as a partnership for federal income tax purposes, subject to certain requirements. If such an ETP fails to qualify as a QPTP, the income generated from the Portfolio's investment in the QPTP may not be qualifying income.[17]

The Portfolio may purchase exchange-traded common stocks and exchange-traded preferred securities of foreign corporations. The Fund's investments in common stock of foreign corporations may also be in the form of American Depositary Receipts (''ADRs''), Global Depositary Receipts (''GDRs'') and European Depositary Receipts (''EDRs'') (collectively ''Depositary Receipts'').[18]

The Portfolio may invest in the securities of other investment companies, including affiliated funds, money market funds and closed-end funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act.

[15] *See* note 21 and accompanying text, *infra.*

[16] For purposes of this filing, ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The Portfolio may invest in certain ETPs that pay fees to the Adviser and its affiliates for management, marketing or other services. The ETPs all will be listed and traded in the U.S. on national securities exchanges. While the Fund may invest in inverse ETPs, the Fund will not invest in leveraged or inverse leveraged ETPs (*e.g.,* 2X or 3X).

[17] Income from QPTPs is generally qualifying income. Examples of such entities are the PowerShares DB Energy Fund, PowerShares DB Oil Fund, PowerShares DB Precious Metals Fund, PowerShares DB Gold Fund, PowerShares DB Silver Fund, PowerShares DB Base Metals Fund, and PowerShares DB Agriculture Fund, which are listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 8.200.

[18] Depositary Receipts are receipts, typically issued by a bank or trust company, which evidence ownership of underlying securities issued by a foreign corporation. For ADRs, the depository is typically a U.S. financial institution and the underlying securities are issued by a foreign issuer. For other Depositary Receipts, the depository may be a foreign or a U.S. entity, and the underlying securities may have a foreign or a U.S. issuer. Depositary Receipts will not necessarily be denominated in the same currency as their underlying securities. Generally, ADRs, in registered form, are designed for use in the U.S. securities market, and EDRs, in bearer form, are designated for use in European securities markets. GDRs are tradable both in the United States and in Europe and are designed for use throughout the world. The Fund may invest in sponsored or unsponsored ADRs; however, not more than 10% of the net assets of the Fund will be invested in unsponsored ADRs. With the exception of unsponsored ADRs, all equity securities (*i.e.,* common stocks, Depositary Receipts, certain preferred securities, ETPs and certain other exchange-traded investment company securities) in which the Portfolio or Fund may invest will trade on markets that are members of the Intermarket Surveillance Group (''ISG'') or that have entered into a comprehensive surveillance agreement with the Exchange.

The Portfolio may invest in municipal securities, which are securities issued by states, municipalities and other political subdivisions, agencies, authorities and instrumentalities of states and multi-state agencies or authorities. The municipal securities which the Portfolio may purchase include general obligation bonds and limited obligation bonds (or revenue bonds), including industrial development bonds issued pursuant to former federal tax law. General obligation bonds are obligations involving the credit of an issuer possessing taxing power and are payable from such issuer's general revenues and not from any particular source. Limited obligation bonds are payable only from the revenues derived from a particular facility or class of facilities or, in some cases, from the proceeds of a special excise or other specific revenue source. Also included within the general category of municipal securities are municipal leases, certificates of participation in such lease obligations or installment purchase contract obligations.

The Portfolio may invest up to 20% of its assets in derivatives, including exchange-traded futures on Treasuries or Eurodollars; U.S. exchange-traded or OTC put and call options contracts and OTC or exchange-traded swap agreements [19] (including interest rate swaps, total return swaps, excess return swaps, and credit default swaps). The Portfolio will segregate cash and/or appropriate liquid assets if required to do so by Commission or Commodity Futures Trading Commission (''CFTC'') regulation or interpretation.

In the case of a credit default swap (''CDS''), the contract gives one party (the buyer) the right to recoup the economic value of a decline in the value of debt securities of the reference issuer if the credit event (a downgrade or default) occurs. This value is obtained by delivering a debt security of the reference issuer to the party in return for a previously agreed payment from the other party (frequently, the par value of the debt security).[20]

CDSs may require initial premium (discount) payments as well as periodic payments (receipts) related to the interest leg of the swap or to the default of a reference obligation. The Portfolio will segregate assets necessary to meet any accrued payment obligations when it is the buyer of CDSs. In cases where the Portfolio is a seller of a CDS, if the CDS is physically settled, the Portfolio will be required to segregate the full notional amount of the CDS. Such segregation will not limit the Portfolio's exposure to loss.

The Portfolio may invest in variable and floating rate securities. Variable rate securities are instruments issued or guaranteed by entities such as (1) the U.S. Government, or an agency or instrumentality thereof, (2) corporations, (3) financial institutions, (4) insurance companies or (5) trusts that have a rate of interest subject to adjustment at regular intervals but less frequently than annually. A variable rate security provides for the automatic establishment of a new interest rate on set dates. Variable rate obligations whose interest is readjusted no less frequently than annually will be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate. The Portfolio may also purchase floating rate securities. A floating rate security provides for the automatic adjustment of its interest rate whenever a specified interest rate changes. Interest rates on these securities are ordinarily tied to, and are a percentage of, a widely recognized interest rate, such as the yield on 90-day U.S. Treasury bills or the prime rate of a specified bank. These rates may change as often as twice daily.

The Portfolio may invest in repurchase agreements with commercial banks, brokers or dealers to generate income from its excess cash balances and to invest securities lending cash collateral. A repurchase agreement is an agreement under which a fund acquires a financial instrument (*e.g.,* a security issued by the U.S. Government or an agency thereof, a banker's acceptance or a certificate of deposit) from a seller, subject to resale to the seller at an agreed upon price and date (normally, the next business day).

The Portfolio may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The Portfolio's exposure to reverse repurchase agreements will be covered by securities having a value equal to or greater than such commitments. Under the 1940 Act, reverse repurchase agreements are considered borrowings. Although there is no limit on the percentage of Fund assets that can be used in connection with reverse repurchase agreements, the Portfolio does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33⅓% of its net assets.

The Portfolio may invest in short-term instruments, including money market instruments, (including money market funds advised by the Adviser), repurchase agreements, cash and cash equivalents, on an ongoing basis to provide liquidity or for other reasons. Money market instruments are generally short-term investments that may include but are not limited to: (i) Shares of money market funds (including those advised by the Adviser); (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit (''CDs''), bankers' acceptances, fixed time deposits and other obligations of U.S. and foreign banks (including foreign branches) and similar institutions; (iv) commercial paper rated at the date of purchase ''Prime-1'' by Moody's or ''A–1'' by S&P, or if unrated, of comparable quality as determined by the Adviser; (v) non-convertible corporate debt securities (*e.g.,* bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of foreign banks (including U.S. branches) that, in the opinion of the Adviser, are of comparable quality to obligations of U.S. banks which may be purchased by the Portfolio. Any of these instruments may be purchased on a current or a forward-settled basis. Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Bankers' acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A Restricted Securities deemed illiquid by the Adviser, consistent with Commission guidance, and repurchase agreements having maturities longer than seven days.[21] The Fund will

[19] Swap agreements are contracts between parties in which one party agrees to make periodic payments to the other party based on the change in market value or level of a specified rate, index or asset. In return, the other party agrees to make payments to the first party based on the return of a different specified rate, index or asset.

[20] The Portfolio will enter into CDS agreements only with counterparties that meet certain standards of creditworthiness.

[21] The Board has delegated the responsibility for determining the liquidity of Rule 144A Restricted Securities that the Portfolio may invest in to the Adviser. In reaching liquidity decisions, the

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.[22]

According to the Registration Statement, the Portfolio and Fund will each be classified as a non-diversified investment company under the 1940 Act. A ''non-diversified'' classification means that the Portfolio or Fund is not limited by the 1940 Act with regard to the percentage of its assets that may be invested in the securities of a single issuer. This means that the Portfolio or Fund may invest a greater portion of its assets in the securities of a single issuer than a diversified fund.[23]

The Portfolio and Fund do not intend to concentrate their investments in any particular industry. The Portfolio and Fund look to the Global Industry Classification Standard Level 3 (Industries) in making industry determinations.[24]

The Portfolio and Fund intend to maintain the required level of diversification and otherwise conduct their operations so as to qualify as a ''regulated investment company'' for purposes of the Internal Revenue Code of 1986.[25]

The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

Net Asset Value

The Fund will calculate net asset value (''NAV'') using the NAV of the Portfolio. To the extent that the Fund invests in instruments other than those in the Portfolio, the Fund will calculate its NAV based on all assets.

NAV per Share for the Fund will be computed by dividing the value of the net assets of the Portfolio (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares outstanding. Expenses and fees, including the management fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Portfolio will be calculated by the Custodian and determined as of the close of the regular trading session on the New York Stock Exchange (''NYSE'') (ordinarily 4:00 p.m. Eastern time) on each day that such exchange is open. Fixed-income assets will generally be valued as of the announced closing time for trading in fixed-income instruments in a particular market or exchange. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at market rates on the date of valuation (generally as of 4:00 p.m. London time) as quoted by one or more sources.

In calculating the Portfolio's NAV per Share, the Portfolio's investments will generally be valued using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer), or (iii) based on amortized cost. In the case of shares of other funds that are not traded on an exchange, a market valuation means such fund's published NAV per share. The Adviser may use various pricing services, or discontinue the use of any pricing service, as approved by the Board of the SSgA Master Trust from time to time. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation.

Common stocks and other exchange-traded equity securities (including shares of preferred securities, convertible securities, ETPs, and QPTPs) generally will be valued at the last reported sale price or the official closing price on that exchange where the stock is primarily traded on the day that the valuation is made. Foreign equities and exchange-listed Depositary Receipts will be valued at the last sale or official closing price on the relevant exchange on the valuation date. If, however, neither the last sales price nor the official closing price is available, each of these securities will be valued at either the last reported sale price or official closing price as of the close of regular trading of the principal market on which the security is listed. Unsponsored ADRs, which are traded in the OTC market, will be valued at the last reported sale price from the OTC Bulletin Board or OTC Link LLC on the valuation date. OTC-traded preferred securities and OTC-traded convertible securities will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service.

Securities of investment companies (other than ETFs registered under the 1940 Act), including affiliated funds, money market funds and closed-end funds, will be valued at NAV.

Rule 144A Restricted Securities, repurchase agreements and reverse repurchase agreements will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in such instruments. Spot currency transactions will generally be valued at mid prices received from an independent pricing service converted into U.S. dollars at current market rates on the date of valuation. Foreign currency forwards normally will be valued on the basis of quotes obtained from broker-dealers or third party pricing services.

According to the Adviser, fixed income securities, including U.S. Government obligations; TIPS; U.S.-registered, dollar-denominated bonds of foreign corporations, governments, agencies and supra-national entities; sovereign debt; corporate bonds; ABS, RMBS, and CMBS (either agency or non-agency); CLOs; TBA transactions; municipal securities; inverse floaters and bank loans; and short-term instruments will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in fixed-income instruments in the respective market or

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).

[22] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

[23] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[24] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[25] 26 U.S.C. 851.

exchange. In determining the value of a fixed income investment, pricing services determine valuations for normal institutional-size trading units of such securities using valuation models or matrix pricing, which incorporates yield and/or price with respect to bonds that are considered comparable in characteristics such as rating, interest rate and maturity date and quotations from securities dealers to determine current value.

The Trust will generally value listed futures and options at the settlement price determined by the applicable exchange. Non-exchange-traded derivatives, including OTC-traded options, swaps and forwards, 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. The Fund's OTC-traded derivative instruments will generally be valued at bid prices. Certain OTC-traded derivative instruments, such as interest rate swaps and credit default swaps, will be valued at the mean price.

In the event that current market valuations are not readily available or such valuations do not reflect current market value, the SSgA Master Trust's procedures require the Pricing and Investment Committee (''Committee'') to determine a security's fair value if a market price is not readily available, in accordance with the 1940 Act.[26] In determining such value the Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators (*e.g.,* movement in interest rates, market indices, and prices from the Portfolio's index provider). In these cases, the Portfolio's NAV may reflect certain portfolio securities' fair values rather than their market prices.

Creation and Redemption of Shares

The NAV of Shares of the Fund will be determined once each business day, normally 4:00 p.m. Eastern time. The Creation Unit size will be 50,000 Shares per Creation Unit. The Trust will issue and sell Shares of the Fund only in Creation Units on a continuous basis, without a sales load (but subject to transaction fees), at their NAV per Share next determined after receipt of an order, on any business day, in proper form.

The consideration for purchase of a Creation Unit of the Fund generally will consist of either (i) the in-kind deposit of a designated portfolio of securities held by the corresponding master fund (the ''Deposit Securities'') per each Creation Unit and the Cash Component (defined below), computed as described below, or (ii) the cash value of the Deposit Securities (''Deposit Cash'') and the ''Cash Component,'' computed as described below. When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchaser. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The ''Cash Component'' is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit exceeds the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component shall be such positive amount. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit is less than the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such negative amount and the creator will be entitled to receive cash in an amount equal to the Cash Component. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

The Custodian, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, immediately prior to the opening of business on the Exchange's Core Trading Session (9:30 a.m., Eastern time), the list of the names and the required amount of each Deposit Security or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit is subject to any applicable adjustments as described in the Registration Statement, in order to effect purchases of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities or the required amount of Deposit Cash, as applicable, is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day.

With respect to the Fund, the Custodian, through the NSCC, will make available immediately prior to the opening of business on the Exchange (9:30 a.m. Eastern time) on each business day, the list of the names and share quantities of the Fund's portfolio securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (''Fund Securities''). Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit will be paid either in-kind or in cash or a combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by the Custodian on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less a fixed redemption transaction fee and any applicable additional variable charge as set forth in the Registration Statement. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an authorized participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust's discretion, an authorized participant may receive the corresponding cash value of the securities in lieu of the in-kind

[26] If a security's market price is not readily available or does not otherwise accurately reflect the fair value of the security, the security will be valued by another method that the Board believes will better reflect fair value in accordance with the Trust's valuation policies and procedures and in accordance with the 1940 Act. The Board has delegated the process of valuing securities for which market quotations are not readily available or do not otherwise accurately reflect the fair value of the security to the Committee. The Committee, subject to oversight by the Board, may use fair value pricing in a variety of circumstances, including but not limited to, situations when trading in a security has been suspended or halted. Accordingly, the Portfolio's NAV may reflect certain securities' fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be received on the sale of the security. The Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Portfolio and the Fund.

securities value representing one or more Fund Securities.

The creation/redemption order cut-off time for the Fund is expected to be 4:00 p.m. Eastern time. Creation/redemption order cut-off times may be earlier on any day that the Securities Industry and Financial Markets Association (''SIFMA'') (or applicable exchange or market on which the Portfolio's investments are traded) announces an early closing time. On days when the Exchange closes earlier than normal, the Fund may require orders for Creation Units to be placed earlier in the day.

Availability of Information

The Fund's Web site (*www.spdrs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[27] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[28]

The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, 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.

In addition, a basket composition file, which includes the security names and quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket represents one Creation Unit of the Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Trust's Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. The intra-day, closing and settlement prices of common stocks and other exchange-traded equity securities (including shares of Depositary Receipts, preferred securities, convertible securities, ETPs, and QPTPs) will be readily available from the national securities exchanges trading such securities as well as automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Intra-day and closing price information for exchange-traded options and futures will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for fixed income securities, including U.S. Government obligations; TIPS; U.S. registered, dollar-denominated bonds of foreign corporations, governments, agencies and supra-national entities; sovereign debt; corporate bonds; asset-backed and commercial mortgage-backed securities; residential mortgage backed securities (either agency or non-agency); CLOs; TBA transactions; municipal securities; inverse floaters and bank loans; and short-term instruments. Price information regarding OTC-traded derivative instruments, including, options, swaps, and spot and forward currency transactions, as well as equity securities traded in the OTC market, including Rule 144A Restricted Securities, OTC-traded preferred securities and OTC-traded convertible securities, is available from major market data vendors.

Pricing information regarding each asset class in which the Fund or Portfolio will invest, including investment company securities, Rule 144A Restricted Securities, repurchase agreements and reverse repurchase agreements will generally be available through nationally recognized data service providers through subscription arrangements. In addition, the Indicative Optimized Portfolio Value (''IOPV''),[29] which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Exchange's Core Trading Session by one or more major market data vendors.[30] The dissemination of the IOPV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund and of the Portfolio on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule

[27] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[28] Under accounting procedures 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.

[29] Premiums and discounts between the IOPV and the market price may occur. This should not be viewed as a ''real-time'' update of the NAV per Share of the Fund, which will be calculated only once a day.

[30] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[31] 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. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [32] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[33] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-traded options, common stocks and other exchange-traded equity securities (including shares of preferred securities, convertible securities, ETPs, certain exchange-traded Depositary Receipts and QPTPs), and futures, with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and such exchange-traded instruments underlying the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and such exchange-traded instruments underlying the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[34] 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 (''TRACE''). FINRA also can access data obtained from the Municipal Securities Rulemaking Board (''MSRB'') relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

With the exception of unsponsored ADRs, which will comprise no more than 10% of the Fund's net assets, all equity securities (*i.e.,* common stocks, Depositary Receipts, certain preferred securities, ETPs and certain other exchange-traded investment company securities) in which the Portfolio or Fund may invest will trade on markets that are members of the ISG or that have entered into a comprehensive surveillance agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value and the Disclosed Portfolio is disseminated; (5) 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 (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern time each trading day.

[31] *See* NYSE Arca Equities Rule 7.12.

[32] 17 CFR 240.10A–3.

[33] 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.

[34] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [35] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Adviser and Sub-Adviser are not registered as a broker-dealer but the Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Sub-Adviser is not affiliated with a broker-dealer. In addition, the Trust's Pricing and Investment Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Portfolio and the Fund. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-traded options, common stocks and other exchange-traded equity securities (including shares of preferred securities, convertible securities, ETPs, and QPTPs), and futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and such exchange-traded securities underlying the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and such exchange-traded securities underlying the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The ETPs held by the Fund will be traded on U.S. national securities exchanges and will be subject to the rules of such exchanges, as approved by the Commission. With the exception of unsponsored ADRs, which will comprise no more than 10% of the Fund's net assets, all exchange-traded equity securities (*i.e.,* common stocks, Depositary Receipts, certain preferred securities, ETPs and certain other exchange-traded investment company securities) in which the Portfolio or Fund may invest will trade on markets that are members of the ISG or that have entered into a comprehensive surveillance agreement with the Exchange. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A Restricted Securities deemed illiquid by the Adviser, consistent with Commission guidance, and repurchase agreements having maturities longer than seven days.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the IOPV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Quotation and last sale information for the Shares will be available via the CTA high-speed line. The intra-day, closing and settlement prices of common stocks and other exchange-traded equity securities (including shares of preferred securities, convertible securities, Depositary Receipts, ETPs, and QPTPs) will be readily available from the national securities exchanges trading such securities as well as automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Intra-day and closing price information for exchange-traded options and futures will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for fixed income securities, including U.S. Government obligations; U.S.-registered, dollar-denominated bonds of foreign corporations, governments, agencies and supra-national entities; corporate bonds; ABS; RMBS; CMBS; CLOs; variable and floating rate securities; TBA transactions; municipal securities; and short-term instruments. Price information regarding OTC-traded derivative securities, including, options, swaps, and spot and forward currency transactions, as well as equity securities traded in the OTC market, such as Rule 144A Restricted Securities, is available from major market data vendors. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, 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. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market

[35] 15 U.S.C. 78f(b)(5).

participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will invest in multiple asset classes and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–143 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–143. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–143 and should be submitted on or before January 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30894 Filed 1–5–15; 8:45 am]

BILLING CODE 8011–01–P

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73959; File No. SR–NASDAQ–2014–095]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Provide a New Optional Functionality to Minimum Quantity Orders

December 30, 2014.

I. Introduction

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 (''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] On November 18, 2014, the Commission extended to January 4, 2015, the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.[4] The Commission received one comment letter regarding the proposed rule change.[5] This order approves the proposed rule change.

II. Description of the Proposal

A Minimum Quantity Order (''MQO'') allows a market participant to specify a minimum share amount at which it will execute. A MQO will not execute unless the volume of contra-side liquidity available to execute against the order meets or exceeds the designated minimum. A MQO received by the Exchange will execute immediately if there is sufficient liquidity available on the Exchange within the limit price of the order. In addition, multiple orders may be aggregated to meet the minimum quantity. For example, a MQO will execute if the sum of the shares of one or more orders is equal to or greater than its minimum quantity. If a MQO does

[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] *See* Securities Exchange Act Release No. 73621, 79 FR 69957 (November 24, 2014).

[5] *See* letter to SEC from James J. Angel, Associate Professor of Finance, Georgetown University, dated November 26, 2014 (''Angel Letter'').

not execute immediately due to lack of contra-side liquidity that is equal to or greater than the designated minimum, the order will post to the NASDAQ order book as a Non-Displayed Order. Once posted, a MQO will execute only if an incoming order is marketable against the resting MQO and is equal to or greater than the minimum quantity set on the resting MQO. Once posted, multiple orders cannot be aggregated to meet the minimum quantity requirement of the Minimum Quantity Order. If a MQO executes partially and the number of shares remaining is less than the minimum quantity of the order, the minimum quantity of the order is reduced to the remaining share size. If a MQO is received that is marketable against a resting contra-side order with size that does not meet the minimum quantity requirement, the MQO will be posted on the book as a Non-Displayed Order at the locking price.

The Exchange proposes to offer an optional order handling functionality that would permit an incoming MQO to forego executions where multiple resting orders could otherwise be aggregated to satisfy the minimum quantity designation. Under the proposed functionality, a MQO would only execute against a single contra-side order that would equal or exceed the minimum quantity designation of the MQO.[6] In addition, if the minimum quantity designation of an incoming MQO could not be satisfied by a resting contra-side order, the MQO would be re-priced one minimum price increment away from the resting liquidity and posted to the NASDAQ order book as a Non-Displayed Order.[7] If an incoming MQO receives a partial execution, the remainder of the order would be cancelled if it would lock resting contra-side liquidity that does not meet the minimum quantity designation.[8]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange represents that some market participants have indicated that they currently avoid routing larger orders to NASDAQ due to the concern that such orders may interact against small orders entered by professional traders, potentially resulting in more expensive transactions. The Exchange represents that the optional minimum execution size functionality proposed for MQOs should enhance the utility of such orders for market participants and should facilitate the entry of larger MQOs on the Exchange.[11] Specifically the Exchange believes that the proposed functionality would provide market participants, including institutional firms that ultimately represent individual retail investors in many cases, with better control over MQOs, thereby enhancing the potential to improve execution quality.[12]

The Commission notes that a commenter expressed strong support for the proposal.[13] In particular, the commenter states that the proposed rule change would benefit institutional investors, such as mutual funds that invest on behalf of retail investors, by minimizing their transaction costs.[14] For example, according to the commenter, the proposed functionality would improve large investors' ability to manage their orders and thereby obtain better execution quality.[15]

The Commission believes that the proposal should provide market participants with enhanced capability to manage their order flow. For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NASDAQ–2014–095) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30895 Filed 1–5–15; 8:45 am]

BILLING CODE 8011–01–P

[6] *See* Notice, 79 FR at 60209.

[7] *See* proposed Rule 4751(f)(5); *see also* Notice, 79 FR at 60208.

[8] *See* proposed Rule 4751(f)(5); *see also* Notice, 79 FR at 60209. The Exchange represents that the proposed functionality already exists on other trading venues. *See* Notice, 79 FR at 60208–09.

[9] 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).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Notice, 79 FR at 60208, 60210.

[12] *Id.* at 60210.

[13] *See* Angel Letter, *supra* note 5.

[14] *Id.*

[15] *Id.*

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–73973; File No. SR–ISE–2014–43]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Amending its Information Barrier Rules

December 31, 2014.

I. Introduction

On September 15, 2014, International Securities Exchange, LLC (''Exchange'' or ''ISE'') 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 amending its information barrier rules. The proposed rule change was published for comment in the **Federal Register** on October 6, 2014.[3] On November 17, 2014, the Commission extended the time period in which to either approve the Proposal, disapprove the Proposal, or institute proceedings to determine whether to approve or disapprove the proposed rule change to January 2, 2015.[4] The Commission received one comment letter regarding the proposed rule change[5] and one response letter from ISE.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73261 (September 30, 2014), 79 FR 60226 (''Notice'').

[4] *See* Securities Exchange Act Release No. 73614 (November 17, 2014), 79 FR 69547 (November 21, 2014).

[5] *See* Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., dated October 27, 2014 (''Group One Letter'').

[6] *See* Letter from Michael J. Simon, Secretary and General Counsel, International Securities Exchange, LLC, dated November 14, 2014 (''ISE Response Letter'').

[7] 15 U.S.C. 78s(b)(2)(B).

II. Description of the Proposal

The Exchange proposes to amend ISE Rules 810 (Limitations on Dealings) and 717 (Limitations on Orders) governing information barriers. Specifically, the Exchange proposes to amend Rule 810 to permit information to flow to a member's Electronic Access Member (''EAM'') unit, which handles the customer/agency side of the business, from its affiliated Primary Market Maker (''PMM'') and/or Competitive Market Maker (''CMM'') (jointly, ''market makers'') unit. As amended, ISE Rule 810 will allow EAMs to know where, and at what price, their affiliated market makers are either quoting or have orders on the order book [8] and to use that information to influence routing decisions. The Exchange represents that it currently provides guidance to its members that ISE Rule 810 is to be interpreted as a two-way information barrier between the EAM unit and its affiliated market maker unit.[9]

The Exchange also proposes to amend ISE Rule 717, Supplementary Material .06 to specify that the orders of a EAM unit and its affiliated PMM and/or CMM unit may interact within one second without violating the ISE Rule 717(d) and (e) order exposure requirements when the firm can demonstrate that: (1) The customer order was marketable when routed; (2) the EAM was not handling the affiliated market maker quote/order; and (3) the affiliated market maker quote/order was in existence at the time the customer order(s) were entered into the ISE system. In combination, the proposed amendments to ISE Rules 810 and 717 will make it possible for an EAM to route a customer order to the ISE to immediately interact with the quote or an order of an affiliated market maker, but only subject to the conditions stated above.

III. Comment Letter and ISE's Response

As noted above, the Commission received one comment letter [10] opposing the proposed rule change.[11] The commenter asserts that the proposed one-way information barrier would introduce a conflict of interest which could result in EAMs routing orders based on self-interest as opposed to the customer's interest.[12] The commenter disagrees with the Exchange's premise that the proposal would not compromise market integrity or cause customer harm.[13] The commenter also indicates that although other exchanges may interpret their rules to permit the sharing of information between the various units of a firm, such sharing only weakens a customer's chance of best execution.

The commenter believes there are two specific scenarios where a costumer may be harmed under this proposed rule change. First, the commenter states that EAMs could route customer orders to an affiliated market maker's quote at an exchange's best bid or offer rather than to an exchange with a better fill rate or price improvement mechanism.[14] Second, the commenter argues that an EAM holding a large customer order that could influence the price in the underlying could opt to route away from the quote of its affiliated market maker to avoid the potential risk of the trade and deprive the customer of a fill they were otherwise entitled to.[15]

The commenter indicates that these routing scenarios are not ''mere conjecture'' as broker-dealers ''openly admit'' that numerous factors are built into routing decisions that are primarily beneficial to broker-dealers.[16] The commenter also notes that there are litigation and academic studies that suggest that routing decisions are negatively impacted by conflicts of interest. The commenter believes that the erosion of information barriers would increase the likelihood that customer orders are routed based on the firm's best interest as opposed to duty of best execution owed to the customer.[17] The commenter concludes that two-way information barriers are the ''only way to truly guard customer interests and protect against the misuse of material non-public information,'' and a shift to a one-way information barrier would not provide any benefits EAM customers.[18] The commenter also believes that exchange rules should be written and interpreted in a way that prevents conflicts of interest from ever arising, and a two-way information barrier takes the potential conflict of interest out of the equation.[19]

The ISE responds that the commenter did not raise any new issues and its concerns were addressed in the Notice.[20] The ISE states that nothing in the proposed rule change would relieve members of their best execution obligation to obtain the most favorable terms reasonably available for customer orders.[21] The Exchange notes that, as a national securities exchange, it has a comprehensive surveillance program to monitor member compliance with applicable securities and regulations, including best execution.[22] ISE also represents that it would continue to monitor for abnormalities in interaction rates between members, and investigate and take appropriate regulatory action against members that fail to comply with their best execution obligations.[23] ISE believes that its surveillance tools will allow it to fulfill its regulatory responsibilities.[24] ISE also suggests that the filing is a competitive imperative as other options exchanges currently interpret their information barrier rules to be one way barriers that permit members to make routing decisions based on the quotes and orders of affiliated business units.[25]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–ISE–2014–43 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [26] to determine whether the proposed rule change should be approved or disapproved.[27] Institution of such proceedings is appropriate at this time in view of the legal and policy issues that are raised by the proposal and are discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to comment on the proposal, including the comments received and the Exchange's response, and provide the Commission with additional comment to inform the Commission's analysis whether to approve or disapprove the proposed rule change.

[8] According to ISE Rule 805(b)(1)(ii), market makers may only have orders on the order book in option classes to which they are not appointed.

[9] *See* Notice, *supra* note 3, 79 FR at 60226.

[10] *See* Group One Letter, *supra* note 5.

[11] *See* ISE Response Letter, *supra* note 6.

[12] *See* Group One Letter at 1, *supra* note 5.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 2.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *See* ISE Response Letter at 1, *supra* note 6.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.* at 2.

[26] 15 U.S.C. 78s(b)(2)(B).

[27] Section 19(b)(2)(B) of the Act provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to an additional 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or if the self-regulatory organization consents to the extension.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from, commenters with regard to the proposed rule change's consistency with Section 6 of the Act, and in particular Sections 6(b)(5).[28] Section 6(b)(5) requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[29]

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any others they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 6 or any other provision, of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[30]

Interested persons are invited to submit written data, views and arguments regarding whether the proposed rule change should be approved or disapproved by January 27, 2015. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 10, 2015.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2014–43 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–2014–43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2014–43 and should be submitted on or before January 27, 2015. If comments are received, any rebuttal comments should be submitted by February 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Brent J. Fields,

Secretary.

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[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(5).

[30] Section 19(b) (2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[31] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73965; File No. SR–BATS–2014–056]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the iShares U.S. Fixed Income Balanced Risk ETF of the iShares U.S. ETF Trust Under Rule 14.11(i)

December 30, 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 December 19, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal list and trade shares of the iShares U.S. Fixed Income Balanced Risk ETF (the ''Fund'') of the iShares U.S. ETF Trust (the ''Trust'') under BATS Rule 14.11(i) (''Managed Fund Shares''). The shares of the Fund are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.[3] The Fund will be an actively managed fund. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on June 21, 2011. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N–1A (''Registration Statement'') with the Commission.[4]

Description of the Shares and the Fund

BlackRock Fund Advisors is the investment adviser (''BFA'' or ''Adviser'') to the Fund.[5] State Street Bank and Trust Company is the administrator, custodian, and transfer agent for the Trust. BlackRock Investments, LLC (''Distributor'') serves as the distributor for the Trust.

BATS Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to BATS Rule 14.11(b)(5)(A)(i), however, Rule 14.11(i)(7) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented ''fire walls'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event that (a) the Adviser becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, it 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 and/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.

iShares U.S. Fixed Income Balanced Risk Fund

According to the Registration Statement, the Fund will seek total return and preservation of capital. To achieve its objective, the Fund will invest, under normal circumstances,[7] at least 80% of its net assets in U.S. dollar-denominated investment-grade and high-yield fixed-income securities, futures, and swaps, as described below. The Fund seeks to provide exposure to a portfolio of Fixed Income Securities, as defined below, where the expected contribution of interest rate risk and credit spread risk are approximately equal. The Fund will attempt to achieve an aggregate credit spread risk based on the credit spread risk of the underlying securities (as determined by BFA) primarily by adjusting the allocation among underlying securities. To the extent necessary, the Fund will attempt to balance the aggregate interest rate risk against the aggregate credit spread risk of the underlying securities (as determined by BFA) primarily by taking short or long positions in U.S. Treasury futures contracts and interest rate swaps, as further described below. In the absence of normal circumstances, the Fund may temporarily depart from its normal investment process, provided that such departure is, in the opinion of BFA, consistent with the Fund's investment objective and in the best interests of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in response to adverse market, economic, or political conditions.

The Fund is a non-diversified fund and therefore may invest a greater portion of its assets in the securities of one or more issuers than a diversified fund. The Fund, however, will not purchase the securities of issuers conducting their principal business activity in the same industry if, immediately after the purchase and as a result thereof, the value of the Fund's investments in that industry would equal or exceed 25% of the current value of the Fund's total assets, provided that this restriction does not limit the Fund's: (i) Investments in securities of other investment companies, (ii) investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or (iii) investments in repurchase agreements collateralized by U.S. government securities.[8]

[3] The Commission approved BATS Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[4] *See* Registration Statement on Form N–1A for the Trust, dated April 21, 2014 (File Nos. 333–179904 and 811–22649). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Company under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') (the ''Exemptive Order''). *See* Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812–13601).

[5] BlackRock Fund Advisors is an indirect wholly owned subsidiary of BlackRock, Inc.

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent 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.

[7] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot, or labor disruption, or any similar intervening circumstance.

[8] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests in more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

The Fund intends to qualify each year as a regulated investment company (a ''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[9] The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

Principal Holdings—Fixed Income Securities and Derivatives

The Fund intends to achieve its investment objective by investing, under normal circumstances, at least 80% of its net assets in a portfolio of U.S. dollar-denominated investment-grade and high-yield fixed-income securities (''Fixed Income Securities''), futures, and swaps, as described below. The Fund may invest, without limitation, in high-yield securities rated CCC or higher by Moody's Investors Service, Inc. or equivalently rated by Standard & Poor's Financial Services LLC and/or Fitch, or, if unrated, determined by BFA to be of equivalent quality.[10] Under normal circumstances, the Fund will invest primarily in fixed-rate Fixed Income Securities of varying maturities.

The Fund seeks to balance interest rate and credit spread risk by investing in a portfolio of Fixed Income Securities that in the aggregate has approximately equal exposure to credit spread risk and interest rate risk, which are measured by BFA as the volatility of returns of a security associated with changes in the security's credit spread or changes in interest rates. The Fund will adjust the allocation among its underlying securities in an effort to achieve a target credit spread risk and interest rate risk for the Fund's portfolio. When necessary to balance the Fund's exposure to interest rate risk against its exposure to credit spread risk, the Fund may take short or long positions in U.S. Treasury futures and, through transactions in interest rate swaps, take short positions in U.S. Treasury securities. BFA will determine the aggregate credit spread risk and interest rate risk of the Fund's portfolio. The Fund may also invest in other interest rate futures contracts, including but not limited to, Eurodollar and Federal Funds futures. The Fund's short positions in U.S. Treasury futures and similar positions through transaction in interest rate swaps are not intended to mitigate credit spread risk or other factors influencing the price of non-government bonds, which may have a greater impact than interest rates.[11]

Fixed Income Securities will include only the following instruments: Fixed and floating rate debt securities, such as corporate [12] and government bonds, agency securities,[13] instruments of non-U.S. issuers,[14] privately-issued securities,[15] municipal bonds, money market securities,[16] and exchange traded and non-exchange traded investment companies (including investment companies advised by BFA or its affiliates) that invest in such Fixed Income Securities.[17] [18]

BFA utilizes a model-based proprietary investment process to assemble an investment portfolio comprised of (i) long positions in U.S. dollar denominated investment-grade corporate bonds selected by BFA based on certain criteria determined by BFA to be indicators of creditworthiness; (ii) long positions in U.S. dollar-denominated high-yield corporate bonds selected by BFA based on certain criteria determined by BFA to be indicators of creditworthiness; (iii) long positions in U.S. dollar-denominated agency mortgage backed securities; (iv) long positions in U.S. dollar denominated agency mortgage to-be-announced transactions; (v) long positions in U.S. Treasury securities; (vi) short positions in U.S. Treasury futures; and (vii) short positions in U.S. Treasury securities through transactions in interest rate swaps. The Fund seeks to invest in a portfolio of Fixed Income Securities that in the aggregate has approximately equal exposure to credit spread risk and interest rate risk, which is measured by BFA as the volatility of returns of a security associated with changes in the security's credit spread or changes in interest rates.

In selecting corporate securities for the Fund, BFA may employ a credit

[9] 26 U.S.C. 851.

[10] According to the Adviser, BFA may determine that unrated Fixed Income Securities are of ''equivalent quality'' based on such credit quality factors that it deems appropriate, which may include among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical ratings organization when rating similar securities and issuers. In making such a determination, BFA may consider internal analyses and risk ratings, third party research and analysis, and other sources of information, as deemed appropriate by the Adviser.

[11] Derivatives held as part of the Fund's principal investment strategy will be exchange traded and/or centrally cleared, and they will be collateralized.

[12] While the Fund is permitted to invest without restriction in corporate bonds, the Adviser expects that, under normal circumstances, the Fund will generally invest in corporate bond issuances that have at least $250 million par amount outstanding.

[13] ''Agency securities'' for these purposes generally includes securities issued by the following entities: Government National Mortgage Association (Ginnie Mae), Federal National Mortgage Association (Fannie Mae), Federal Home Loan Banks (FHLBanks), Federal Home Loan Mortgage Corporation (Freddie Mac), Farm Credit System (FCS) Farm Credit Banks (FCBanks), Student Loan Marketing Association (Sallie Mae), Resolution Funding Corporation (REFCORP), Financing Corporation (FICO), and the Farm Credit System (FCS) Financial Assistance Corporation (FAC). Agency securities can include, but are not limited to, mortgage-backed securities.

[14] ''Instruments of non-U.S. issuers'' means U.S. dollar-denominated fixed income securities issued by non-U.S. corporate or sovereign entities.

[15] ''Privately-issued securities'' generally includes Rule 144A securities and, in this context, may include both mortgage-backed and non-mortgage 144A securities. To the Extent that the Fund's holding of privately-issued securities include non-agency mortgage-backed securities or illiquid assets, such holdings will be subject to the limitations established in the ''Other Portfolio Holdings'' and ''Investment Restrictions'' sections set forth below, as applicable.

[16] The Adviser expects that, under normal circumstances, the Fund intends to invest in money market securities (as described below) in a manner consistent with its investment objective in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, and to satisfy margin requirements, to provide collateral or to otherwise back investments in derivative instruments. For these purposes, money market securities include: Short-term, high-quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; repurchase agreements; money market mutual funds; commercial paper; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. All money market securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated money market securities. However, it may do so, to a limited extent, such as where a rated money market security becomes unrated, if such money market security is determined by the Adviser to be of comparable quality. BFA may determine that unrated securities are of comparable quality based on such credit quality factors that it deems appropriate, which may include, among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical rating organization rating similar securities and issuers.

[17] The Fund currently anticipates investing in only registered open-end investment companies, including mutual funds and the open-end investment company funds described in BATS Rule 14.11, but notes that the Exemptive Order allows the Fund to invest in ''shares of other ETFs, shares of money market mutual funds, or other investment companies.''

[18] *See* BATS Rule 14.11(c)(4)(B)(i) governing fixed income based Index Fund Shares. For the purposes of this footnote, the term ''fixed income securities'' will include all holdings of the Fund. The Fund's portfolio will meet the following requirements of Rule 14.11(c)(4)(B)(i): (1) Components that in the aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of $100 million or more (Rule 14.11(c)(4)(B)(i)(b)); (2) a component may be a convertible security, however, once the convertible security component converts to an underlying equity security, the component is removed from the index or portfolio (Rule 14.11(c)(4)(B)(i)(c)); and (3) no component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities do not in the aggregate account for more than 65% of the weight of the index or portfolio (Rule 14.11(c)(4)(B)(i)(d)).

screening process centered on research and analysis of issuer credit quality to reduce exposure to credit issuers that have potential for experiencing credit deterioration. The remaining credit portfolio is then constructed to match the key target risk characteristics which BFA determines to be relevant in prevailing market conditions.

To adjust the exposure to interest rate risks, BFA may employ short positions primarily in U.S. Treasury futures and interest rate swaps. By taking these short positions, BFA seeks to mitigate, but not eliminate, the impact of Treasury interest rates on the performance of the underlying bonds. The short positions are not intended to mitigate other factors influencing the price of bonds.

The Fund is an actively-managed fund that does not seek to replicate the performance of a specified index.

Other Portfolio Holdings

In addition to the derivatives holdings described above as part of the Fund's principal investment strategy, the Fund may also, to a limited extent (under normal circumstances, less than 20% of the Fund's net assets), engage in transactions in the following instruments:

Treasury futures, interest rate swaps, credit default swaps, asset-backed Fixed Income Securities, non-Agency mortgage-backed fixed-income securities, and structured securities [19] in order to serve additional investment objectives of the Fund.[20] Asset-backed securities are fixed-income securities that are backed by a pool of assets, usually loans such as installment sale contracts or credit card receivables. Mortgage-backed securities are asset-backed securities based on a particular type of asset, a mortgage. There are a wide variety of mortgage-backed securities involving commercial or residential, fixed-rate or adjustable rate mortgages and mortgages issued by banks or government agencies.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser [21] under the 1940 Act.[22] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged or inverse leveraged returns (*i.e.* two times or three times the Fund's benchmark).

Net Asset Value

According to the Registration Statement, the net asset value (''NAV'') of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the Exchange, generally 4:00 p.m. Eastern Time (the ''NAV Calculation Time'') on each day that the Exchange is open for trading, based on prices at the NAV Calculation Time. NAV per Share is calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. The Fund's net assets are valued primarily on the basis of market quotations.

According to the Registration Statement, the Fund values non-exchange traded Fixed Income Securities using prices provided directly from one or more broker-dealers, market makers, independent third-party pricing services which may use matrix pricing and valuation models to derive values, or, for investment companies, NAV. Exchange traded instruments, including exchange traded Fixed Income Securities and futures, will be valued at market closing price or, if no sale has occurred, at the last quoted bid price on the primary exchange on which they are traded. Price information for exchange traded instruments, including exchange traded derivatives, will be taken from the exchange where the security is primarily traded. Over-the-counter derivatives are valued based upon quotations from market makers or by a pricing service in accordance with valuation procedures approved by the Fund's board of directors. Certain short-term debt securities will be valued on the basis of amortized cost.

According to the Registration Statement, generally, trading in certain Fixed Income Securities is substantially completed each day at various times prior to the close of business on the Exchange. Additionally, trading in certain derivatives is substantially completed each day at various times prior to the close of business on the Exchange. The values of such securities and derivatives used in computing the NAV of the Fund are determined at such times.

According to the Registration Statement, when market quotations are not readily available or are believed by BFA to be unreliable, the Fund's investments are valued at fair value. Fair value determinations are made by BFA in accordance with policies and procedures approved by the Fund's board of directors and in accordance with the 1940 Act. BFA may conclude that a market quotation is not readily available or is unreliable if a security or other asset or liability is thinly traded,

[19] ''Structured securities'' generally includes privately-issued and publicly-issued structured securities, including certain publicly-issued structured securities that are not agency securities, excluding agency mortgage backed securities. Examples include, but are not limited to: Asset-backed securities backed by assets such as consumer receivables, credit cards, student loans, and equipment leases; asset-backed commercial paper; credit linked notes; and secured funding notes. Structured securities do not include agency mortgage-backed securities.

[20] In addition to the uses described above, derivatives might be included in the Fund's investments to serve additional investment objectives of the Fund. Such uses are limited to the following: Using a combination of treasury futures, interest rate swaps, and credit default swaps to equitize coupon income and cash holdings. The derivatives will be exchange traded and/or centrally cleared, and they will be collateralized.

[21] In reaching liquidity decisions, the Adviser may consider factors including: 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; 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); any legal or contractual restrictions on the ability to transfer the security or asset; significant developments involving the issuer or counterparty specifically (*e.g.,* default, bankruptcy, etc.) or the securities markets generally; and settlement practices, registration procedures, limitations on currency conversion or repatriation, and transfer limitations (for foreign securities or other assets).

[22] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

or where there is a significant event[23] subsequent to the most recent market quotation.

According to the Registration Statement, fair value represents a good faith approximation of the value of an asset or liability. The fair value of an asset or liability held by the Fund is the amount the Fund might reasonably expect to receive from the current sale of that asset or the cost to extinguish that liability in an arm's-length transaction. Valuing the Fund's investments using fair value pricing will result in prices that may differ from current valuations and that may not be the prices at which those investments could have been sold during the period in which the particular fair values were used.

The Shares

The Fund will issue and redeem Shares on a continuous basis at the NAV per Share only in large blocks of a specified number of Shares or multiples thereof (''Creation Units'') in transactions with authorized participants who have entered into agreements with the Distributor. The Fund currently anticipates that a Creation Unit will consist of 50,000 Shares, though this number may change from time to time, including prior to listing of the Fund. The exact number of Shares that will constitute a Creation Unit will be disclosed in the Registration Statement of the Fund. Once created, Shares of the Fund trade on the secondary market in amounts less than a Creation Unit.

The consideration for purchase of Creation Units of the Fund generally will consist of the in-kind deposit of a designated portfolio of securities (including any portion of such securities for which cash may be substituted) (*i.e.,* the ''Deposit Securities''), and the ''Cash Component'' computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The portfolio of securities required for purchase of a Creation Unit may not be identical to the portfolio of securities the Fund will deliver upon redemption of Fund Shares. The Deposit Securities and Fund Securities (as defined below), as the case may be, in connection with a purchase or redemption of a Creation Unit, generally will correspond pro rata to the securities held by the Fund.

The Cash Component will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the ''Deposit Amount,'' which will be an amount equal to the market value of the Deposit Securities, and serve to compensate for any differences between the NAV per Creation Unit and the Deposit Amount. The Fund generally offers Creation Units partially for cash. BFA will make available through the National Securities Clearing Corporation (''NSCC'') on each business day, prior to the opening of business on the Exchange, the list of names and the required number or par value of each Deposit Security and the amount of the Cash Component to be included in the current Fund Deposit (based on information as of the end of the previous business day) for the Fund.

The identity and number or par value of the Deposit Securities may change pursuant to changes in the composition of the Fund's portfolio as rebalancing adjustments and corporate action events occur from time to time. The composition of the Deposit Securities may also change in response to adjustments to the weighting or composition of the holdings of the Fund.

The Fund reserves the right to permit or require the substitution of a ''cash in lieu'' amount to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through the Depository Trust Company (''DTC'') or the clearing process through the NSCC.[24]

Except as noted below, all creation orders must be placed for one or more Creation Units and must be received by the Distributor in proper form no later than 4:00 p.m., Eastern Time, in each case on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form. Orders requesting substitution of a ''cash in lieu'' amount generally must be received by the Distributor no later than 2:00 p.m., Eastern Time on the Settlement Date. The ''Settlement Date'' is generally the third business day after the transmittal date. On days when the Exchange or the bond markets close earlier than normal, the Fund may require orders to create or to redeem Creation Units to be placed earlier in the day.

Fund Deposits must be delivered through the Federal Reserve System (for cash and government securities), through DTC (for corporate and municipal securities), or through a central depository account, such as with Euroclear or DTC, maintained by State Street or a sub-custodian (a ''Central Depository Account'') by an authorized participant. Any portion of a Fund Deposit that may not be delivered through the Federal Reserve System or DTC must be delivered through a Central Depository Account. The Fund Deposit transfer must be ordered by the authorized participant in a timely fashion so as to ensure the delivery of the requisite number of Deposit Securities to the account of the Fund by no later than 3:00 p.m., Eastern Time, on the Settlement Date.

A standard creation transaction fee will be imposed to offset the transfer and other transaction costs associated with the issuance of Creation Units.

Shares of the Fund may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and only on a business day. BFA will make available through the NSCC, prior to the opening of business on the Exchange on each business day, the designated portfolio of securities (including any portion of such securities for which cash may be substituted) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (''Fund Securities''). Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit generally will consist of a specified amount of cash, Fund Securities, plus additional cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after the receipt of a request in proper form, and the value of the specified amount of cash and Fund Securities, less a redemption transaction fee. The Fund generally redeems Creation Units partially for cash.

A standard redemption transaction fee will be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

Redemption requests for Creation Units of the Fund must be submitted to the Distributor by or through an authorized participant no later than 4:00 p.m. Eastern Time on any business day, in order to receive that day's NAV. The authorized participant must transmit the

[23] A ''significant event'' is an event that, in the judgment of BFA, is likely to cause a material change to the closing market price of the asset or liability held by the Fund.

[24] The Adviser represents that, to the extent the Trust permits or requires a ''cash in lieu'' amount, such transactions will be effected in the same or equitable manner for all authorized participants.

request for redemption in the form required by the Fund to the Distributor in accordance with procedures set forth in the authorized participant agreement.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees and expenses, portfolio holdings disclosure policies, distributions, taxes and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (*www.iShares.com*), as applicable.

Availability of Information

The Fund's Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[25] daily trading volume, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information for the Fund will also be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites. On each business day, before commencement of trading in Shares during Regular Trading Hours [26] on the 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.[27]

On a daily basis, the Disclosed Portfolio displayed on the Fund's Web site will include the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, if any, 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 or other asset or instrument underlying the holding,[28] if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; 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.

In addition, for the Fund, an estimated value, defined in BATS Rule 14.11(i)(3)(C) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[29] In addition, the quotations of certain of the Fund's holdings may not be updated during U.S. trading hours if such holdings do not trade in the United States or if updated prices cannot be ascertained.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Intraday, executable price quotations on Fixed Income Securities and non-exchange traded derivatives, including non-exchange listed investment companies, are available from major broker-dealer firms and for exchange-traded assets, including exchange listed investment companies and futures, such intraday information is available directly from the applicable listing exchange. All such intraday price information is available through subscription services, such as Bloomberg, Thomson Reuters and International Data Corporation, which can be accessed by authorized participants and other investors.

Information regarding market price and trading volume will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available on the facilities of the CTA.

Initial and Continued Listing

The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[30] A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. The Exchange will halt trading in the Shares under the conditions specified in BATS Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing 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. Trading in the Shares also will be subject to Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BATS will allow trading in the Shares from 8:00 a.m.

[25] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[26] Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

[27] 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.

[28] Derivatives that reference or allow delivery of more than one asset, such as U.S. Treasury futures, will identify the underlying asset generically.

[29] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values published via the Consolidated Tape Association (''CTA'') or other data feeds.

[30] *See* 17 CFR 240.10A–3.

until 5:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BATS Rule 11.11(a), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. The Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange traded investment companies and futures via the Intermarket Surveillance Group (''ISG''), from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[31] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). The Exchange prohibits the distribution of material non-public information by its employees.

Information Circular

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: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening[32] and After Hours Trading Sessions[33] when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Fund's Registration Statement.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[34] in general and Section 6(b)(5) of the Act[35] 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.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in BATS Rule 14.11(i). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. If the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser to the investment company shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. The Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented ''fire walls'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Exchange may obtain information regarding trading in the Shares and the underlying shares in investment companies and futures via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[36]

According to the Registration Statement, the Fund expects that it will have at least 80% of its assets invested in U.S. dollar-denominated investment grade Fixed Income Securities, futures, and swaps. The Fund's exposure to any single industry will generally be limited to 25% of the Fund's assets. The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged or inverse leveraged returns (*i.e.* two times or three times the Fund's benchmark). The Fund also may invest its net assets in money market instruments at the discretion of the Adviser. While the Fund is permitted to invest without restriction in corporate bonds, the Adviser expects that, under normal circumstances, the Fund will generally invest in corporate bond issuances that have at least $250 million par amount outstanding. The Fund will not invest in non-U.S. equity securities.

The Fund may employ short positions primarily in U.S. Treasury futures and interest rate swaps in order to mitigate the impact of Treasury interest rates on the performance of the underlying bonds. The short positions are not

[31] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Disclosed 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. The Exchange also notes that all of the investment company securities and futures will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[32] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

[33] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

[34] 15 U.S.C. 78f.

[35] 15 U.S.C. 78f(b)(5).

[36] *See* supra note 31.

intended to mitigate other factors influencing the price of bonds.

Additionally, the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities. 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.

In addition to the derivatives holdings described above as part of the Fund's principal investment strategy, the Fund may also, to a limited extent (under normal circumstances, less than 20% of the Fund's net assets), engage in transactions in the following instruments:

Treasury futures, interest rate swaps, credit default swaps, asset-backed Fixed Income Securities, non-Agency mortgage-backed fixed-income securities, and structured securities in order to serve additional investment objectives of the Fund, as described above.[37]

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each business day, before commencement of trading in Shares during Regular Trading Hours, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Pricing information will be available on the Fund's Web site including: (1) The prior business day's reported NAV, the Bid/Ask Price of the Fund, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in BATS Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to BATS Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's TRACE. As noted above, investors will also have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Intraday, executable price quotations on Fixed Income Securities and non-exchange traded derivatives are available from major broker-dealer firms and for exchange-traded assets, including investment companies and futures, such intraday information is available directly from the applicable listing exchange. All such intraday price information is available through subscription services, such as Bloomberg, Thomson Reuters and International Data Corporation, which can be accessed by authorized participants and other investors.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of 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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[37] *See* supra note 20.

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2014–056 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–BATS–2014–056. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2014–056, and should be submitted on or before January 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30901 Filed 1–5–15; 8:45 am]

BILLING CODE 8011–01–P

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73957; File No. SR–MIAX–2014–068]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

December 30, 2014.

Pursuant to the provisions of 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 December 19, 2014, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to modify the Trading Permit Fee for EEMs.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its Monthly Trading Permit fee to increase the monthly Trading Permit fee that applies to Electronic Exchange Members (''EEMs''). Specifically, the Exchange proposes to increase the monthly Trading Permit fee that applies to EEMs to $1,500, from the current level of $1,000.

The Exchange issues Trading Permits that confer the ability to transact on the Exchange.[3] The Exchange assesses monthly fees for Trading Permits depending upon the category of Member that is issued a particular trading permit.[4] EEMs are assessed a monthly fee of $1,000 for a Trading Permit. All Market Makers, whether they are a Registered Market Makers (''RMMs''), Lead Market Makers (''LMMs''), or Primary Lead Market Makers (''PLMMs''), are assessed $4,000.00 per month for a Trading Permit for an assignment in up to 100 option classes, $5,500.00 per month for a Trading Permit for an assignment in up to 250 option classes, or $7,000.00 per month for a Trading Permit for an assignment in all option classes listed on the Exchange.

The Exchange proposes to increase the monthly Trading Permit fee that applies to EEMs to $1,500, in order to increase the Exchange's non-transaction fee revenues. The Exchange notes that the proposed monthly Trading Permit fees are generally lower than monthly trading permit fees in place at CBOE and the NASDAQ OMX PHLX LLC (''PHLX''). The $1,500 monthly Trading Permit fee to be assessed to EEMs is lower than the CBOE's monthly electronic access trading permit fee ($1,600) and the PHLX's monthly permit fee for members ($2,150).

Members receiving Trading Permits during the month will be assessed Trading Permit Fees according to the above schedule, except that the calculation of the Trading Permit fee for the first month in which the Trading Permit is issued will be pro-rated based on the number of trading days occurring

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] There is no limit on the number of Trading Permits that may be issued by the Exchange; however the Exchange has the authority to limit or decrease the number of Trading Permits it has determined to issue provided it complies with the provisions set forth in Rule 200(a) and Section 6(c)(4) of the Exchange Act. *See* 15 U.S.C. 78(f)(c)(4). For a complete description of MIAX Trading Permits, *see* MIAX Rule 200.

[4] The monthly Trading Permit Fee is in addition to the one-time application fee for MIAX Membership. The Exchange charges a one-time application fee based upon the applicant's status as either an Electronic Exchange Member (''EEM'') or as a Market Maker. Applicants for MIAX Membership as an EEM are assessed a one-time Application Fee of $2,500.00. Applicants for MIAX Membership as a Market Maker are assessed a one-time Application Fee of $3,000.00. The difference in the fee charged to EEMs and Market Makers reflects the additional review and processing effort needed for Market Maker applications.

after the date on which the Trading Permit was in effect during that first month divided by the total number of trading days in such month multiplied by the monthly rate.

The Exchange proposes to implement the Trading Permit fees beginning January 1, 2015.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(4) of the Act [6] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed Trading Permit fee is reasonable, equitable and not unfairly discriminatory. The Exchange notes that the Trading Permit fees are lower than comparable fees at other exchanges as described in the Purpose section above. As such, the proposal is reasonably designed because it will incent market participants to register as EEMs on the Exchange in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed fee is fair and equitable and not unreasonably discriminatory because the Trading Permit fee applies equally to all Members who choose to register as an EEM. All similarly situated EEMs will be subject to the same Trading Permit fee, and access to the Exchange is offered on terms that are not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposal increases both intermarket and intramarket competition by marginally increasing Trading Permit fees for EEMs on the Exchange in a manner that still remains lower than comparable fees on other exchanges. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposal reflects this competitive environment because it increases the Exchange's fees in a manner that continues to encourage market participants to register as EEMs on the Exchange, to provide liquidity, and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2014–068 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–MIAX–2014–068. 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–MIAX–2014–068 and should be submitted on or before January 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30891 Filed 1–5–15; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73967; File No. SR–NASDAQ–2014–128]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASDAQ Rules 7014 and 7018

December 30, 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 December 19, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–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 the Substance of the Proposed Rule Change

NASDAQ is proposing to lower access fees in order to attract more investor orders to the public markets. In response to claims that public markets are too expensive, NASDAQ is proposing to amend Rule 7018(a) to lower execution fees for a select group of securities where access fees may be discouraging the use of public markets. NASDAQ believes that the data generated by this experimental approach will contribute to the on-going debate on the structure of U.S. markets. NASDAQ is also making clarifying changes to Rule 7014.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on February 2, 2015. The text of the proposed rule change is available at *nasdaq.cchwallstreet.com* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Hundreds of exchange-listed securities trade more volume on off-exchange markets than on exchange markets. Off-exchange orders do not generate quotes on public markets, do not interact with orders on public markets and consequently do not promote or contribute to price discovery to the same extent as do orders posted and executed on exchanges.[3] Economic studies from markets spanning the world conclude that as more orders migrate away from exchanges, the price discovery process weakens, trading spreads widen, and overall investor trading costs increase.[4] NASDAQ has been an advocate for improvements to the market structure regulations that have enabled—and even exacerbated—this shift by failing to evolve as technological advances have transformed trading over the last decade. In the absence of market-wide regulatory changes, NASDAQ OMX, through its subsidiary exchanges including NASDAQ, has attempted multiple times and in multiple ways to improve market structure to the extent possible by a single player in an interconnected, multi-player ecosystem. While these programs have met mixed success, NASDAQ believes that each one makes an important contribution to the continued evolution of U.S. market structure by showing regulators and market participants potential paths to positive change.

Now, in response to assertions that the shift in trading away from public markets is caused by high exchange access fees, NASDAQ is proposing another market structure experiment: To significantly reduce access fees, and related credits in a select set of securities. As discussed below, NASDAQ believes that proposed changes may improve price discovery in the select securities. Perhaps more importantly, the experimental fee reduction will generate much-needed data about the impact of access fees on the level of off-exchange trading and, potentially, on price discovery, trading costs, displayed liquidity and execution quality as well. NASDAQ further believes that a data driven, empirically-based review of the impacts of fees and rebates on market quality is the sound and prudent method to drive the equity markets to the right conclusion. NASDAQ believes the proposal is a means to that end.

Specifically, NASDAQ is proposing to amend NASDAQ Rule 7018(a) by reducing the fee assessed for accessing liquidity, and also reducing the credits provided for adding liquidity, on NASDAQ in certain securities. The proposed reduced fees and credits will be provided in lieu of other fees and credits under the fee schedule.[5] Currently, NASDAQ assesses fees and provides credits under Rule 7018(a) in securities that trade at $1 or more based on the market on which it is listed.[6] Under each section of the rule, NASDAQ provides various tiers of fees and rebates based on a member's trading activity. NASDAQ is proposing to modify the fees and credits applicable to trading activity in fourteen equity securities, denoted in the proposed rule by their ticker symbols (''Select Symbols'').[7] NASDAQ is also amending Rule 7014 to make clear that the fees and credits described in Rule 7014 do not apply to Select Symbols. The proposed change is a part of NASDAQ's continuing efforts to improve market quality.

Rule 610 of Regulation NMS generally limits the fees that any trading center[8] can charge for accessing the best bid and offer of an exchange to no more than $0.0030 per share; however, there is no limit on how low an access fee may be under the regulation. Most national securities exchanges operate what is commonly known as a ''maker-taker'' model of pricing, whereby a liquidity maker is provided with a rebate if its order is executed and a liquidity taker is assessed a fee for removing that liquidity. By using the maker-taker model, exchanges are able to provide an

[3] NASDAQ notes that a displayed order at the NBBO of an exchange, and the subsequent execution thereof, contributes significantly to price discovery because both the displayed order prior to execution, and the execution itself, provide a reference price to the market. Further, a non-displayed order on an exchange contributes to price discovery as it is part of the continuous auction on a market with publicly displayed orders and quotes—albeit the contribution of a non-displayed order on an exchange is less than the contribution of a displayed order on the exchange. A non-displayed order on an off-exchange venue contributes less to price discovery because it is resting in a less transparent trading venue that is not part of the continuous auction of a ''lit'' exchange.

[4] *See, e.g.,* Australian Securities and Investments Commission, Report 331 ''Dark Liquidity and High-Frequency Trading'' (March 2013) (available at: *http://download.asic.gov.au/media/1344182/rep331-published-18-March-2013.pdf*); *see also* International Organization of Securities Commissions, Technical Committee, Final Report ''Principals for Dark Liquidity'' (May 2011) (available at: *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD353.pdf*).

[5] For example, through the Investor Support Program and Qualified Market Maker Program NASDAQ provides certain credits and reduced fees for member firms that improve the market significantly. *See* Rule 7014. NASDAQ notes that although the proposed new fees and credits are in lieu of other fees and credits, the trading activity in these securities will be accounted for in calculations of measures used to qualify for fees and credits under Rule 7018(a) applied to securities not in the proposed program (for example, Consolidated Volume as defined under Rule 7018(a)).

[6] Namely, NASDAQ, The New York Stock Exchange, or other exchanges.

[7] Each of the Select Symbol securities trade in excess of $1. NASDAQ notes that the proposed fees and credits applicable to the Select Symbols do not apply to participation in the NASDAQ Opening, Closing, and Halt Crosses.

[8] ''Trading Center'' is defined by Regulation NMS as a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent. *See* 17 CFR 242.600(b)(78).

incentive to liquidity makers to expose their orders, supported by the fee paid by the liquidity taker.

Under Rule 7018(a), NASDAQ currently assesses a fee of $0.0030 per share executed for accessing liquidity on NASDAQ, and provides various credits under the rule for providing liquidity. NASDAQ is proposing to reduce the fees assessed for accessing liquidity on the Exchange in the Select Symbols in an effort to attract more liquidity to the Exchange in those securities and thereby improve the quality of the market in them on NASDAQ. In terms of the fee assessed for accessing all liquidity on NASDAQ, the Exchange proposes to lower the fee from $0.0030 to $0.0005 for the fourteen Select Symbols, which are comprised of securities listed on either NASDAQ or the New York Stock Exchange (''NYSE''). NASDAQ is proposing to reduce the access fee regardless of whether the liquidity removed is displayed or not.

Concurrent with lowering the fee assessed for removing liquidity from NASDAQ in the Select Symbols, NASDAQ is also proposing to reduce the credits provided for adding liquidity in them. Currently, NASDAQ provides various credits to member firms that provide displayed liquidity [9] based on various measures of the nature and consistency of the member firm's beneficial market activity.[10] The credits NASDAQ provides for displayed liquidity range from $0.0015 to $0.00305 per share executed. NASDAQ is proposing to reduce the credit provided to a member firm that provides displayed liquidity in the select securities to $0.0004 per share executed.

The Exchange also provides a credit to member firms that contribute non-displayed mid-point liquidity to NASDAQ. Like the credits provided for displayed liquidity, NASDAQ provides several credits to member firms that provide non-displayed midpoint liquidity based on the nature and consistency of the member firm's beneficial contribution to market quality. These credits NASDAQ provides for non-displayed midpoint liquidity range from $0.0010 to a credit of $0.0025 per share executed. NASDAQ notes that, while displayed liquidity provides the greatest contribution to market quality, non-displayed mid-point liquidity often provides liquidity takers with significant price improvement. Accordingly, NASDAQ provides an incentive to market participants to provide non-displayed midpoint liquidity, albeit at a level generally lower than what is provided for displayed liquidity. NASDAQ is proposing to provide a credit to a member firm that provides non-displayed midpoint liquidity in the select securities of $0.0002 per share executed.

Lastly, NASDAQ provides credits that range from $0.0018 to $0.0000 per share executed for certain other non-displayed orders, including Supplemental Orders,[11] if that member firm contributes a significant level of non-displayed liquidity during the month. Under the proposal, NASDAQ will not provide a credit for other non-displayed orders in the Select Symbols.

NASDAQ notes that it may, from time to time, alter the securities that are included in the list of Select Symbols and will file the appropriate rule filing if such a chance [sic] is proposed. NASDAQ will consider the impact the pricing has had on market quality and off-exchange volume of existing Select Symbols, and will also consider similar factors when selecting securities to be added as Select Symbols.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

NASDAQ believes that the proposed fee and credits for trading in the Select Symbols are reasonable and equitably allocated because they are designed to improve market quality in securities that currently trade significantly off-exchange. NASDAQ notes that the proposed access fee is significantly lower than the access fee assessed by NASDAQ for all equity securities trading above $1. Although access fees have been debated before Regulation NMS was adopted, these fees and related credits have recently been the subject of intense debate and part of the larger discussion on U.S. market structure. Many commenters have noted that the exchange's fee and rebate structures have become too complex, which has resulted in a significant number of market participants to [sic] direct order flow to venues other than exchanges. NASDAQ believes that orders interacting on ''lit'' exchanges provide the greatest contribution to price competition and transparency. Accordingly, NASDAQ is proposing to reduce the access fee significantly in certain securities that have greater than average off-exchange transactions, which it believes may attract order flow that is currently directed to off-exchange trading venues. As a consequence of the access fee reduction in these securities, NASDAQ is also generally reducing the credit provided to liquidity makers for providing liquidity in the Select Symbols. As noted above, exchanges using the maker-taker model use, in part, the access fee assessed the liquidity taker to cover the credit provided to the liquidity maker. As such, NASDAQ believes that it reasonable to reduce the credits provided to liquidity makers in the Select Symbols given the reduction in the fee assessed liquidity takers. The Exchange notes that the credits provided for adding liquidity in the Select Symbols are tiered to provide the greatest credit to liquidity makers that provide the most beneficial liquidity. NASDAQ believes that providing such tiered credits is reasonable and an equitable allocation of the credit because doing so is consistent with the current structure under the rule,

[9] Other than Supplemental Orders and Designated Retail Orders, which have separate credits and eligibility requirements.

[10] For example, NASDAQ provides a credit of $0.00305 per share executed to member firms that have (i) shares of liquidity provided in all securities through one of its Nasdaq Market Center MPIDs that represent 1.60% or more of Consolidated Volume during the month, or (ii) shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.60% or more of Consolidated Volume during the month, and shares of liquidity provided in all securities through one of its Nasdaq Market Center MPIDs that represent 0.75% or more of Consolidated Volume during the month. Consolidated Volume is defined under the rule as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. As such, to qualify for the credit a member firm must consistently contribute significantly toward improving price discovery.

[11] As defined by Rule 4751(f)(14).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4) and (5).

whereby member firms that provide displayed liquidity are generally provided the greatest credit and those that provide non-displayed liquidity receive the lowest.

NASDAQ believes that the proposed changes are not unfairly discriminatory because they will apply uniformly to all member firms that trade in the Select Symbols. Moreover, applying the reduced access fee to the Select Symbols is not unfairly discriminatory because the Exchange seeks to provide incentive to member firms to direct order flow away from off-exchange venues and on to NASDAQ. NASDAQ notes that it is also reducing the credits provided to liquidity makers in the Select Symbols, which will offset the reduced fee received by NASDAQ from liquidity takers. As such, liquidity makers will continue to be rewarded for providing liquidity to NASDAQ, while liquidity takers will continue to be assessed a fee for removing liquidity. Lastly, NASDAQ is continuing its practice of providing greater credits to liquidity makers that provide liquidity that contributes most to price discovery.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[14] NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, NASDAQ is making a significant reduction in the access fee assessed for removing liquidity in the Select Symbols. NASDAQ's goal in doing so is to attract liquidity to NASDAQ in these securities, thereby improving the level of price discovery. NASDAQ does not believe that the proposed changes will serve as a burden on competition in any way, but rather may promote competition among exchanges in the fees assessed and credits provided in the Select Symbols. Moreover, the proposed changes are reflective of the competition that exists between exchanges and off-exchange venues that are subject to lesser regulatory burdens than the exchanges, including transparency. Lastly, the proposed changes are designed to benefit market quality and ultimately, price competition among market participants on the Exchange.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. To the extent the proposed changes are effective at attracting order flow to the Exchange, the changes will promote competition among exchanges and other trading venues. Accordingly, NASDAQ does not believe that the proposed changes will unnecessarily impair the ability of members or other order execution venues to compete in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[15]. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2014–128 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–128. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–128, and should be submitted on or before January 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30903 Filed 1–5–15; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78f(b)(8).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73955; File No. SR–CBOE–2014–094]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for the CBOE Book Depth Data Feed and for Certain Other CBOE Real-Time Data Feeds

December 30, 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 December 17, 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

Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') proposes to establish fees for the CBOE Book Depth Data Feed and amend fees for certain other CBOE real-time data feeds. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to: (1) Amend fees for the CBOE BBO Data Feed and Complex Order Book (''COB'') Data Feeds; (2) establish fees for the CBOE Book Depth Data Feed; and (3) establish fees for distribution of CBOE data via a ''Display Only Service'' (as defined below). These data feeds are made available by CBOE's affiliate Market Data Express, LLC (''MDX'').

BBO, Book Depth and COB Data Feeds

BBO Data Feed: The BBO Data Feed is a real-time, low latency data feed that includes the following content: (i) Outstanding quotes and standing orders at the best available price level on each side of the market, with aggregate size (''BBO data''), and last sale data;[3] (ii) totals of customer versus non-customer contracts at the BBO, (iii) All-or-None contingency orders priced better than or equal to the BBO, (iv) BBO and last sale data for complex strategies (*e.g.,* spreads, straddles, buy-writes, etc.); (v) expected opening price (''EOP'') and expected opening size (''EOS'') information that is disseminated prior to the opening of the market and during trading rotations, (vi) end-of-day (''EOD'') summary messages that are disseminated after the close of a trading session that include summary information about trading in CBOE listed options (*i.e.,* product name, opening price, high and low price during the trading session and last sale price), (vii) ''recap messages'' that are disseminated during a trading session any time there is a change in the open, high, low or last sale price of a CBOE listed option, as well as product name and total volume traded in the product during the trading session; and (viii) product IDs and codes for all CBOE listed options contracts. The data in the BBO Data Feed is refreshed periodically during the trading session. The BBO and last sale data contained in the BBO Data Feed is identical to the data sent to the Options Price Reporting Authority (''OPRA'') for redistribution to the public.[4]

Book Depth Data Feed: The Book Depth Data Feed is a real-time, low latency data feed that includes all data contained in the BBO Data Feed (as described above) plus outstanding quotes and standing orders up to the first four price levels on each side of the market, with aggregate size (''Book Depth''). The Book Depth Data Feed includes market data for simple options as well as complex strategies.[5]

COB Data Feed: The COB Data Feed is a subset of the Book Depth Data Feed. It is a real-time data feed that includes data regarding the Exchange's Complex Order Book and related complex order information. The COB Data Feed includes BBO, Book Depth and last sale data for all CBOE-traded complex order strategies and identifies customer orders and trades.[6]

Fees

BBO Data Feed Fees: MDX currently charges a ''Data Fee'', payable by a Customer, of $5,000 per month for internal use and external redistribution of the BBO Data Feed.[7] The Data Fee entitles a Customer to provide the BBO Data Feed to an unlimited number of internal users and Devices[8] within the Customer. A Customer receiving the BBO Data Feed from another Customer is assessed the Data Fee by MDX pursuant to its own market data agreement with MDX, and is entitled to use the Data internally and/or distribute it externally.[9] All Customers have the same rights to utilize the data internally and/or distribute it externally as long as the Customer has entered into a written agreement with MDX for the data and pays the Data Fee.

The Exchange proposes to increase the Data Fee from $5,000 per month to $6,000 per month. The Exchange also

[3] ''Best bid and offer'' or ''BBO'' data is sometimes referred to as ''top-of-book'' data. Data with respect to executed trades is referred to as ''last sale'' data.

[4] MDX makes available to Customers the BBO data and last sale data that is included in the BBO Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

[5] *See* Securities Exchange Act Release No. 71774 (March 24, 2014), 79 FR 17619 (March 28, 2014).

[6] MDX also offers a real-time Flexible Exchange (''FLEX'') Options Data Feed that includes BBO and last sale data for FLEX options traded on the CBOE FLEX Hybrid Trading System, including BBO and last sale data for FLEX complex strategies. The FLEX Options Data Feed is currently made available at no charge. The Exchange is not proposing to establish fees for the FLEX Options Data Feed at this time.

[7] A BBO Data Feed ''Customer'' is currently defined as any entity that receives the BBO Data Feed either directly from MDX's system or through a connection to MDX provided by an approved redistributor (*i.e.,* a market data vendor or an extranet service provider) and distributes it externally or uses it internally. The MDX fee schedule for CBOE data is located at *https://www.cboe.org/MDX/CSM/OBOOKMain.aspx.*

[8] A ''Device'' means any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form.

[9] A Customer may choose to receive the data from another Customer rather than directly from MDX's system because it does not want to or is not equipped to manage the technology necessary to establish a direct connection to MDX.

proposes to establish a ''User Fee'', payable by a Customer, of $50 per month per Device or user ID for use of data in the BBO Data Feed by ''Display Only Service'' users. A ''Display Only Service'' would allow a natural person end-user to view and manipulate data using a Customer's computerized service, but not to save, copy, export or transfer the data or any results of the manipulation to any other computer hardware, software or media, except for printing it to paper or other non-magnetic media. User fees would be payable only for ''external'' Display Only Service users (Devices or user IDs of users who are not employees or natural person independent contractors of the Customer, the Customer's affiliates or an authorized service facilitator).

The Exchange proposes to amend the definition of a ''Customer'' to make it uniformly applicable to the BBO Data Feed and the other CBOE real-time data feeds described above. The term ''Customer'' would mean any person, company or other entity that, pursuant to a market data agreement with MDX, is entitled to receive data, either directly from MDX or through an authorized redistributor (*i.e.,* a Customer or an extranet service provider), whether that data is distributed externally or used internally. An entity or person that receives BBO data from a Customer through a Display Only Service is not a ''Customer'' unless it has a market data agreement in place with MDX.

Book Depth Data Feed Fees: The Exchange proposes to amend the MDX fee schedule to establish fees for the Book Depth Data Feed. MDX would charge a ''Data Fee'', payable by a Customer (as defined above), of $6,000 per month for internal use and external redistribution of the Book Depth Data Feed. The Data Fee for the Book Depth Data Feed would entitle a Customer to provide the Book Depth Data Feed to an unlimited number of internal users and Devices within the Customer. A Customer receiving the Book Depth Data Feed from another Customer would be assessed the Data Fee by MDX pursuant to its own market data agreement with MDX, and would be entitled to use the Data internally and/or distribute it externally. All Customers would have the same rights to utilize the Book Depth data internally and/or distribute it externally as long as the Customer has entered into a written agreement with MDX for the data and pays the Data Fee. BBO Data Feed Customers could upgrade to become Book Depth Data Feed Customers without paying any additional Data Fee.[10]

MDX would also charge a Book Depth Data Feed Customer a User Fee of $50 per month per Device or user ID for use of the data in the Book Depth Data Feed by Display Only Service users (as defined above). User Fees would be payable only for ''external'' Display Only Service Users (as defined above). An entity or person that receives Book Depth data from a Customer through a Display Only Service is not a ''Customer'' unless it has a market data agreement in place with MDX.

COB Data Feed Fees: MDX currently charges Customers of the COB Data Feed a Data Fee of $3,000 per month plus applicable User Fees.[11] The Data Fee for the COB Data Feed is waived for Customers of the BBO Data Feed.[12]

MDX currently charges a Customer User Fees of $25 per month per Device or user ID for receipt of the data by ''Professional Users'' [13] and $1 per month for receipt of the data by ''Non-Professional Users.'' [14] User Fees are subject to a cap of $2,000 per month (*i.e.,* a Customer pays no more than $2,000 in User Fees for a given month).

The Exchange proposes to reduce the Data Fee from $3,000 per month to $100 per month. The Data Fee would be waived for Customers of the Book Depth Data Feed. The Exchange proposes to reduce the User Fee for Non-Professional Users from $1 per month to zero.[15] For the purpose of consistency, the Exchange proposes to amend the definition of a COB Data Feed Customer so that it is the same definition that is applicable to the BBO and Book Depth Data Feeds.[16]

Systems Fees: MDX currently charges a Port Fee of $500 per data port per month for receipt of a data feed through a connection to MDX. The Exchange proposes to amend the MDX Fee Schedule to clarify how the Port Fee is assessed. First, the Exchange proposes to clarify that the Port Fee applies to the receipt of any data feed through a connection to MDX, not only for the receipt of the BBO Data Feed. Second, the Exchange proposes to amend the description of the fee to clarify that it is payable by any Customer that receives data through a direct connection to MDX or through a connection to MDX provided by an extranet service provider. Lastly, the Exchange proposes to clarify that the port fee applies to receipt of any data feed but is only assessed once per data port. For example, if a Customer receives two data feeds over the same port, the Port Fee is only assessed once for that port.

[10] Such Customers would still be subject to Display Only Service User Fees as described below.

[11] A COB Data Feed Customer is currently defined as any entity that receives the COB Data Feed, either directly from MDX's system or through a connection to MDX provided by an approved redistributor (*i.e.,* a market data vendor or an extranet service provider), and distributes it externally or uses it internally, except that an entity or person that receives the COB Data Feed from a Customer and only uses it internally is not a ''Customer'' if it receives the COB Data Feed from a Customer subject to a form of ''Subscriber Agreement'' that has been approved by MDX.

[12] Such COB Data Feed Customers are still subject to User Fees as described below.

[13] A ''Professional User'' is any natural person recipient of Data who is not a Non-Professional User. User Fees for Professional Users are payable for both ''internal'' Professional Users (Devices or user IDs of employees of a Customer) and ''external'' Professional Users (Devices or user IDs of Professional Users who receive the Data from a Customer and are not employed by the Customer). (Non-Professional Users must be external since a person who uses the COB Data Feed for a commercial purpose cannot be a Non-Professional User.)

[14] A ''Non-Professional User'' is a natural person who uses the COB Data Feed only for personal purposes and not for any commercial purpose and who, if he or she works in the United States, is not: (i) Registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, if he or she works outside of the United States, does not perform the same functions as someone who would qualify as a Non-Professional User if he or she worked in the United States.

[15] The Exchange proposes to amend the definition of ''Non-Professional User'' so that it is consistent with the definition of ''Non-Professional User'' used by OPRA. *See* OPRA Addendum for Nonprofessionals, which is part of Attachments B–1 and B–2 to OPRA's Vendor Agreement. A ''Non-Professional User'' would mean a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) Registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

[16] For the same reason, the Exchange proposes to amend the definition of a FLEX Options Data Feed Customer so that it is the same definition that is applicable to the BBO, Book Depth and COB Data Feeds.

The Exchange also proposes to delete from the MDX Fee Schedule the statements that MDX will not charge fees for any of the data feeds (or the port fee) for any calendar month in which Customer commences receipt of the data after the 15th day of the month (or in the case of the port fee, establishes the connection after the 15th day of the month) or discontinues receipt of the data before the 15th day of the month (or in the case of the port fee, disconnects before the 15th day of the month). The Exchange believes it would be more appropriate for billing policies to be located within MDX's written agreement with Customers.

All of the proposed fee changes would be effective on January 1, 2015.

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.[17] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange also believes the proposed rule change is consistent with the Section 6(b)(5)[19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

BBO Data Fees

The Exchange believes the proposed increase in the Data Fee for BBO data is equitable and not unfairly discriminatory because it would apply equally to all Customers. The Exchange believes the proposed Data Fee is reasonable because it compares favorably to fees that other markets charge for similar products. For example, NASDAQ OMX PHLX charges Internal Distributors a monthly fee of $4,000 per organization and External Distributors a monthly fee of $5,000 per organization for its ''TOPO Plus Orders'' data feed, which like the BBO Data Feed includes top-of-book data (including orders, quotes and trades) and other market data. The International Securities Exchange offers a ''Top Quote Feed'', which includes top-of-book data, and a separate ''Spread Feed'', which like the BBO Data Feed includes order and quote data for complex strategies. ISE charges distributors of its Top Quote Feed a base monthly fee of $3,000 and distributors of its Spread Feed a base monthly fee of $3,000. NYSE charges a $3,000 per month Access Fee and $2,000 per month External Redistribution fee for each of its market data products entitled ''NYSE ArcaBook for Amex Options'' and ''NYSE ArcaBook for Arca Options'' that include top-of-book and last sale data similar to the data in the BBO Data Feed.

The Exchange believes the proposed Display Only Service User Fee for the BBO Data Feed is equitable and not unfairly discriminatory because it would apply equally to all Customers that distribute data via a Display Only Service. The Exchange believes the proposed User Fee is reasonable because it compares favorably to usage fees that other markets charge for similar products. For example, NASDAQ OMX PHLX charges a $40 per month Professional Subscriber Fee for use of its market data products by each of internal and external users. The International Securities Exchange charges a $20 per month Controlled Device Fee for use of its Top Quote Feed and a separate $25 per month Controlled Device Fee for use of its Spread Feed. NYSE charges a $50 per month Professional User Fee for use of each of its NYSE ArcaBook for Amex Options and NYSE ArcaBook for Arca Options market data products that include top-of-book and last sale data similar to the data in the BBO Data Feed.

The Exchange believes it is equitable and not unfairly discriminatory to charge a lower fee for use of BBO data via a Display Only Service because such use would be limited to display use only. The Display Only Service would only allow a natural person end-user to view and manipulate data using the Customer's computerized service, but not to save, copy, export or transfer the data or any results of the manipulation to any other computer hardware, software or media, except for printing it to paper or other non-magnetic media. The Exchange notes other exchanges charge fees for market data products based on distinctions between ''display'' and ''non-display'' usage.[20]

Book Depth Data Fees

The Exchange believes the proposed Data Fee for the Book Depth Data Feed is equitable and not unfairly discriminatory because it would apply equally to all Customers. All Customers would have the same rights to utilize the data (*i.e.,* use the data internally and/or distribute it externally) as long as the Customer has entered into a market data agreement with MDX for the data and pays the Data Fee.

The Exchange believes the proposed Data Fee is reasonable because it compares favorably to fees that other markets charge for similar products. For example, BATS BZX Exchange charges a $1,000 per month Internal Use Access Fee and a $5,000 per month External Distribution Access Fee for Multicast PITCH, which is its depth of market and last sale feed. NASDAQ OMX PHLX charges Internal Distributors a monthly fee of $4,000 and External Distributors a monthly fee of a $4,500 for its Depth of Market data feed that includes full depth of quotes and orders and last sale data for options listed on PHLX. NYSE charges a $3,000 per month Access Fee and $2,000 per month External Redistribution fee for each of its NYSE ArcaBook for Amex Options and NYSE ArcaBook for Arca Options market data products that include top-of-book, last sale and depth of quote data.

The Exchange believes the proposal to allow BBO Data Feed Customers to upgrade to become Book Depth Data Feed Customers without any additional Data Fee is equitable and not unfairly discriminatory because it would apply equally to all BBO Data Feed Customers. BBO Data Feed Customers currently pay MDX $5,000 per month for the right to use and redistribute the data in the BBO Data Feed. The Book Depth Data Feed includes all of the data in the BBO Data Feed. The proposed fee arrangement would allow a Book Depth Data Feed Customer who has upgraded from a BBO Data Feed to use and redistribute Book Depth data for no additional charge, thereby incentivizing further redistribution of the data in the Book Depth Data Feed. The Exchange notes other exchanges offer similar fee arrangements.[21]

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4).

[19] *Id.*

[20] *See e.g.,* Securities Exchange Act Release No. 69554 (May 10, 2013), 78 FR 28917 (May 16, 2013), (SR–NYSEArca-2013–47); Securities Exchange Act Release No. 69553 (May 10, 2013), 78 FR 28926 (May 16, 2013), (SR–NYSEMKT–2013–40); Securities Exchange Act Release No. 68576 (January 3, 2013), 78 FR 1886 (January 9, 2013), (SR–PHLX–2012–145); and Securities Exchange Act Release No. 64652 (June 13, 2011), 76 FR 35498 (June 17, 2011), (SR–NASDAQ–2011–45).

[21] For example, the Exchange believes the NASDAQ Options Market charges only one distributor fee to allow a subscriber access to its ''NASDAQ ITCH-to-Trade Options'' (ITTO) and ''Best of NASDAQ Options'' (BONO) products. The Exchange believes NASDAQ OMX BX charges only one distributor fee to allow a subscriber access to its ''BX Options Depth of Market'' (BX Depth) and ''BX Options Top of Market'' (BX Top) products. In addition, the Exchange believes the International Securities Exchange charges no additional fee to subscribers of its ''Depth of Market'' Feed that also access its Top Quote Feed.

The Exchange believes the proposed Display Only Service User Fee for the Book Depth Data Feed is equitable and not unfairly discriminatory because it would apply equally to all Customers that distribute data via a Display Only Service. The Exchange believes the proposed User Fee is reasonable because it compares favorably to usage fees that other markets charge for similar products. For example, NASDAQ OMX PHLX charges a $40 per month Professional Subscriber Fee for use of its market data products by each of internal and external users. The International Securities Exchange charges a $50 per month Controlled Device Fee for use of its Depth of Market Feed. NYSE charges a $50 per month Professional User Fee for use of each of its NYSE ArcaBook for Amex Options and NYSE ArcaBook for Arca Options market data products.

The Exchange believes it is equitable and not unfairly discriminatory to charge a lower fee for use of Book Depth data via a Display Only Service because such use would be limited to display use only. The Display Only Service would only allow a natural person end-user to view and manipulate data using the Customer's computerized service, but not to save, copy, export or transfer the data or any results of the manipulation to any other computer hardware, software or media, except for printing it to paper or other non-magnetic media. As noted above, other exchanges charge fees for market data products based on distinctions between ''display'' and ''non-display'' usage.[22]

COB Data Fees: The Exchange believes the proposed reductions of the Data Fee and Non-professional User Fee for the COB Data Feed are equitable and not unfairly discriminatory because they would apply equally to all Customers of the COB Data Feed. The Exchange believes the proposed Data Fee is reasonable because it compares favorably to fees that other markets charge for similar products. For example, as noted above, the International Securities Exchange charges distributors of its Spread Feed a base monthly fee of $3,000. The proposed lower Data Fee may permit wider distribution of the COB Data Feed at a lower cost to Customers, and the reduced User Fee may make it less costly for Customers to distribute data to Non-professional Users, thereby benefitting both Customers and Non-professional Users, including public investors.

The Exchange believes the proposal to allow Book Depth Data Feed Customers to become COB Data Feed Customers without any additional Data Fee is equitable and not unfairly discriminatory because it would apply equally to all Book Depth Data Feed Customers. Book Depth Data Feed Customers would pay MDX $6,000 per month for the right to use and redistribute the data in the Book Depth Data Feed. The COB Data Feed is a subset of the Book Depth Data Feed. The proposed fee arrangement would allow a Book Depth Data Feed Customer to use and redistribute the COB Data Feed for no additional charge, thereby incentivizing further redistribution of the data in the COB Data Feed. The Exchange notes other exchanges offer similar fee arrangements.[23]

Systems Fees and Billing Policy: The Exchange believes the proposed changes to the description of the Port Fee are equitable, reasonable and not unfairly discriminatory because they would benefit all Customers by clarifying how the Port Fee is assessed. The Exchange believes removing the billing policy from the MDX Fee Schedule is equitable, reasonable and not unfairly discriminatory because MDX believes it would be more appropriate for billing policies to be located within MDX's written agreement with Customers along with other policies related to MDX's market data services.

For the reasons cited above, the Exchange believes the proposed fees for the BBO, Book Depth and COB Data Feeds are equitable, reasonable and not unfairly discriminatory. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed fees for the BBO, Book Depth and COB Data Feeds fail to meet the requirements of the Act.

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.

An exchange's ability to price its proprietary data feed products is constrained by (1) the existence of actual competition for the sale of such data, (2) the joint product nature of exchange platforms, and (3) the existence of alternatives to proprietary data.

The Existence of Actual Competition. The Exchange believes competition provides an effective constraint on the market data fees that the Exchange, through MDX, has the ability and the incentive to charge. CBOE has a compelling need to attract order flow from market participants in order to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on CBOE to act reasonably in setting its fees for market data, particularly given that the market participants that will pay such fees often will be the same market participants from whom CBOE must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. CBOE currently competes with eleven options exchanges (including CBOE's affiliate, C2 Options Exchange) for order flow.[24]

In addition, in the case of products that are distributed through market data vendors, the market data vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Internet portals, such as Google, impose price discipline by providing only data that they believe will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Similarly, Customers will not offer the BBO, Book Depth or COB Data Feeds unless these products will help them maintain current users or attract new ones. For example, a broker-dealer will not choose to offer the BBO, Book Depth or COB Data Feeds to its retail customers unless the broker-dealer believes that the retail customers will use and value the data and the provision of such data will help the broker-dealer maintain the customer relationship, which allows the broker-dealer to generate profits for itself. Professional users will not request any of these feeds from Customers unless they can use the data for profit-generating purposes in their businesses. All of these operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and

[22] *Supra* footnote 20.

[23] *Supra* footnote 21.

[24] The Commission has previously made a finding that the options industry is subject to significant competitive forces. *See e.g.,* Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR–ISE–2009–97) (order approving ISE's proposal to establish fees for a real-time depth of market data offering).

proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data quality, and price and distribution of their data products. The more trade executions a platform does, the more valuable its market data products become. The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's broker-dealer customers view the costs of transaction executions and market data as a unified cost of doing business with the exchange.

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products. Thus, because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 options self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

The Existence of Alternatives. CBOE is constrained in pricing the BBO, Book Depth and COB Data Feeds by the availability to market participants of alternatives to purchasing these products. CBOE must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. Other options exchanges can and have produced their own top-of-book, book depth and complex strategies market data products, and thus are sources of potential competition for MDX. For example, as noted above, BATS, ISE, NASDAQ OMX PHLX and NYSE offer market data products that compete with the BBO, Book Depth and COB Data Feeds. The large number of SROs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and BD is currently permitted to produce proprietary data products, and many currently do. In addition, the OPRA data feed is a significant competitive alternative to the BBO and last sale data included in the BBO and Book Depth Data Feeds.

Further, data products are valuable to professional users only if they can be used for profit-generating purposes in their businesses and valuable to non-professional users only insofar as they provide information that such users expect will assist them in tracking prices and market trends and making trading decisions.

The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and paragraph (f) of Rule 19b–4 [26] 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–2014–094 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–CBOE–2014–094. This file number should be included on the subject line if email is used. To help the Commission process and review your

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f).

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–2014–094 and should be submitted on or before January 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Brent J. Fields,

Secretary.

[FR Doc. 2014–30893 Filed 1–5–15; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8995]

Determination Under Section 7012 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2014 Relating to Assistance to Somalia

Pursuant to section 7012 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2014 (Div. K, P.L. 113–76) (the Act), E. O. 12163, as amended by E. O. 13346, and Delegation of Authority 245–1, I hereby determine assistance to Somalia is in the national interest of the United States and thereby waive, with respect to Somalia, the application of section 7012 of the Act.

This Determination shall be reported to Congress and published in the **Federal Register**.

[27] 17 CFR 200.30–3(a)(12).

Dated: May 5, 2014.

Heather Higginbottom,

Deputy Secretary of State for Management and Resources.

Editorial Note: This document was received for publication by the Office of **Federal Register** on December 31, 2014.

[FR Doc. 2014–30958 Filed 1–5–15; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 8994]

Determination Under Section 7012 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2014, Relating to Assistance to Zimbabwe

Pursuant to the authority vested in me by section 7012 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2014 (Div. K, P.L. 113–76) (SFOAA), E.O. 12163, as amended by E.O. 13346, and Delegation of Authority 245–1, I hereby determine that targeted assistance to Zimbabwe for health, good governance, education, leadership, family planning, agriculture and food security, poverty reduction, livelihoods, and macroeconomic growth including anti-corruption efforts, helping victims of trafficking, and combatting trafficking, as well as the continuation of assistance that would have a significant adverse effect on vulnerable populations if suspended, are in the national interest of the United States and thereby waive, with respect to Zimbabwe, the application of section 7012 of the SFOAA for such assistance.

This determination shall be reported to Congress and published in the **Federal Register**.

Dated: November 24, 2014.

Heather Higginbottom,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2014–30962 Filed 1–5–15; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 8993]

In the Matter of the Review of the Designation of Popular Front for the Liberation of Palestine—General Command as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act

Based upon a review of the Administrative Record assembled in this matter pursuant to Section 219(a)(4)(C) and (b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C), (b)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State concludes that the circumstances that were the basis for the 2008 decision to maintain the designation of the aforementioned organization as a foreign terrorist organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation of the Popular Front for the Liberation of Palestine—General Command.

Therefore, the Secretary of State hereby determines that the designation of the aforementioned organization as a foreign terrorist organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: December 29, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–30963 Filed 1–5–15; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–17195; FMCSA–2006–26066; FMCSA–2007–29019; FMCSA–2010–0201; FMCSA–2010–0287; FMCSA–2010–0354; FMCSA–2010–0385; FMCSA–2012–0279]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 21 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective January 31, 2015. Comments must be received on or before February 5, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2004–17195; FMCSA–2006–26066; FMCSA–2007–29019; FMCSA–2010–0201; FMCSA–2010–0287; FMCSA–2010–0354; FMCSA–2010–0385; FMCSA–2012–0279], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: 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.*

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.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

II. Exemption Decision

This notice addresses 21 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 21 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Gary Alvarez (MA)
James M. Brasher (AL)
Donald G. Brock, Jr. (NC)
Leon C. Flynn (TX)
Eugene W. Harnisch (WI)
Brett K. Hasty (GA)
Garry D. Layton (TX)
Boynton L. Manuel (SC)
Jimmy R. Mauldin (OK)
Patrick J. McMillen (WI)
Anthony W. Miller (OH)
Rocky Moorhead (NM)
Gary L. Nicholas (MI)
Lynn R. Schraeder (IA)
Ranjodh Singh (CA)
Myron A. Smith (MN)
Jose M. Suarez (TX)
Glen W. Sterling (LA)
Ricky Watts (FL)
Olen L. Williams, Jr. (TN)
Richard L. Zacher (OR)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two-year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 21 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (69 FR 17263; 69 FR 31447; 70 FR 44946; 71 FR 43557; 71 FR 63379; 72 FR 1050; 72 FR 58362; 72 FR 67344; 73 FR 42403; 73 FR 78422; 74 FR 57553; 75 FR 38602; 75 FR 54958; 75 FR 69737; 75 FR 70078; 75 FR 72863; 75 FR 77492; 75 FR 79079; 76 FR 1499; 76 FR 2190; 76 FR 5425; 76 FR 70212; 77 FR 60008; 77 FR 68202; 77 FR 71671; 77 FR 74273; 77 FR 74733; 77 FR 76166; 78 FR 800). Each of these 21 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

IV. 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 (FMCSA–2004–17195; FMCSA–2006–26066; FMCSA–2007–29019; FMCSA–2010–0201; FMCSA–2010–0287; FMCSA–2010–0354; FMCSA–2010–0385; FMCSA–2012–0279), 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, got to *http://www.regulations.gov* and put the docket number, ''FMCSA–2004–17195; FMCSA–2006–26066; FMCSA–2007–29019; FMCSA–2010–0201; FMCSA–2010–0287; FMCSA–2010–0354; FMCSA–2010–0385; FMCSA–2012–0279'' 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 any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and in the search box insert the docket number, ''FMCSA–2004–17195; FMCSA–2006–26066; FMCSA–2007–29019; FMCSA–2010–0201; FMCSA–2010–0287; FMCSA–2010–0354; FMCSA–2010–0385; FMCSA–2012–0279'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button 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: December 22, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–30931 Filed 1–5–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against a Proposed Public Transportation Project

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for a project in Douglas County, CO. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject project and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before June 5, 2015.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Terence Plaskon, Environmental Protection Specialist, Office of Planning and Environment, (202) 366–0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation project listed below. The actions on the project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on each project. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The project and actions that are the subject of this notice are:

Project name and location: Southeast Extension, Douglas County, CO. *Project sponsor:* Regional Transportation District (RTD). *Project description:* RTD proposes to extend the existing light rail transit alignment and provide new transit service south from the existing end-of-line Lincoln Station in Douglas County, Colorado approximately 2.3 miles to RidgeGate Parkway in the City of Lone Tree, Douglas County, Colorado. The project includes a 2.3-mile, double-track light rail extension, three new stations, and a new end-of-line 1,300-space parking facility. *Final agency actions:* No use determination of Section 4(f) resources; Section 106 finding of no adverse effect; project-level air quality conformity; and Finding of No Significant Impact, signed October 17, 2014. *Supporting documentation:* Environmental Assessment, signed August 6, 2014.

Dated: December 30, 2014.

Elizabeth Riklin,

Deputy Associate Administrator Planning and Environment.

[FR Doc. 2014–30937 Filed 1–5–15; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 80 Tuesday,

No. 3 January 6, 2015

Part II

Department of the Interior

Office of Natural Resources Revenue

30 CFR Parts 1202 and 1206

Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1202 and 1206

[Docket No. ONRR–2012–0004]

RIN 1012–AA13

Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Natural Resources Revenue (ONRR) proposes to change the regulations governing valuation for royalty purposes of oil and gas produced from Federal onshore and offshore leases and coal produced from Federal and Indian leases. The proposed rule also consolidates definitions for oil, gas, and coal product valuation into one subpart applicable to the Federal oil and gas and Federal and Indian coal subparts.

DATES: You must submit comments on or before March 9, 2015.

ADDRESSES: You may submit comments to ONRR on this proposed rulemaking by any method below. Please refer to the Regulation Identifier Number (RIN) 1012–AA13 in your comments. (See also Public Availability of Comments under Procedural Matters.)

- Electronically go to *www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ''ONRR–2012–0004,'' then click ''Search.'' Follow the instructions to submit public comments. ONRR will post all comments.
- Mail comments to Armand Southall, Regulatory Specialist, P.O. Box 25165, MS 61030A, Denver, Colorado 80225.
- Hand-carry comments, or use an overnight courier service, to the Office of Natural Resources Revenue, Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: For comments or questions on procedural issues, contact Armand Southall, ONRR, telephone (303) 231–3221, or email at *armand.southall@onrr.gov.* The authors of the proposed rule are Sarah Inderbitzin, Richard Adamski, Michael DeBerard, Peter Christnacht, Kimbra Davis, and Lance Wenger.

SUPPLEMENTARY INFORMATION:

I. Background

In 2007, the Royalty Policy Committee (RPC) Subcommittee on Royalty Management issued a report titled ''Mineral Revenue Collection From Federal and Indian Lands and the Outer Continental Shelf.'' The Subcommittee's report recommended clarification of the regulations governing onshore gas and transportation deductions to provide more certainty for ONRR, BLM, and industry, which should result in better compliance. More specifically, the Subcommittee recommended revisions to the gas valuation regulations and guidelines to address the cost-bundling issue and to facilitate the calculation of gas transportation and gas processing deductions. The Subcommittee also recommended the use of market indices for gas valuation in the context of non-arm's-length transactions in lieu of benchmarks, which have been used since 1988.

The Subcommittee's report also recommended ''revis(ing) and implement(ing) the regulations and guidance for calculating prices used in checking royalty compliance for solid minerals, with particular attention to non-arm's-length transactions.''

The current Federal oil valuation regulations have been in effect since 2000, with a subsequent amendment relating primarily to the use of index pricing in some circumstances. The current Federal gas valuation regulations have been in effect since March 1, 1988, with various subsequent amendments relating primarily to the transportation allowance provisions. The current Federal and Indian coal valuation regulations have been in effect since March 1, 1989, with minor subsequent amendments relating primarily to the Federal black lung excise taxes, abandoned mine lands fees, State and local severance taxes, and washing and transportation allowance provisions. In the years since we wrote these regulations, the Secretary of the Interior's (Secretary) responsibility to determine the royalty value of minerals produced has not changed, but the industry and marketplace have changed dramatically. ONRR proposes these amendments to our valuation regulations to permit the Secretary to discharge the Department of the Interior's (Department) royalty valuation responsibility in an environment of continuing and accelerating change in the industry and the marketplace. The Secretary's responsibilities regarding oil and gas production from Federal leases and coal production from Federal and Indian leases require development of flexible valuation methodologies that lessees can accurately comply with in a timely manner.

To increase the effectiveness and efficiency of our rules, ONRR is proposing proactive and innovative changes. We intend for this proposed rulemaking to provide regulations that (1) offer greater simplicity, certainty, clarity, and consistency in product valuation for mineral lessees and mineral revenue recipients; (2) are more understandable; (3) decrease industry's cost of compliance and ONRR's cost to ensure industry compliance; and (4) provide early certainty to industry and ONRR that companies have paid every dollar due. Therefore, ONRR proposes to amend the current regulations at 30 CFR part 1202, subpart F, and part 1206, subparts C, D, F, and J, governing the valuation, for royalty purposes, of oil, gas, and coal produced from Federal leases and coal produced from Indian leases.

On May 27, 2011, ONRR published Advance Notices of Proposed Rulemaking (ANPRs) regarding the valuation, for royalty purposes, of oil, gas, and coal produced from Federal leases and coal produced from Indian leases (76 FR 30878, 30881). ONRR received responses to the Federal oil and gas valuation ANPR from 19 State, industry, industry trade association, and the general public commenters. ONRR then conducted 3 public workshops on Federal oil and gas valuation in September and October 2011 in Houston, Texas, Washington, DC, and Denver, Colorado. At the workshops, ONRR asked attendees to discuss, among other things, the use of index prices to value oil and gas, alternatives to the current requirement to track actual costs to determine transportation allowances, and alternate methods for valuing wellhead gas volumes to eliminate the requirement to trace the value of liquids removed from processed gas.

ONRR received responses to the Federal and Indian coal valuation ANPR from 11 industry representative, Tribe, State, community group (representing several member groups), coal publication, and trade organization commenters. ONRR then conducted 3 public workshops on Federal and Indian coal valuation in October 2011 in Denver, Colorado; St. Louis, Missouri; and Albuquerque, New Mexico. At those workshops, ONRR asked attendees to discuss, among other things, (1) possible alternatives to the current methods that we use to value arm's-length and non-arm's-length coal sales, (2) coal comparability factors, (3) possible alternatives to the current methods we use to value coal cooperative sales of coal, (4) use of index prices to value coal, and (5)

possible alternatives to the current requirements to track actual costs to determine transportation and washing allowances.

ONRR considered the input from the ANPRs and the workshops and proposes this consolidated rulemaking to improve the current regulations. The proposed rule would not alter the underlying principles of the current regulations. By proposing these amendments, the Department reaffirms that the value, for royalty purposes, of crude oil and natural gas produced from Federal leases and coal produced from Federal and Indian leases is determined at or near the lease and that gross proceeds from arm's-length contracts are the best indication of market value. Like the current regulations, these proposed regulations would not restrict ONRR to a comparison of arm's-length sales of other production occurring in the field or area to value production not sold under an arm's-length contract. Thus, like the current regulations, in this proposed rule, ONRR may begin with a ''downstream'' price or value and determine value at the lease by allowing deductions for the cost of transporting production to downstream sales points or markets, or by allowing appropriate adjustments for location or quality.

Federal and Indian lessees are not obligated to sell their production downstream of the lease. A lessee is at liberty to sell production at or near the lease, even if selling downstream might yield a higher royalty value than selling it at the lease. If a lessee chooses to sell downstream, the choice to sell downstream does not make otherwise non-deductible costs deductible (for example marketable condition and marketing costs). See *Independent Petroleum Ass'n of America.* v. *DeWitt,* 279 F.3d 1036 (D.C. Cir. 2002), *cert. denied sub nom., Independent Petroleum Ass'n of America.* v. *Watson,* 537 U.S. 1105 (2003) (''*Independent Petroleum Ass'n* v. *DeWitt*''); *Devon Energy Corp* v. *Norton,* No. 04–CV–0821 (GK), 2007 WL 2422005 (D.D.C. Aug. 23, 2007), *aff'd sub nom., Devon Energy Corp.* v. *Kempthorne,* 551 F.3d 1030 (D.C. Cir. 2008), *cert. denied,* 130 S. Ct. 86 (2009) (''*Devon*'') and cases cited therein.

As noted above, the changes proposed in this rule reflect an effort by ONRR to update its royalty valuation regulations to, among other things, simplify processes and provide early clarity regarding royalties owed. However, even with the changes outlined in this rule, royalty valuations will continue to be complex, and the markets for oil, gas, and coal will continue to evolve. Therefore, ONRR continues to be interested in opportunities to further streamline the valuation process, while also bringing added transparency to the system. In particular, we seek ideas and comments on:

1. The potential for creating standardized ''schedules'' for transportation and processing allowances to reduce the need to rely on case-by-case operator reporting and agency review of actual costs.

2. Opportunities to more fundamentally reassess how non-arm's length transactions are treated for the purposes of determining royalties owed.

ONRR recognizes that the costs and benefits of making further changes to its valuation regulations (beyond those specifically proposed in this rule) will depend on the specific commodity at issue (*i.e.,* oil, gas or coal), as well as geographic or other factors. Thus, detailed comments that elaborate on specific situations where further valuation changes should be considered would be particularly useful to ONRR as it proceeds with this rulemaking as well as any future rules that may be considered.

II. Explanation of Proposed Amendments

Based on comments ONRR received on the ANPRs and at the public workshops, and other relevant information, we propose this consolidated rule to improve the current regulations to ensure greater clarity, efficiency, certainty, and consistency in production valuation.

The general consensus of comments received on the ANPR about arm's-length oil sales was that actual proceeds are the best indicator of value, and ONRR should not change to index prices. Most commenters agreed the valuation methodology for non-arm's-length sales of Federal oil is working, as is using actual costs to determine transportation allowances. Thus, ONRR is not currently proposing major changes to oil valuation methodologies except to eliminate both unused valuation options, such as tendering, and associated definition(s), and to make the oil rule consistent with our proposed changes to the proposed Federal gas rule.

The comments we received regarding gas produced from Federal leases were, in certain instances, polarized. Very large companies generally support index pricing as an option if it is revenue-neutral and there are no required true-ups (end-of-year comparison of the index value to actual sales and payment on the higher of the two). Independent gas producers and States generally disagreed with the major companies and did not support index pricing because they believe it may not reflect actual value and may not be revenue neutral. The majority of respondents generally support using actual costs for gas transportation and processing deductions to maintain revenue neutrality. In response, ONRR proposes no major changes for the valuation of arm's-length gas sales. However, for non-arm's-length gas sales, ONRR proposes to eliminate current benchmarks (a series of indicators of market value). Instead, ONRR proposes valuation methodology options based on how gas is sold using the first arm's-length-sale price (affiliate resales), optional index prices, or weighted average pool prices.

The general consensus of ANPR commenters for coal valuation was not to change royalty valuation of arm's-length sales and not to use coal index values because of their very limited applicability. Commenters suggested modifying the non-arm's-length coal benchmarks and eliminating seldom-used benchmarks. Commenters agreed ONRR should keep Federal and Indian rules separate. Therefore, at this time, ONRR is proposing no changes to the valuation of arm's-length coal sales.

For non-arm's-length coal sales, ONRR proposes to eliminate the current benchmarks. Instead, ONRR proposes to value coal on the gross proceeds received from the first arm's-length sale. ONRR also proposes to value sales of coal between coal cooperative members using the first arm's-length sale or a netback methodology. In addition, if there is no coal sale, and lessees or their affiliates use the coal to generate electricity and sell the electricity, then ONRR proposes to value the coal for royalty purposes based on the gross proceeds the lessee or its affiliate receive for the power plant's arm's-length sales of the electricity, less applicable deductions. ONRR proposes the same changes for both Federal and Indian coal, with some minor exceptions, but would continue to maintain separate regulations.

ONRR also proposes other changes to our regulations, although we did not specifically request comments on these changes in the ANPRs or at the workshops. One such proposed change is adding a new ''default provision'' to address valuation when ONRR determines (1) a contract does not reflect total consideration, (2) the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration due to misconduct or breach of the duty to market for the mutual benefit of the lessee and the lessor, or (3) it cannot

ascertain the correct value of production because of a variety of factors, including, but not limited to, a lessee's failure to provide documents. In these cases, the Secretary may enforce his/her authority and exercise considerable discretion to establish the reasonable value of production using a variety of discretionary factors and any other information the Secretary believes is appropriate.

Finally, we rewrote all sections of the current regulations in Plain Language to meet the criteria of Executive Orders 12866 and 12988 and the Presidential Memorandum of June 1, 1998, and to make our rules more clear, consistent, and readable. All citations to the current ONRR regulations in title 30 of the *Code of Federal Regulations* (CFR) in this preamble refer to the July 1, 2012, CFR.

III. Section-by-Section Analysis

Before reading the additional explanatory information below, please turn to the proposed rule language that immediately follows the List of Subjects in 30 CFR parts 1202 and 1206 and signature page in this proposed rule. The Department will codify this language in the CFR if we finalize the proposed rule as written.

After you read the proposed rule, please return to the preamble discussion below. The preamble contains more information about the proposed rule, such as why we define a term in a certain manner and why we chose one valuation method over another.

The derivation table below only shows a crosswalk of the recodified sections of the current and the proposed regulations in part 1206.

DERIVATION TABLE FOR PART 1206

The requirements of section:	Are derived from section:
Subpart C	
1206.20	1206.101; 1206.151; 1206.251; 1206.451.
1206.101	1206.102.
1206.102	1206.103.
1206.103	1206.104.
1206.106	1206.105.
1206.107	1206.106.
1206.108	1206.107.
1206.109	1206.108.
1206.110	1206.109.
1206.111	1206.110.
1206.112	1206.111.
1206.113	1206.112.
1206.114	1206.113.
1206.115	1206.114.
1206.116	1206.115.
1206.117	1206.116.
1206.118	1206.117.
Subpart D	
1206.140	1206.150.
1206.141(a)(1)–(4)	1206.152(a)(1).
1206.141(b)(1)–(3)	1206.152(a)(2).
1206.141(b)(4)	1206.152(b)(1)(iv).
1206.142(a)(4)	1206.153(a)(1).
1206.142(b)	1206.153(a)(2).
1206.142(c)	1206.153(b)(1)(i).
1206.143(a)(1) and (b)	1206.152(b)(1)(ii); 1206.153(b)(1)(ii).
1206.143(a)(2)	1206.152(f); 1206.153(f).
1206.143(c)	1206.152(b)(1)(iii); 1206.153(b)(1)(iii).
1206.144	1206.152(c)(1)–(3); 1206.153(c)(1)–(3).
1206.145	1206.152(e)(1) and (2); 1206.153(e)(1) and (2); 1206.157(c)(1)(ii) and (c)(2)(iii); 1206.159(c)(1)(ii) and (c)(2)(iii).
1206.146	1206.152(i); 1206.153(i).
1206.147	1206.152(k); 1206.153(k).
1206.148	1206.152(g); 1206.153(g).
1206.149	1206.152(l); 1206.153(l).
1206.150	1206.154.
1206.151	1206.155.
1206.152(a)	1206.156(a).
1206.152(b)	1206.156(b); 1206.57(a)(2) and (b)(3).
1206.152(c)(1)	1206.157(a)(2) and (b)(4).
1206.152(f)	1206.157(a)(4).
1206.153(b)	1206.157(f).
1206.153(c)	1206.157(g).
1206.154(a)	1206.157(b).
1206.154(e)–(h)	1206.157(b)(2)(i)–(iii).
1206.154(i)	1206.157(b)(2)(iv).
1206.154(i)(3)	1206.157(b)(2)(v).
1206.155	1206.157(c)(1)(i), (ii).
1206.156	1206.157(c)(2)(i)–(iv).
1206.157(a)(1) and (c)	1206.156(d).
1206.157(a)(2) and 1206.158.	1206.157(e).

DERIVATION TABLE FOR PART 1206—Continued

The requirements of section:	Are derived from section:
1206.159(a)(1)	1206.158(a).
1206.159(b)	1206.158(b).
1206.159(c)(1) and (2)	1206.158(c)(1) and (2).
1206.159(d)	1206.158(d)(1).
1206.160	1206.159(a).
1206.161	1206.159(b).
1206.162	1206.159(c)(1).
1206.163	1206.159(c)(2).
1206.164	1206.159(d).
1206.165	1206.159(e).
Subpart F	
1206.250	1206.250.
1206.251	1206.254; 1206.255; 1206.260.
1206.252(d)	1206.258(a); 1206.261(b).
1206.260(a)(1) and (b)	1206.261(a).
1206.260(c)(2)	1206.261(a)(2).
1206.260(d)	1206.261(c)(3).
1206.260(e)	1206.261(c)(1), (c)(2), and (e).
1206.260(f)	1206.262(a)(4).
1206.260(g)	1206.262(a)(2) and (a)(3).
1206.261	1206.262(a)(1).
1206.262	1206.262(b).
1206.263	1206.262(c)(1).
1206.264	1206.262(c)(2).
1206.265	1206.262(d).
1206.266	1206.262(e).
1206.267(a)	1206.258(a).
1206.267(b)(2)	1206.258(c); 1206.260.
1206.267(c)	1206.259(a)(4).
1206.267(d)	1206.259(a)(2) and (a)(3).
1206.267(e)	1206.258(e).
1206.268	1206.259(a)(1).
1206.269	1206.259(b).
1206.270	1206.259(c)(1).
1206.271	1206.259(c)(2).
1206.272	1206.259(d).
1206.273	1206.259(e).
Subpart J	
1206.450	1206.450.
1206.451	1206.453; 1206.454; 1206.459.
1206.460	1206.461(a)(1).
1206.463	1206.461(c).

A. Section-By-Section Analysis of 30 CFR Part 1202—Royalties, Subpart F—Coal

ONRR proposes to amend subpart F regarding Federal and Indian coal production volumes on which you must pay royalties. The proposed rule merely moves current 30 CFR 1206.253 and 1206.452 to 30 CFR part 1202, subpart F to a new § 1202.251. We also rewrote the current sections in Plain Language without substantive change.

B. Section-By-Section Analysis of 30 CFR Part 1206—Product Valuation, Subpart A—General Provisions and Definitions, Subpart C—Federal Oil, Subpart D—Federal Gas, Subpart F—Federal Coal, and Subpart J—Indian Coal

ONRR proposes to amend subparts A, C, D, F, and J relating to the valuation of oil and gas produced from Federal leases and coal produced from Federal and Indian leases.

Subpart A—General Provisions

1206.20 What definitions apply to subparts C, D, F, and J?

ONRR proposes to consolidate the definitions from Federal Oil (30 CFR 1206.101), Federal Gas (30 CFR 1206.151), Federal Coal (30 CFR 1206.251), and Indian Coal (30 CFR 1206.451). The consolidated definitions reside in a proposed § 1206.20 under proposed Subpart A—General Provisions and Definitions.

ONRR proposes to consolidate the existing definitions for these products to provide greater clarity and eliminate redundancy. Where common terms exist in the four subparts, ONRR modifies the definitions to incorporate the active voice and to use plain and simple language similar to the language reflected in the 2000 Federal crude oil rule. For example, the term *arm's-length contract* applies the modern language of the 2000 Federal crude oil rule and extends its applicability to Federal gas and Federal and Indian coal. Where a definition has different meanings for different subparts, we define the term

for each subpart in that definition. For example, see the definition of ''gross proceeds'' below. Terms we currently reference in only one subpart, for example *ANS* (Alaska North Slope), remain unmodified, except we propose to locate these definitions in the consolidated definitions in § 1206.20. Finally, ONRR proposes to add new definitions.

We identify all new definitions in the table below and show if each existing definition remains unchanged, is modified, or is eliminated.

SUMMARY OF TERMS AND STATUS

Term	Status			
	Modified	Not modified	Added new definition	Removed definition
Ad valorem lease		X		
Affiliate	X			
Allowance				X
ANS		X		
Area	X			
Arm's-length contract	X			
Audit	X			
BIA		X		
BLM		X		
BOEM			X	
BSEE			X	
Coal		X		
Coal cooperative			X	
Coal washing		X		
Compression		X		
Condensate	X			
Constraint			X	
Contract	X			
Designee		X		
Exchange agreement		X		
FERC			X	
Field	X			
Gas		X		
Gas plant products		X		
Gathering	X			
Geographic region			X	
Gross proceeds	X			
Index	X			
Index pricing point	X			
Index zone			X	
Indian allottee				X
Indian Tribe	X			
Individual Indian mineral owner			X	
Keepwhole contract			X	
Lease	X			
Lease products	X			
Lessee	X			
Like quality			X	
Like quality coal				X
Like-quality lease products				X
Location differential		X		
Market center		X		
Marketable condition		X		
Marketing affiliate				X
Mine		X		
Minimum royalty				X
Misconduct			X	
Net-Back method				X
Net output	X			
Net profit share				X
Netting	X			
NGLs			X	
NYMEX price		X		
Oil		X		
ONRR		X		
ONRR-approved commercial price bulletin			X	
ONRR-approved publication	X			
Outer Continental Shelf		X		
Payor			X	
Person	X			
Posted price				X
Processing	X			
Processing allowance			X	

SUMMARY OF TERMS AND STATUS—Continued

Term	Status			
	Modified	Not modified	Added new definition	Removed definition
Prompt month		X		
Quality differential		X		
Region			X	
Residue gas		X		
Rocky Mountain Region		X		
Roll	X			
Sale	X			
Sales type code				X
Section 6 lease		X		
Short ton			X	
Spot market price				X
Spot price		X		
Spot sales agreement				X
Tendering program				X
Tonnage			X	
Trading month		X		
Transportation allowance	X			
Warranty contract				X
Washing allowance			X	
WTI differential		X		

We explain the new and modified terms and definitions below. For most modified terms, we rewrote the terms in Plain Language and make no substantive change.

Subpart C—Federal Oil

1206.100 What is the purpose of this subpart?

This proposed section is the same as current 30 CFR 1206.100.

1206.101 How do I calculate royalty value for oil I or my affiliate sell(s) under an arm's-length contract?

This proposed section is the same as current 30 CFR 1206.102 except for two substantive changes. First, proposed paragraph (a) contains the same provisions as existing § 1206.102(a) with one modification. Proposed paragraph (a) adds that the value in this paragraph does not apply ''if ONRR decides to value your oil under § 1206.105.'' Proposed § 1206.105 is ONRR's new proposed default valuation mechanism.

ONRR also proposes to add a new provision to paragraph (c)(1) allowing ONRR to decide a lessee's oil value if the lessee fails to make the election in this paragraph. Under the current regulations, if a contract is either non-arm's-length or an exchange agreement, a lessee can choose one of two different valuation methods. ONRR proposes to add a new provision to clarify the current regulations by explaining the consequences if a lessee fails to properly make the election. For example, if a lessee improperly classifies its contract as an arm's-length contract under the current regulations, the lessee will most likely pay royalties on the price specified in its contract. However, if the lessee or ONRR subsequently determines the contract actually was non-arm's-length or an exchange agreement, the existing regulations do not specify if the lessee may make the election retroactively. To remove this ambiguity, ONRR proposes to eliminate the lessee's election in these situations and provide that ONRR can determine the lessee's oil value under the new default valuation mechanism in § 1206.105.

1206.102 How do I value oil not sold under an arm's-length contract?

This proposed section is the same as current 30 CFR 1206.103 except for two substantive changes. The first substantive change is to paragraph (a), which explains when you may value oil under this section. Proposed paragraph (a) requires you to use this section to value your oil ''unless ONRR decides to value your oil under § 1206.105.'' Proposed § 1206.105 is ONRR's new proposed default valuation mechanism.

ONRR also proposes to remove current 30 CFR 1206.103(b)(1) containing the option for lessees to use a tendering program to value oil they produce from Federal leases in the Rocky Mountain Region. Since the final oil valuation regulations were published in March 2000, ONRR is aware of only one company that valued its oil using this provision. At that time, we received feedback from oil producers that it was administratively inefficient to implement a tendering program for valuation purposes. We do not believe any oil producer has used this provision since then. Therefore, because industry has abandoned its use of this provision, we propose to remove tendering from the options available to value Federal oil produced in the Rocky Mountain Region.

Finally, ONRR proposes to amend paragraphs (d) and (e) of § 1206.103 in the current regulations. Under the current regulations, lessees may apply paragraphs (d) and (e) to value their production with ONRR approval. ONRR proposes to amend paragraphs (d) and (e) to instead state that ONRR may decide to use these paragraphs to value production under § 1206.105.

1206.103 What publications are acceptable to ONRR?

The substantive requirements of this proposed section are the same as current 30 CFR 1206.104. However, we propose to remove our requirement to publish a notice of acceptable publications in the **Federal Register**. Instead, we propose to provide acceptable publications on our Web site.

1206.104 How will ONRR determine if my royalty payments are correct?

In this section, ONRR proposes amendments to the text of its gross proceeds provisions to rewrite them in Plain Language and to make them consistent with other valuation regulations. Thus, rather than repeat the requirements or procedures in each applicable section of this rule, ONRR proposes to have this section apply to this entire subpart. However, the substantive requirements of proposed

paragraphs (d), (e) and (f) remain unchanged. We propose the same changes to the Federal gas amendments that we propose in this section, so please refer to the discussion of the substantive changes we propose to make to the Federal gas regulation in § 1206.143 below for more information.

1206.105 How will ONRR determine the value of my oil for royalty purposes?

ONRR proposes to add a new ''default'' valuation § 1206.105 under which ONRR can value your oil if we decide to do so pursuant to the criteria under § 1206.104 or any other provision in this subpart. If ONRR determines value under this new default section, we may consider any information we deem relevant. Also, this proposed section enumerates factors ONRR may consider if we decide we will determine value, for royalty purposes, under this section, which may include, but not be limited to:

(a) The value of like-quality oil in the same field or nearby fields or areas;

(b) The value of like-quality oil from the same plant;

(c) Public sources of price or market information ONRR deems reliable;

(d) Information available and reported to ONRR, including but not limited to, on Form ONRR–2014 and Form ONRR–4054;

(e) Costs of transportation or processing, if ONRR determines they are applicable; or

(f) Any information ONRR deems relevant regarding the particular lease operation or the salability of the oil.

This proposed section allows ONRR to consider any criteria we deem relevant, as well as criteria similar to the current gas valuation benchmarks under 30 CFR 1206.152(c)(1) and (2) and 1206.153(c)(1) and (2). Like the valuation regulations in effect prior to the 1988 rulemaking that resulted in the current gas valuation regulations, 30 CFR 206.103 (1984) (onshore) and 206.150 (1984) (offshore), under proposed § 1206.105, ONRR has the authority and responsibility to establish the reasonable value of production for royalty purposes and possesses considerable discretion in determining that value. *Independent Petroleum Ass'n* v. *DeWitt,* 279 F.3d at 1039–1040, and cases cited therein. Thus, under this proposed section, ONRR has broad authority to value your oil in the manner we deem most appropriate considering the factors we deem most appropriate.

We add the same default provision to Federal gas in § 1206.144, Federal coal in § 1206.254, and Indian coal in § 1206.454.

1206.106 What records must I keep to support my calculations of value under this subpart?

1206.107 What are my responsibilities to place production into marketable condition and to market production?

The two proposed sections above are the same as current 30 CFR 1206.105 and 1206.106, except we rewrite the sections in Plain Language.

1206.108 How do I request a value determination?

This proposed section is the same as current 30 CFR 1206.107 except we make some substantive changes to provide greater clarity to the process a lessee may use to request valuation guidance and determinations, as well as the effect of ONRR's response to such requests. Because we are making the same changes to the Federal gas amendments in this proposed rulemaking, please refer to proposed § 1206.148 of the Federal gas regulation below for more information.

1206.109 Does ONRR protect information I provide?

This proposed section is the same as current 30 CFR 1206.108, except we rewrite the section in Plain Language.

1206.110 What general transportation allowance requirements apply to me?

This proposed section is the same as current 30 CFR 1206.109 except we reword the section name and make the following substantive changes. First, in proposed paragraph (a)(2)(ii), we add a new provision that states you may not take a transportation allowance for the movement of oil produced on the OCS from the wellhead to the first platform. Because we are making the same change to the Federal gas amendments we propose in this rulemaking, please refer to § 1206.152(a)(2)(ii) of the Federal gas regulation below for more information.

Second, we propose in paragraph (b) to clarify that if you request to use a different cost allocation than that in paragraph (b), and we approve your request, you can only use your proposed allocation methodology prospectively. We make this proposed change to clarify that you may not request retroactive changes to your royalty reporting and payment. We make the same change to proposed §§ 1206.112(b), 1206.112(i)(1), 1206.112(j), 1206.113(c)(2), 1206.150(c)(4), 1206.152(b), 1206.154(b)(3), 1206.154(i)(1), 1206.161(b)(3), 1206.151(h)(1), 1206.262(b)(3), 1206.262(h)(1), 1206.269(b)(3), 1206.269(h)(1), 1206.462(b)(3), 1206.462(h)(1), 1206.463(d)(4)(i), 1206.469(b)(3), 1206.469(h)(1), and 1206.470(d)(4)(i).

Third, in paragraph (d)(1) of this section, we propose to remove current 30 CFR 1206.109(c)(2) that allows a lessee to request to exceed the limit on transportation allowances of 50 percent of the value of the oil. We also propose to terminate existing approvals to exceed the 50 percent limit under paragraph (d)(2). Because we are making the same change to the Federal gas amendments in this proposed rulemaking, please refer to § 1206.152(e) below for more information.

Fourth, like the default provision for valuation we discuss above under § 1206.104, proposed paragraph (f) provides that ONRR may determine your transportation allowance under § 1206.105 if (1) there is misconduct by or between the contracting parties, (2) the total consideration the lessee or its affiliate pays under an arm's-length contract does not reflect the reasonable cost of transportation because the lessee breached its duty to market oil for the mutual benefit of the lessee and the lessor by transporting oil at a cost that is unreasonably high, or (3) ONRR cannot determine if the lessee properly calculated a transportation allowance for any reason. Because we are making the same change to the Federal gas amendments we propose in this rulemaking, please refer to the discussion of § 1206.152(g) below for more information on this provision.

Finally, we also propose a new provision under paragraph (g) to clarify that you do not need ONRR's approval before reporting a transportation allowance for costs you incur. This is consistent with existing practice.

1206.111 How do I determine a transportation allowance if I have an arm's-length transportation contract?

This proposed section is the same as current 30 CFR 1206.110, except for three substantive changes. ONRR proposes to eliminate the provision in current 30 CFR 1206.110(b)(4) that allows a lessee to include the costs of carrying line fill on its books as a component of arm's-length transportation allowances. Rather, we propose to specifically preclude including this cost in transportation allowances under new paragraph (c)(9) of this section. We propose to eliminate allowing this cost because we believe this is a cost to market the oil we disallow as a deduction under our existing valuation regulations. Line fill occurs after the royalty measurement point and is necessary for the pipeline operator to get Federal oil production to

market. We request comments on whether this is a marketing cost.

We also propose to add a new paragraph (d) that applies if you have no contract in writing for the arm's-length transportation of oil. In that case, ONRR determines your transportation allowance under § 1206.105. Under the proposed rule, you may propose to ONRR a method to determine the allowance using the procedures in § 1206.108(a) and may use that method to determine your allowance until ONRR issues its determination. This proposed paragraph does not apply if a lessee performs its own transportation. Instead, proposed § 1206.112 for non-arm's-length transportation allowances, applies.

Finally, ONRR proposes to eliminate the provision in current 30 CFR 1206.110(g) that allows a lessee to report transportation costs, in certain circumstances, as a transportation factor. We propose that a lessee must report separately all transportation costs under both arm's-length and non-arm's-length sales contracts as a transportation allowance on Form ONRR–2014. ONRR believes requiring lessees to report all deductions for transportation costs separately as allowances on Form ONRR–2014 is more transparent, supports ONRR's increased data mining efforts to promote accurate upfront royalty reporting, and assists State and Federal auditors in their compliance work.

1206.112 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?

This proposed section is the same as current 30 CFR 1206.111 except for the following substantive changes.

We replace current 30 CFR 1206.111(b)(3) and (b)(4) with proposed paragraph (b)(3)(i) of this section, which allows you to elect to calculate depreciation and a return on undepreciated capital investment in a transportation system under proposed paragraph (b)(3)(i)(1) or a return on undepreciated capital investment with no depreciation under proposed paragraph (b)(3)(i)(2). The proposed regulation provides that once you make an election, you may not change it without ONRR's approval. In addition, proposed paragraph (b)(3)(ii) replaces current 30 CFR 1206.111(b)(5). Currently, 30 CFR 1206.111(b)(5) allows you to continue deducting 10 percent of the cost of capital expenditures once you have depreciated the asset below 10 percent under current 30 CFR 1206.111(j). However, under proposed paragraph (i)(1)(iii) of this section, instead of allowing a 10 percent deduction, we base the return on undepreciated capital investment on the reasonable salvage value of the asset. ONRR believes this method more reasonably reflects the actual costs for oil transportation systems. Also, it makes the treatment of depreciation consistent with other royalty valuation rules, including the current Federal gas rule at 30 CFR 1206.157(g) (proposed § 1206.154(i)).

In proposed paragraph (c)(2)(ii), we prohibit you from including actual or theoretical line loss as a transportation cost. ONRR proposes to eliminate the provision in the current regulations at 30 CFR 1206.111(b)(6)(v) which allows a lessee to reduce the royalty volume measured at the royalty measurement point by actual or theoretical line loss occurring after the royalty measurement point. This change is consistent with long-standing mineral leasing laws that require royalty on the volume of production removed from the lease. Mineral Leasing Act, 30 U.S.C. 181–287; Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351–359 (onshore acquired lands); Indian leasing statutes, 25 U.S.C. 396a—396g (tribal leases); 25 U.S.C. 396 (allotted leases); and the Outer Continental Shelf Lands Act, 43 U.S.C. 1331–1356. This change also makes Federal oil valuation consistent with ONRR's other product valuation regulations.

Under proposed paragraph (c)(2)(iii), ONRR eliminates the provision in current 30 CFR 1206.111(b)(6)(ii) which allows a lessee to include the costs of carrying line fill on its books as a component of non-arm's-length transportation allowances. We believe this is a cost to market the oil, which we disallow as a deduction under current valuation regulations. Line fill occurs after the royalty measurement point and is necessary for the pipeline operator to get Federal oil production to market. We request comments on whether this is a marketing cost.

Proposed paragraph (i)(1) allows you to calculate depreciation and a return on undepreciated capital investment using either a straight-line method (based on either the life of the equipment or the life of the reserves that the transportation system services) or a unit of production method. This depreciation method was in ONRR's oil valuation regulations in effect for producer-owned transportation systems prior to the effective date of the 2000 Federal oil valuation regulations. This new proposed paragraph (i)(1) would replace the provision in current 30 CFR 1206.111(h), which allows a lessee to depreciate a transportation asset a second time after the lessee already fully depreciated that asset. The current Federal oil valuation regulations authorize fully depreciated transportation assets to be recapitalized a second time when they are purchased from the original owner. ONRR proposes to remove this provision. Under proposed paragraph (i)(1)(ii), ONRR allows depreciation of pipeline assets only one time. If the pipeline asset is sold, we allow the purchaser to continue the remaining allowance depreciation schedule if applicable. This change makes Federal oil valuation consistent with ONRR's other product valuation regulations.

Proposed paragraph (i)(1)(iii)(B) changes the return on undepreciated capital investment from10 percent to the reasonable salvage value of the asset multiplied by the rate of return in proposed paragraph (i)(3) of this section.

New proposed paragraph (i)(2) provides an alternative to depreciating the asset under paragraph (i)(1). Under this option, you may elect to use a cost equal to the allowable initial capital investment in the transportation system, multiplied by the rate of return in proposed paragraph (i)(3) of this section. If you chose this option, you may not include depreciation as a cost in your allowance. ONRR removed the provision limiting this option to transportation assets put in place after March 1, 1988. When ONRR published its Federal oil valuation regulations on May 5, 2004, it changed the requirements for transportation allowances. In recognition that certain transportation facilities had been given approval prior to these regulations' effective date (August 1, 2004), ONRR made the new requirements apply only to facilities that were placed in service on or after the effective date of these regulations. Now, almost ten years later, ONRR believes that none of facilities affected by the 2004 rule change are still eligible for depreciation under the requirements in effect prior to August 1, 2004. Therefore, we remove this language from the proposed regulations.

Proposed paragraph (i)(3) would amend current 30 CFR 1206.111(i)(2) to change the Standard & Poor's BBB bond rate we allow as an approximation of the cost of capital for non-arm's-length transportation. Currently, 30 CFR 1206.111(i)(2) allows a lessee to compute the rate of return on the undepreciated cost of capital by multiplying the undepreciated amount remaining by 1.3 times the Standard & Poor's BBB bond rate. ONRR proposes to decrease the multiplier of the Standard & Poor's BBB bond rate from 1.3 to 1.0. In the final Federal oil

valuation regulations published in March 2000, we increased the multiplier of the Standard & Poor's BBB bond rate from 1.0 to 1.3. We propose to change it back to 1.0 times the BBB bond rate because we believe this rate better reflects the cost of borrowing to finance capital expenditures involved in pipeline construction. It also is consistent with our other product valuation regulations.

When a company or affiliate invests in shipping its own production, it considers if it can more profitably transport its own production or contract with a third party to provide the service. At this stage in production development, a company has a solid asset to demonstrate its ability to repay the capital investment necessary to construct the pipeline. ONRR consulted with FERC and has concluded that the BBB bond rate is an adequate representation for the cost of capital for the construction of producer-owned pipelines.

1206.113 What adjustments and transportation allowances apply when I value oil production from my lease using NYMEX prices or ANS spot prices?

1206.114 How will ONRR identify market centers?

1206.115 What are my reporting requirements under an arm's-length transportation contract?

Proposed §§ 1206.113 through 1206.115 are the same as current 30 CFR 1206.112 through 1206.114, but we rewrite the sections in Plain Language and update the examples in current 30 CFR 1206.112(d) using November 2012 prices.

1206.116 What are my reporting requirements under a non-arm's-length transportation contract?

This proposed section is the same as current 30 CFR 1206.115 except we make each sentence a paragraph. We also add a new paragraph (d) that explains you must follow the reporting requirements for arm's-length contract under § 1206.115 if you are authorized under § 1206.112(j) to not use your actual costs.

1206.117 What interest and penalties apply if I improperly report a transportation allowance?

This proposed section is the same as current 30 CFR 1206.116 except we make each sentence a paragraph and add ''penalties'' to the heading to better describe the section.

1206.118 What reporting adjustments must I make for transportation allowances?

1206.119 How do I determine royalty quantity and quality?

These two proposed sections, 30 CFR 1206.118 and 1206.119, are the same as current §§ 1206.117 and 1206.119, respectively, but we rewrite the sections in Plain Language.

1206.120 How are operating allowances determined?

We propose to remove current 30 CFR 1206.120 on how to determine operating allowances because it is unnecessary. If a lease has provisions for operating allowances, that lease term will govern valuation under proposed § 1206.100(d)(4) of this subpart.

Subpart D—Federal Gas

ONRR proposes to add new §§ 1206.140 through 1206.149 to this subpart to codify, clarify, and enhance current ONRR Federal gas valuation practices.

1206.140 What is the purpose and scope of this subpart?

We propose to redesignate the current regulations at § 1206.150 to § 1206.160. Also, in this proposed rule, we rewrote the redesignated sections in Plain Language. Proposed § 1206.140 is the same as current 30 CFR 1206.150 except for three changes. First, we propose to add a new paragraph (b) to explain that the terms ''you'' and ''your'' in this subpart refer to the lessee. Second, we propose to redesignate paragraphs (b) and (c) as paragraphs (c) and (d). Finally, we propose to remove existing regulations in paragraph (d), which state this subpart is intended to ensure leases are administered in accordance with governing mineral leasing laws and lease terms. We believe current paragraph (d) is unnecessary and duplicative of our authority to promulgate this rule.

1206.141 How do I calculate royalty value for unprocessed gas I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

This proposed section explains the valuation of unprocessed gas for royalty purposes. Proposed paragraph (a)(1) explains that this section applies to unprocessed gas—meaning gas that is never processed—consistent with the current gas regulations.

Proposed paragraph (a)(2) explains this section applies to gas you are not required to value under proposed § 1206.142, or that ONRR does not value under proposed § 1206.144. Proposed § 1206.142(a) explains what gas ONRR considers processed for valuation purposes, and proposed § 1206.144 explains ONRR's new proposed default valuation mechanism. We discuss proposed §§ 1206.142 and 1206.144 below.

Under proposed paragraph (a)(3), we state this section also applies to processed gas you must value prior to processing under § 1206.151 of this part. Proposed § 1206.151 contains the dual accounting provisions for Federal gas in current 30 CFR 1206.155.

Under proposed paragraph (a)(4), we consider unprocessed gas any gas you sell prior to processing if price is based on an amount per MMBtu or Mcf, and not on the value of residue gas and gas plant products. Therefore, this proposed paragraph applies to the valuation of gas when price is not based on a processed gas price.

Paragraph (b) proposes a new valuation methodology based on the first arm's-length sale of the gas. ONRR promulgated the current gas valuation regulations in 1988 to achieve market value based on transactions between independent, non-affiliated parties. The Department has long believed the values established in arm's-length transactions are the best indication of market value, and the 1988 rules reflect that belief.

Although the Secretary's responsibility to determine the royalty value of minerals produced has not changed, the industry and marketplace have changed dramatically since we wrote the 1988 regulations. As discussed below, industry and marketplace changes, as well as litigation necessitate changes to ONRR's valuation regulations. Indeed, ONRR already amended the Indian gas (30 CFR part 1206, subpart E) and Federal oil (30 CFR part 1206, subpart C) valuation regulations to simplify those regulations and provide early certainty by valuing those products based on the first arm's-length sale and/or on publicly available prices.

When we developed the 1988 rules, producers most commonly sold natural gas at the wellhead to natural gas pipeline companies, which transported and sold the gas to local distribution companies. However, from mid-1980 to early 1990, a series of FERC rulemakings resulted in deregulation of some pipeline systems. As a result, industry now sells directly to end users or distributors, and pipelines only provide transportation services. Producers also created marketing affiliates to which they initially transferred production.

For lessee sales to affiliates, the current Federal gas valuation regulations require a lessee to value

production based on a series of ''benchmarks'' to be applied in a prescribed order (30 CFR 1206.152(c)). The first benchmark is the gross proceeds accruing to the lessee in a sale under its non-arm's-length contract, provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts (30 CFR 1206.152(c)(1)). This method has posed practical difficulties since companies are not privy to other companies' ''comparable'' sales transactions. In addition, ONRR and lessees have found it difficult to determine what portion of lease production a lessee must sell at arm's-length to reliably determine the value of the remaining production. Likewise, the remaining benchmarks at 30 CFR 1206.152(c)(2) and (3) have proven difficult for industry to follow and ONRR to administer. ONRR proposes to replace the current regulations in § 1206.152(c)(1), (2), and (3) with proposed paragraph (b).

To simplify and clarify valuation of non-arm's-length sales, proposed paragraph (b) bases value on the first arm's-length sale with applicable allowances. The first arm's-length sale may occur immediately, or may follow one or more non-arm's-length transfers or sales of the gas. However, under the proposed rule, you will use the first arm's-length sale regardless of whether you sell or transfer gas to one or more affiliates or other persons in non-arm's-length transactions before the first arm's-length sale, and regardless of the number of those non-arm's-length transactions. This arm's-length sales value will apply unless you exercise the index-based option in proposed paragraph (c) of this section we discuss below.

Proposed paragraph (b)(1) would state value is the gross proceeds accruing to you under an arm's-length contract, less applicable allowances.

Similarly, under proposed paragraph (b)(2), if you sell or transfer your Federal gas production to your affiliate, or some other person at less than arm's length, and that person or its affiliate then sells the gas at arm's length, royalty value will be the other person's (or its affiliate's) gross proceeds under the first arm's-length contract. For example, a lessee might sell its Federal gas production to a person who is not an ''affiliate'' as defined, but with whom its relationship is not one of ''opposing economic interests'' and therefore is not at arm's length. An illustrative example is when a number of working interest owners in a large field form a cooperative venture that purchases all of the working interest owners' production and resells the combined volumes to a purchaser at arm's-length. *Xeno, Inc.,* 134 IBLA 172 (1995), involved a similar situation. If none of the working interest owners own 10 percent or more of the new entity, the new entity would not be an ''affiliate'' of any of them. Nevertheless, the relationship between the new entity and the respective working interest owners is not at arm's length because of the lack of opposing economic interests regarding the contract. In this case, we believe it appropriate to value the production based on the arm's-length sale price the cooperative venture receives for the gas. Therefore, under proposed paragraph (b)(2), you must value the production based on the gross proceeds accruing to you, your affiliate, or other person to whom you transferred the gas (or its affiliate) when the gas ultimately is sold at arm's length, unless you elect to use the index pricing option we propose under § 1206.141(c) of this section or ONRR decides to value your gas under the new default valuation provision in proposed § 1206.144 discussed below.

In summary, to provide early certainty and simplification, ONRR proposes to amend its valuation regulations for Federal gas to provide that, with certain exceptions, the first arm's-length sale is the value for royalty purposes consistent with valuation of non-arm's-length sales of Federal oil production under current 30 CFR 1206.102(a).

Proposed paragraph (b)(3) explains valuation if you, your affiliate, or another person sell under multiple arm's-length contracts for gas produced from a lease that is valued under this proposed paragraph (b). In this case, unless you exercise the index-based option we provide in paragraph (c) of this section, because you sold non-arm's length to your affiliate or another person, under the proposed rule, you must value the gas based on the volume-weighted average of the value established under this paragraph for each contract for the sale of gas produced from that lease. This is identical to current 30 CFR 1206.102(b) applicable to valuation of Federal oil. In addition, we believe this provision is consistent with ongoing practice under the current gas valuation rule.

Proposed paragraph (b)(4) contains the provisions of the current gas valuation rule at 30 CFR 1206.152(b)(1)(iv) that explains how to value over-delivered volumes under a cash-out program, but we rewrite this provision in Plain Language.

ONRR proposes to add a new paragraph (c) containing an index price valuation methodology that a lessee may elect to use in lieu of valuing its gas under proposed paragraphs (b)(2) and (b)(3) of this section based on the gross proceeds accruing to its affiliate or other person under the first arm's-length sale. The proposed methodology is based on publicly available index prices less a specified deduction to account for processing and transportation costs. Under the proposed rule, this valuation methodology also applies to ''no contract'' situations we describe below under paragraph (e).

We believe this index price option simplifies the current valuation methodology and provides early certainty. Many pipelines and service providers now charge producers ''bundled'' fees that include both deductible costs of transportation and non-deductible costs to place production into marketable condition. Both ONRR and lessees with arm's-length transportation contracts have found allocating the costs between placing the gas in marketable condition and transportation is administratively burdensome and time consuming. Similarly, when processing plants charge bundled fees that include non-deductible costs, the cost allocation is administratively burdensome and time consuming.

Litigation also has complicated the application of ONRR's gas valuation regulations. Although litigation has clarified what constitutes marketable condition, its application is fact specific and time consuming. *See Devon* and cases cited therein.

The proposed index-based option provides a lessee with an alternative that is simple, certain, and avoids the requirements to ''trace'' production when there are numerous non-arm's-length sales prior to an arm's-length sale and unbundle fees. Under this proposed paragraph (c), the lessee may choose to value its gas only in an area that has an active index pricing point published in a publication that ONRR approves. The lessee may elect to value its gas under this proposed paragraph, and that election is binding on the lessee for 2 years. ONRR would post a list of approved publications at *www.onrr.gov*. ONRR proposes to use Platts and Natural Gas Intelligence as ONRR-approved publications but invites comments on whether these publications are appropriate, as well as whether there are other publications that ONRR should use.

If the lease is in an area with active index pricing points, the lessee must determine the applicable index pricing point or points. We used the language in proposed paragraphs (c)(1)(i) and (ii) ''If you can only transport to one index pricing point'' and ''If you can transport

gas to more than one index pricing point,'' respectively (emphasis added), because, under the proposed rule, we intend that for an index pricing point to be applicable, the lessee must be able to physically transport its gas by pipeline to that index pricing point. Further, an index pricing point would be applicable as long as the lessee could physically transport their gas by pipeline to that index pricing point (emphasis added). This means that under the proposed rule, the index pricing point applies even if the lessee could not transport its gas to that index pricing point because the pipeline is constrained (for example when all available capacity on a pipeline through which the lessee's gas might flow to that index pricing point was already under contract to other parties).

For example, assume you have a lease in the West Delta area of the Gulf of Mexico and your lease is physically connected by pipeline to the Mississippi Canyon Pipeline. In this case, your gas is physically capable of flowing to the Toca Plant (through the Southern Natural Gas Pipeline), the Yscloskey Plant (through the Tennessee Gas Pipeline), or the Venice Plant, and you have multiple index pricing points to which your gas can physically flow. Also, assume the highest reported monthly bid week price among the multiple index pricing points is the Tennessee Gas 500 Leg Price at the tailgate of the Yscloskey Plant. Finally, assume you cannot flow your gas through the Tennessee Gas Pipeline (to the Yscloskey Plant) because all available capacity on that pipeline is under contract to other persons, and the pipeline has no capacity available to you for the production month—in other words, it is constrained. In this example, you would use the highest reported monthly bid week price at the tailgate of the Yscloskey Plant as the value under this paragraph even though your gas did not flow to that index pricing point during the production month.

Under proposed paragraph (c), the lessee could not use index pricing points if it could not physically transport its gas to that index pricing point because there is not a pipeline or series of pipelines that physically connect to the lease and flow from the lease to the index pricing point. ONRR would exclude the use of these index pricing points because they do not represent points at which the lessee can sell its gas, and it is difficult to adjust these prices for location differentials between the index pricing points and the lease.

If the lessee can transport its gas to only one index pricing point, the value under proposed paragraph (c)(1)(i) is the highest reported monthly bid week price for that index pricing point in the ONRR-approved publication for the production month. If the lessee can transport its gas to more than one index pricing point, the value under proposed paragraph (c)(1)(ii) is the highest reported monthly bid week price for the index pricing points to which the lessee could transport its gas, in the ONRR-approved publication for the production month. However, under paragraph (c)(1)(iii), if there are sequential index pricing points on a pipeline, the lessee would use the first index pricing point at or after the lessee's gas enters the pipeline.

ONRR recognizes that index pricing points are normally located off the lease, and frequently at lengthy distances from the lease. Thus, under proposed paragraph (c)(1)(iv), ONRR allows a lessee to reduce the highest reported monthly bid week price by a set amount to account for transportation costs a lessee would incur to move the gas from the lease to an applicable index pricing point. ONRR proposes to allow a lessee to reduce the highest reported monthly bid week prices by 5 percent for sales from the OCS Gulf of Mexico and by 10 percent for sales from all other areas, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu. ONRR proposes these percent reductions based on the average gas transportation rates that lessees have reported to ONRR from 2007 through 2010 for OCS and all other areas.

ONRR proposes to allow a lessee to choose the index price methodology to value its gas under this paragraph for the following reasons: (1) It relies on a market price at which gas is sold from the area during the production month; (2) it recognizes costs that a lessee must incur to transport gas from the lease to an index pricing point; and (3) it makes payment and verification of royalties paid simple and efficient, thereby saving both lessees and ONRR significant administrative costs. Further, ONRR believes this alternative methodology provides ONRR with a reasonable market value for the lessee's gas that avoids requiring a lessee and ONRR to track every resale of the lessee's gas during the production month, especially when those sales can involve several transactions hundreds of miles downstream from the lease. As we state above, it also avoids the unbundling of transportation and processing costs.

ONRR proposes to use the highest reported monthly bid week price with a reduction for transportation costs. We propose this because it generally represents the gross proceeds net of transportation allowances accruing to lessees that ONRR believes are most likely to choose this option to value their gas based on information lessees and others reported on Form ONRR–2014 for the period from 2007 through 2011.

Proposed paragraph (c)(1)(v) states that, after you select an ONRR-approved publication available at *www.onrr.gov,* you may not select a different publication more often than once every 2 years. ONRR also proposes, under paragraph (c)(1)(vi), to exclude individual index prices from this option if we determine that the index price does not accurately reflect the value of production. ONRR plans to disallow the use of index prices with low liquidity, such as those classified as Tier 3 in the Platts publications. ONRR would post a list of excluded index pricing points at *www.onrr.gov*. We would appreciate comments on this proposal.

Proposed paragraph (c)(2) explains that you may not take any other deductions from the value calculated under this paragraph (c) because you would already receive a reduction for transportation under proposed paragraph (c)(1)(iv).

Proposed paragraph (d)(1) provides that, if you have no written contract or no sale of gas subject to this section and there is an index pricing point for the gas, then you must value your gas under the index pricing provisions of paragraph (c) of this section unless ONRR values your gas under § 1206.144. This provision includes, but is not limited to, when: (1) The lessee sells its gas to an affiliate and the affiliate uses the gas in its facility; (2) the lessee sells its gas to an affiliate and the affiliate resells the gas to another affiliate of either the lessee or itself and that affiliate uses the gas in its facility; (3) the lessee uses the gas as fuel for its other leases in the field or area; or (4) the lessee delivers gas to another person as payment of an overriding royalty interest that other person holds.

Proposed paragraph (d)(2) addresses situations in which you have no contract for the sale of gas subject to this section and there is not an index pricing point for the gas. In these situations, ONRR will decide the value under § 1206.144. However, when this occurs, under paragraph (d)(2)(i), we require that you propose to ONRR a method to determine the value using the procedures in proposed § 1206.148(a). Proposed § 1206.148(a) describes the information you must provide to ONRR when you request a valuation

determination. Proposed paragraph (d)(2)(ii) allows you to use your proposed method until ONRR issues a decision. After ONRR issues a determination, under paragraph (d)(2)(iii), you will have to make any adjustment under proposed § 1206.143(a)(2). You have to make adjustments only if ONRR decides you must use a different methodology than you propose under paragraph (d)(2)(i).

1206.142 How do I calculate royalty value for processed gas I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

ONRR proposes a new § 1206.142 including a new paragraph (a) that amends and expands what is processed gas for royalty valuation purposes. Currently, when gas is sold under an arm's-length contract prior to processing, and the lessee neither retains nor exercises any rights to the gas after processing (in other words, an outright sale before the plant), such gas is valued as unprocessed gas. Included are contracts where the title passes before processing, but payment is based on the values of residue gas and gas plant products after processing. Percentage-of-Proceeds (POP) contracts (contracts where the lessee's arm's-length contract for the sale of that gas prior to processing provides for the value to be determined on the basis of a percentage of the purchaser's proceeds resulting from processing the gas) are the most common of these contracts, but ONRR has observed a myriad of variations of such contracts. Because this gas is valued as unprocessed gas under the current regulations, there are no limits on the minimum value of such gas for royalty purposes, except for gas sold under arm's-length POP contracts, which has a minimum value of 100 percent of the residue gas. No such limitation applies to contracts that do not specifically qualify as POP contracts.

For example, if the sales value is based on a percentage of an index price for residue gas and/or NGLs, the current regulations base value simply on the gross proceeds the lessee receives under the contract. In essence, the unprocessed gas regulations allow such sales arrangements to reduce the value of residue gas below the 100-percent minimum value required under the processed gas regulations and below the 1-percent minimum value for NGLs (assuming ONRR approves an exception under the current rules in excess of 66⅔ percent of the NGL value) required for processed gas.

ONRR has seen numerous contract arrangements that provide payment terms based on: (1) A percentage of the volume or value of residue gas, plant products, or any combination of the two actually recovered at the plant; (2) the full volume and value of residue gas and/or plant products recovered at the plant, less a flat fee per MMBtu of wet gas entering the plant; (3) a combination of (1) and (2); and (4) the value of a percentage of the theoretical volumes of residue gas and/or plant products contained in the wet gas stream (so-called casing head gas contracts). Because the many contract variations base the underlying value on processed gas values, ONRR believes we should require a lessee to value gas sold under such contracts as processed gas for royalty purposes. This proposal provides the protection the current processed gas regulations have against excessive transportation and processing allowances and prevents a lessee from structuring contracts to avoid these requirements. Such a change also clarifies if gas is processed gas or unprocessed gas.

In summary, under proposed paragraph (a)(1), ONRR will consider gas you or your affiliate do not sell or otherwise dispose of under an arm's-length contract before processing ''processed gas.'' Paragraph (a)(1) also applies to non-arm's-length sales of gas before processing and transfers to a plant without a contract like the current regulations.

Proposed paragraph (a)(2) applies to the situations described above when payment is based on any constituent products resulting from processing, such as residue gas, NGLs, sulfur, or carbon dioxide. We would value POP contracts, percentage-of-index contracts, casing head gas contracts, and contracts with any such variations of payment based on volumes or value of those products as processed gas. With the exception of POP contracts, this constitutes a departure from current practice.

Proposed paragraph (a)(3), while not a change in current regulatory practice, explicitly states that the lessee must value gas processed under a keepwhole contract as processed gas. Under proposed § 1206.20, we define a keepwhole contract as a processing agreement under which the processor compensates the lessee by delivering to the lessee a quantity of residue gas after processing equivalent to the quantity of gas the processor received prior to processing, normally based on heat content, less gas used as plant fuel and gas that is unaccounted for and/or lost. The lessee does not receive NGLs under these contracts. Over the past several years, ONRR has witnessed much confusion over how to value gas sold under such contracts for royalty purposes. This provision makes it clear that the lessee must value gas processed under a keepwhole contract as processed gas. That is, royalty would be based on 100 percent of the value of residue gas, 100 percent of the value of gas plant products, plus the value of any condensate recovered downstream of the point of royalty settlement prior to processing, less applicable transportation and processing allowances.

To illustrate how to calculate the processing allowance in these cases, assume you deliver 32,000 MMBtu of natural gas to the gas processing plant. Also assume 7,000 MMBtu represents the shrinkage volume (the MMBtu equivalent of the NGLs recovered), and the plant recovers and retains 92,000 gallons of NGLs from your gas. Further, assume the plant returns 7,000 MMBtu of gas to you at the tailgate of the plant in addition to the residue gas that results after processing your gas to ''keep you whole.'' Finally, assume the 7,000 MMBtu of gas returned to you is worth $42,000 and the NGLs the plant retained are worth $63,000. In this example, the cost you incur to process the gas is $21,000 ($63,000 – $42,000). If you incur additional costs, for example a $0.03 per MMBtu fee times the 32,000 MMBtu you deliver to the plant for processing, then you add those additional costs (in this example, $960) to the $21,000 cost calculated above to determine your total processing costs (in this example $21,960).

Proposed paragraph (a)(4) simply restates current 30 CFR 1206.153(a)(1) regarding arm's-length contracts and reservations of rights to process gas the lessee or its affiliate exercises.

ONRR also proposes paragraph (b), which contains the same requirements as current 30 CFR 1206.153(a)(2), but we rewrite it in Plain Language, without substantive change.

Like the valuation of unprocessed gas under proposed § 1206.141(b), proposed paragraph (c) provides that the value of residue gas or any gas plant product under this section is the gross proceeds accruing to you or your affiliate under the first arm's-length contract. Also, like proposed § 1206.141(b), this value does not apply if you exercise the index-based option we provide in paragraph (d) of this section or if ONRR decides to value your residue gas or any gas plant product under the new default valuation provision in § 1206.144. Proposed paragraphs (c)(1), (2), (3), and (4) explain to which transactions this paragraph applies. See the discussion of

the identical proposal for proposed §§ 1206.141(b)(1), (2), (3), and (4) above.

Proposed paragraph (d) contains the index-based valuation option for valuation of your residue gas and NGLs. Under this proposed rule, you may elect to value either your residue gas or your NGLs under the index-based option, or you may elect to value both of them under this option if your residue gas or NGLs meet the requirements for using the optional valuation methodology we discuss above. Like the current Federal oil regulations (30 CFR 1206.102(d)(1)(ii)) and proposed § 1206.141(c), you cannot change your election to use this paragraph (d) to value your gas more often than once every two years.

Proposed paragraph (d)(1) applies to residue gas. It has the same index price option as proposed §§ 1206.141(c)(i) through (vi) we discuss above using index pricing points.

Proposed paragraph (d)(2) contains the index-based pricing option for NGLs. Under paragraph (d)(2)(i), if you sell NGLs in an area with one or more ONRR-approved commercial price bulletins available at *www.onrr.gov,* you may choose one bulletin, and your value for royalty purposes would be the monthly average price for that bulletin for the production month. We consider you to be selling NGLs in an area with an ONRR-approved commercial price bulletin if actual sales of NGLs that the plant processing your gas recovers are made using NGLs prices in an ONRR-approved commercial price bulletin. For example, in ONRR's experience, actual sales of NGLs recovered in plants in New Mexico commonly reference Mt. Belvieu prices in Platts, while actual sales of NGLs recovered in plants in certain parts of Wyoming reference Mt. Belvieu or Conway, Kansas prices. If your gas is processed at one of these plants with these types of actual sales arrangements, under this proposed rule, ONRR will consider you to be selling NGLs in an area with an ONRR-approved commercial price bulletin. In that case, you may elect to value your NGLs using the index price method if your NGLs meet the requirements for using that method. ONRR will monitor actual sales of NGLs and eliminate any area where an active market using NGLs prices in an ONRR-approved commercial price bulletin ceases to exist.

Under proposed paragraph (d)(2)(ii), you may reduce the index-based value you calculate under paragraph (d)(2)(i) by a specified amount to account for a theoretical processing allowance and transportation and fractionation (T&F). Therefore, the reduction includes two components we calculated—an allowance based on processing allowance information lessees report to ONRR and T&F based on our review of gas plant contracts and gas plant statements.

For the processing allowance component, ONRR examined processing allowances that lessees and others reported from January 2007 through October 2011. We segregated the data into 2 subsets—the first being the Gulf of Mexico (GOM) and the second being onshore Federal leases and OCS leases other than those in the GOM. We segregated the leases geographically because the GOM is closer to major market centers at Mt. Belvieu, Napoleonville, and Geismer/Sorrento and, generally, has its own processing, transportation, and fractionation regimen that is distinct from the rest of the country. We do not believe it is fair or accurate to benchmark processing for the entire country based on the economics of GOM processing.

We could not segregate non-arm's-length processing allowances because lessees do not identify processing allowances as arm's-length or non-arm's-length when they report to ONRR. Rather, we calculated a weighted average cents per gallon processing allowance by month for both GOM and all other Federal leases. Using the weighted average cents per gallon processing allowance we calculated, we determined the average allowance rate over the 5-year period, along with the maximum and minimum monthly rates as follows:

	GOM	Other
Average Rate	17 ¢/gal	22 ¢/gal.
Maximum Rate	29 ¢/gal	32 ¢/gal.
Minimum Rate	10 ¢/gal	15 ¢/gal.

Because we intend for this option to provide a simple method for ONRR to calculate and provide to lessees, we used the minimum, rather than the average rate, for the processing allowance portion of the deduction. For both the GOM and all other Federal leases, the minimum rate is 7 cents less than the average rate. ONRR believes that: (1) The minimum allowance best protects the public interest and (2) a lessee experiencing higher costs than this rate does not have to elect to use this option and the lower cost allowance. Moreover, ONRR believes that 7 cents is a reasonable tradeoff given the simplicity, certainty, and commensurate administrative savings this option would provide a lessee.

For the T&F part of the reduction, ONRR examined contracts that specified T&F. If contracts did not specify T&F, we looked at the gas plant statements. If the statements listed T&F as a line item, we used that line item as the T&F. If the statements did not list T&F as a line item, we calculated the difference between the price on the plant statement and an appropriate published price to approximate the T&F. We then averaged these T&F costs for GOM, New Mexico, and other as follows:

	GOM	New Mexico	Other
Average T&F	5 ¢/gal	7 ¢/gal	12 ¢/gal.

We broke out New Mexico because the T&F fees for New Mexico plants were consistently around 7 cents per gallon and were considerably less than for other onshore plants. We then added the processing allowances we calculated and the T&F. Based on the 5-years' worth of data discussed above, we calculated the total NGLs reductions lessees could use under this option are as follows:

	GOM	New Mexico	Other
NGLs Deduction	15 ¢/gal	22 ¢/gal	27 ¢/gal.

Under paragraph (d)(2)(ii), rather than publish the reductions in the CFR, ONRR proposes to post the reductions at *www.onrr.gov* for the geographic location of your lease. ONRR proposes to calculate the reductions using the methodology explained above. This process would give ONRR the flexibility to quickly recalculate and provide revised reductions to lessees in response to market changes. This methodology would be binding on you and ONRR. Under paragraph (d)(4), ONRR would update the allowable reductions periodically using this methodology and post changes at *www.onrr.gov*.

Proposed paragraph (d)(2)(iii) explains that after you select an ONRR-approved commercial price bulletin available at *www.onrr.gov,* you may not select a different commercial price bulletin more often than once every two years. Under proposed paragraph (d)(3), you may not take any other deductions from the value you used under this paragraph (d) because it already includes reductions for transportation and processing.

Proposed paragraph (e) mirrors proposed § 1206.141(d). It explains how you must value your processed gas if you have no written contract for the sale of gas or no sale of the gas subject to this section.

1206.143 How will ONRR determine if my royalty payments are correct?

In this section, ONRR proposes amendments to the current gross proceeds provisions, rewriting them in Plain Language and making them consistent with our other product valuation regulations (such as geothermal resources and Federal oil). Like those published regulations, rather than repeating the requirements or procedures in each applicable section of this proposed rule, ONRR proposes to apply this section to this entire subpart. However, the substantive requirements of proposed paragraphs (d), (e), and (f) remain unchanged. Below we discuss the paragraphs with substantive changes.

Proposed paragraph (a)(1), like our current regulations, states ''ONRR may monitor, review, and audit the royalties you report, and, if ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR will direct you to use a different measure of royalty value . . . .'' However, we propose to add paragraph (a)(1) that states in addition to directing you to use a different measure of value, we also may decide your value under § 1206.144 as we discuss below.

Proposed paragraph (b), like our current regulations, explains ''[w]hen the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the gas, residue gas, or gas plant products.'' However, we propose to add a new paragraph (b) that if ONRR determines a contract does not reflect the total consideration, ONRR may decide your value under § 1206.144 as we discuss below.

Proposed paragraph (c) broadly defines three circumstances when ONRR will calculate the value of your gas using the method specified in the new proposed ''default'' valuation § 1206.144. During its compliance activities, ONRR encounters a wide range of situations in which lessees have inaccurately calculated value. By broadly defining the circumstances in which ONRR may calculate value, this proposed rule ensures ONRR can fulfill its statutory mandate under FOGRMA to ensure that lessees accurately calculate, report, and pay royalties (30 U.S.C. 1701 and 1711).

Proposed paragraphs (c)(1) and (c)(2) contain the provisions regarding misconduct and breach of the duty to market in current 30 CFR 1206.152(b)(1)(i) and 1206.153(b)(1)(iii). Under the current regulations, if ONRR determines there is misconduct between the parties, or that the lessee has breached its duty to market, then the lessee must value its gas under the current benchmarks for non-arm's-length sales of gas in 30 CFR 1206.152(c)(2) or (c)(3) (unprocessed gas) and 1206.153(c)(2) or (c)(3) (processed gas). However, as we discuss above, ONRR proposes to eliminate the benchmarks in this rulemaking. We propose instead that if ONRR determines there is misconduct between the parties to a contract or the lessee has breached its duty to market, we may decide your value under § 1206.144 as we discuss below.

As we discuss above in proposed § 1206.20, *misconduct,* for purposes of proposed paragraph (c)(1), means any failure to perform a duty owed to the United States under a statute, regulation, or lease, or unlawful or improper behavior regardless of the mental state of the lessee or any individual employed by, or associated with, the lessee. *Misconduct,* in this subpart, would be different than, and in addition to, any violations subject to civil penalties under FOGRMA, 30 U.S.C. 1719, and its implementing regulations in part 1241 of this chapter. Behavior that constitutes *misconduct,* under this part 1206, would not need to be willful, knowing, voluntary, or intentional. This is a valuation mechanism, not an enforcement tool. Under this proposed rule, if ONRR determines that *misconduct* has occurred, ONRR will calculate value under § 1206.144. However, if ONRR determines the *misconduct* was knowing or willful, it also could pursue civil penalties under part 1241 of this chapter.

Under proposed paragraph (c)(2), ONRR defines what is a breach of the duty to market. The proposed rule specifies that ONRR may determine value under § 1206.144 if a lessee sells gas, residue gas, or gas plant products at an unreasonably low price. The proposed rule explains what ONRR could consider an ''unreasonably low'' price. A lessee has a duty to market gas for the mutual benefit of the United States, as lessor, and the lessee. An unreasonably low price may reflect a failure of the lessee to perform that duty. Proposed paragraph (a)(2) defines a sales price as ''unreasonably low'' ''if it is 10 percent less than the lowest reasonable measures of market price, including, but not limited to, index prices and prices reported to ONRR for like-quality gas, residue gas, or gas plant products.'' ONRR's authority to exercise this provision is discretionary; ONRR ''may'' decide your value if it determines your price is unreasonably low. In exercising its discretion, ONRR may consider any information that shows a price appears unreasonably low, and, thus, is not an accurate reflection of fair market value.

ONRR also proposes a new paragraph (c)(3). Under proposed paragraph (c)(3), ONRR may value your gas, residue gas, or gas plant products under § 1206.144 if ONRR cannot determine if you properly valued your gas, residue gas, or gas plant products under § 1206.141 or § 1206.142 for any reason. This is a broad ''catch-all'' provision ONRR may

use to decide the value of gas, residue gas, or gas plant products when it cannot determine if a lessee properly valued its production. ONRR will exercise this discretionary authority to meet its mandate under 30 U.S.C. 1711 to ensure accurate accounting for Federal oil and gas royalties under the different circumstances it encounters during its compliance verification activities. It is the lessee's responsibility to provide ONRR with information sufficient for us to ensure that royalties are accurately calculated. Under this provision, ONRR will still meet its statutory mandate even when a lessee fails to provide sufficient information. However, like proposed paragraph (c)(1) of this section, this is an ONRR valuation mechanism that is in addition to any civil penalty authority ONRR has under part 1241 of this chapter.

We propose a new paragraph (g)(1) that requires the lessee or its affiliate to make all contracts in writing before it can use the contracts as the basis for the lessee's valuation of its gas produced from Federal leases. This proposed requirement will apply to any contract revisions or amendments. Further, ONRR proposes that all parties to the contract must sign the contracts, contract revisions, or amendments before lessees can use them as the basis for the lessee's valuation of its gas under these regulations.

ONRR believes this proposed requirement is critical to the proper application of the valuation regulations. Lessees should provide to ONRR the actual, written contracts signed by all parties because those contracts document the very transactions on which the regulations require lessees to base values and allowances. Without the applicable sales, transportation, and/or processing contracts, neither the lessee nor ONRR can verify that Federal royalties are properly paid. Because ONRR would only require a lessee to provide its actual contractual arrangements that it uses to conduct its business, this requirement should place no burden on a lessee.

ONRR proposes a new paragraph (g)(2) providing that ONRR may decide the value of a lessee's gas if the lessee or its affiliate fails to make all contracts, contract revisions, or amendments in writing. If the lessee cannot produce the written, signed contracts that would otherwise serve as the basis of the lessee's valuation of its gas under the regulations, ONRR may decide to determine the appropriate value of the lessee's gas under newly proposed § 1206.144 as we discuss below.

Finally, ONRR proposes to add paragraph (g)(3) to make clear the new provision requiring contracts to be in writing and signed by all parties is in addition to any other recordkeeping requirements the lessee must satisfy under this title, and that this new requirement supersedes any provision in this title to the contrary.

1206.144 How will ONRR determine the value of my gas for royalty purposes?

ONRR proposes a new ''default'' valuation § 1206.144 that ONRR may use to value your gas, residue gas, or gas plant products for royalty purposes. Because we propose the same default provision for federal oil, please refer to § 1206.105 above for more information.

1206.145 What records must I keep to support my calculations of royalty under this subpart?

1206.146 What are my responsibilities to place production into marketable condition and to market production?

1206.147 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?

1206.148 How do I request a valuation determination or guidance?

See discussion below.

1206.149 Does ONRR protect information I provide?

1206.150 How do I determine royalty quantity and quality?

ONRR proposes to rewrite in Plain Language the regulations for recordkeeping, marketable condition and marketing, audit, confidentiality, and quantity and quality requirements and procedures. Also, ONRR proposes to make these sections consistent with other product valuation regulations, such as the geothermal and Federal oil regulations. In addition, rather than repeat the requirements or procedures in each applicable section of this rule, ONRR proposes to have these sections apply to this entire subpart. The substantive requirements remain unchanged.

1206.148 How do I request a valuation determination or guidance?

ONRR proposes a new § 1206.148 on how to request a valuation determination or guidance. This section is the same as § 1206.108 applicable to Federal oil we discuss above, with several substantive changes. Proposed § 1206.148 replaces and expands the provisions contained in current 30 CFR 1206.152(g) and 1206.153(g). The newly proposed section provides greater clarity on the process lessees may use to request valuation guidance and determinations, as well as on the effect of ONRR's response to such requests. Adding proposed § 1206.148 will make the procedures for gas valuation requests consistent with the procedures ONRR proposes for Federal oil and Federal and Indian coal.

Under proposed paragraph (a), a lessee may request a valuation determination or guidance from ONRR regarding any gas produced. Paragraph (a)(1) through (3) explains that the lessee's request must be in writing; identify all leases involved, all interest owners in the leases, and the operator(s) for those leases; and completely explain all relevant facts. In addition, under paragraphs (a)(4) through (6), a lessee must provide all relevant documents, its analysis of the issue(s), citations to all relevant precedents, including adverse precedents, and its proposed valuation method.

In response to a lessee's request, under proposed paragraph (b), ONRR may (1) decide that it will issue guidance, (2) inform the lessee in writing that it will not provide a determination or guidance, or (3) request that the Assistant Secretary for Policy, Management, and Budget issue a determination. This proposal changes the current Federal oil regulations under 30 CFR 1206.107(b), which has caused confusion over whether an ONRR-issued determination is a binding appealable order or non-appealable guidance. Under this proposed rule, ONRR clarifies that we only issue non-binding guidance for valuation of Federal oil and gas and Federal and Indian coal. This proposal is consistent with ONRR's existing practice of having only the Assistant Secretary sign decisions that are binding on the Department. Also, ONRR proposes to remove the regulatory language that we will ''reply to requests expeditiously.'' Our practice is to reply as quickly as possible, so we do not make it a regulatory requirement.

Proposed paragraphs (b)(3)(i) and (ii) identify situations in which ONRR and the Assistant Secretary typically do not provide a determination or guidance, including, but not limited to, requests for guidance on hypothetical situations and matters that are the subject of pending litigation or administrative appeals.

Under proposed paragraph (c)(1), a determination the Assistant Secretary of Policy, Management and Budget signs binds both the lessee and ONRR unless the Assistant Secretary modifies or rescinds the determination. After the Assistant Secretary issues a determination, under proposed paragraph (c)(2), the lessee must make

any adjustments to its royalty payments that follow from the determination. If the lessee owes additional royalties, it must pay the additional royalties due plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter. In addition, proposed paragraph (c)(3) explains that a determination the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

Proposed paragraph (d) explains that, if ONRR issues guidance, the guidance is not binding on ONRR, delegated States, or the lessee with respect to the specific situation addressed in the guidance. This is a change from the current Federal oil regulation at 30 CFR 1206.107(d) that makes a determination ONRR issues binding on ONRR and delegated States but not the lessee. Moreover, guidance, ONRR's decision whether to issue guidance, and ONRR's decision whether to request a determination by the Assistant Secretary would not be appealable decisions or orders under 30 CFR part 1290. This is the same as current 30 CFR 1206.107(d)(1). However, as provided under current 30 CFR 1206.107(d)(2), under proposed paragraph (d)(2) of this section, if ONRR issues an order requiring the lessee to pay royalty on the same basis as the guidance, the lessee could appeal the order under 30 CFR part 1290.

Under proposed paragraph (e), ONRR or the Assistant Secretary may use any of the applicable criteria in this subpart to make a determination or provide guidance. Also, under proposed paragraph (f), if a statute or regulation on which ONRR based any determination or guidance is changed, the changed statute or regulation takes precedence over the determination or guidance after the effective date of the statute or regulation, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the determination or guidance. Therefore, under this proposed provision, determinations and guidance are not open-ended.

1206.151 How do I perform accounting for comparison?

ONRR proposes to move the regulations in current 30 CFR 1206.155 to proposed § 1206.151, but we rewrite this section in Plain Language. This section requires a lessee to pay royalties on the greater of the value of the unprocessed gas or the value of its processed gas if the lessee, its affiliate, a person to whom the lessee transferred gas under a non-arm's-length contract, or a person to whom the lessee transferred gas without a contract processes the lessee's or its affiliate's gas and does not sell the residue gas at arm's length. However, ONRR requests comments on whether we need this proposed requirement for two reasons. First, proposed §§ 1206.142 and 1206.143 of this subpart recognize the real market value of gas today is the combined value of its constituent components—residue gas and gas plant products. And, the proposed regulations value gas sold on that basis as processed gas. There appears to be a limited market for unprocessed gas, unless it is sold based upon the constituent products contained therein, hence accounting for comparison may not be needed. Second, because the criteria that triggers dual accounting—a non-arm's-length sale of residue gas after processing—is not used to value gas under this proposed rule, dual accounting may no longer be appropriate because the residue gas is valued based on the first arm's-length sale or index-based option.

ONRR also proposes to keep the requirement in current 30 CFR 1206.155 that lessees must perform dual accounting if required by lease terms. ONRR believes this provision is consistent with proposed § 1206.140(c)(4), which specifically recognizes the primacy of lease terms over the terms of the regulations when they are inconsistent.

Before we discuss each section of proposed §§ 1206.152 through 1206.158 regarding transportation allowances, we believe it is helpful to discuss some general changes we make. The proposed regulations move the current regulations regarding transportation allowances from 30 CFR 1206.156 and 1206.157 to proposed §§ 1206.152 through 1206.158. The proposed gas transportation allowance regulations are changed, primarily in structure, but there also are a few substantive changes. The structure of the proposed gas transportation allowance regulations is modeled after the current Federal oil transportation allowance regulations to achieve consistency between the two. In most cases, the regulatory requirements do not change. We reorganize the current provisions and rewrite them in Plain Language. Like the current oil transportation allowance regulations, this structure provides more regulatory section headings, better organization, and greater visibility to locate regulatory requirements applicable to the lessee's particular transportation allowance situations. Also, we reorganize or combine many paragraphs that were embedded within a current section into a new section for greater visibility. We propose to segregate individual multiple requirements within paragraphs into separate paragraphs to improve visibility and identification.

1206.152 What general transportation allowance requirements apply to me?

Proposed § 1206.152 retains the provisions in current § 1206.156 (''Transportation allowances—general''), makes Federal gas regulations consistent with Federal oil regulations, and consolidates provisions applicable to both arm's-length and non-arm's-length transportation in the current regulations rather than repeating those provisions in the respective sections explaining those allowances. We also rewrite the current regulations in Plain Language and only discuss substantive changes and additions below.

Proposed paragraph (a) contains the same requirements as current § 1206.156(a) and includes a new provision that ''[y]ou may not deduct transportation costs you incur to move a particular volume of production to reduce royalties you owe on production for which you did not incur those costs.'' Consistent with current regulations, this provision prevents the lessee from claiming transportation costs incurred for a segment of transportation when the gas did not actually flow on that segment. A lessee could only claim transportation costs attributable to the actual movement of the lease production on that transportation segment.

We also propose new paragraphs (a)(1) and (a)(2)(i), which are consistent with the current Federal oil rule § 1206.109(a)(2). New paragraph (a)(1) states you may take a transportation allowance when you value unprocessed gas under § 1206.141(b) or residue gas and gas plant products under § 1206.142(b) based on a sale at a point off the lease, unit, or communitized area where the gas is produced. New paragraph (a)(2)(i) states that you may take a transportation allowance when the movement to the sales point is not gathering. Neither change to the current rule is substantive because both codify existing practice and case law.

Proposed new paragraph (a)(2)(ii) states that ''[f]or gas produced on the OCS, the movement of gas from the wellhead to the first platform is not transportation.'' It is well established that the movement of oil and gas that ONRR determines is ''gathering'' is not allowable as a transportation allowance. *California Co.* v. *Udall,* 296 F.2d 384 (D.C. Cir. 1961); *Kerr-McGee Corp.,* 147 IBLA 277 (1999). However, on May 20, 1999, the then-Associate Director for the former MMS's Royalty Management

Program issued ''Guidance for Determining Transportation Allowances for Production from Leases in Water Depths Greater Than 200 Meters'' (Deep Water Policy). The Deep Water Policy provides the following guidelines: (1) Current regulations must be followed; (2) movement costs are allocated between royalty and non-royalty bearing substances; (3) movement prior to a central accumulation point is considered gathering, movement beyond the point is considered transportation; (4) leases and units are treated similarly; (5) the movement is to a facility that is not located on a lease adjacent to the lease on which the production originates; and (6) allowances for subsea completions not located in water deeper than 200 meters are considered on a case-by-case basis.

Both the current Federal oil and gas valuation rules define gathering as ''the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area that BLM or BSEE approves for onshore and offshore leases, respectively.'' 30 CFR 1206.101 (Federal oil) and 1206.151 (Federal gas). Under the Deep Water Policy, ONRR considered a subsea manifold located on the OCS in deep water to be a ''central accumulation point'' regardless of whether it was actually a central accumulation or treatment point as ONRR's regulations require. Since ONRR issued the Deep Water Policy, lessees have been deducting the costs of moving bulk production from the subsea manifold to the platform where the oil and gas first surface. In addition, lessees have attempted to expand the Deep Water Policy to deem subsea wellheads ''central accumulation points'' and take transportation allowances from the sea bed floor to the first platform where the bulk production surfaces. Thus, lessees have taken transportation allowances under the Deep Water Policy, in some instances, for movement ONRR considers non-deductible ''gathering'' under its regulations.

In addition, the Interior Board of Land Appeals (IBLA) has concluded there are three definitive attributes of gas gathering lines: (1) They move lease production to a central accumulation point; (2) they connect to gas wells; and (3) they bring gas by separate and individual lines to a central point where it is delivered into a single line. *Kerr-McGee Corp.,* 147 IBLA at 282 (citations omitted). In *Kerr-McGee,* the IBLA stated that ''even though production is moved across lease boundaries, because it is treated and sold on adjacent leases the costs of moving it there are properly regarded as gathering, not transportation.'' *Id.* at 283 (citations omitted). Under *Kerr-McGee,* almost all of the movement the Deep Water Policy allows as a transportation allowance is, in actuality, non-deductible ''gathering'' under ONRR's current valuation regulations.

We have determined that the Deep Water Policy is inconsistent with our regulatory definition of gathering and Departmental decisions interpreting that term. Therefore, we propose to rescind the Deep Water Policy in this rulemaking. We propose to accomplish this by making two changes. First, consistent with *Kerr-McGee,* we propose to add to the definition of ''gathering'' that any movement of bulk production from the wellhead to a platform offshore is gathering, not allowable transportation. Second, we propose to add a new paragraph (a)(2)(ii) to this section that states ''[f]or gas produced on the OCS, the movement of gas from the wellhead to the first platform is not transportation.'' We also make this change to proposed Federal oil § 1206.110(a)(2)(ii).

Proposed paragraph (b) of this section contains and consolidates current requirements in 30 CFR 1206.156(b) and 1206.157(a)(2) and (b)(3) regarding allocation of transportations costs based on your or your affiliate's cost of transporting each product if you transport one or more products in the gaseous phase in a transportation system.

Proposed paragraph (c)(1) contains and consolidates current requirements in 30 CFR 1206.157(a)(2) and (b)(4) which all apply to allocation of transportations costs when you or your affiliate transport both gaseous and liquid products in the same transportation system.

Under proposed paragraph (d), if you value unprocessed gas under § 1206.141(c) or residue gas and gas plant products under § 1206.142(d)—the index-based valuation options—you may not take a transportation allowance. This is because the index-based valuation provisions already incorporate the costs of transportation.

Proposed paragraph (e)(1), eliminates the current provision allowing lessees to request transportation allowances in excess of 50 percent of the sales value of the unprocessed gas, residue gas, or NGLs. Currently, ONRR limits transportation allowances and factors to 50 percent of the sales value of unprocessed gas, residue gas, or gas plant products unless we approve an exception to the limitation. To ensure a fair return to the public and to limit ONRR's administrative costs to process such requests, the proposed regulation eliminates the exception to the 50-percent limit. ONRR believes the current 50-percent limit on transportation-related costs is adequate in the vast majority of transportation situations. Thus, paragraph (e)(2) provides that any existing approvals for the exception to the limitation terminate on the effective date of the final rule. We will not grandfather any existing approval to exceed the 50-percent limit.

Proposed paragraph (f) continues the current requirement under 30 CFR 1206.157(a)(4), applicable to arm's-length transportation, that lessees must express transportation allowances for residue gas, gas plant products, or unprocessed gas in a dollar-value equivalent. We propose to also apply this requirement to non-arm's-length transportation consistent with existing practice. We further propose that if your or your affiliate's payments for transportation under a contract are not in dollars-per-unit, you must convert the consideration you or your affiliate paid to its dollar-value equivalent.

Like the default provision for valuation we discuss above under § 1206.143(c), proposed paragraphs (g)(1), (2), and (3) provide that ONRR may determine your transportation allowance under § 1206.144, if: (1) There is misconduct by or between the contracting parties; (2) the total consideration the lessee or its affiliate pays under an arm's-length contract does not reflect the reasonable cost of transportation because the lessee breached its duty to market the unprocessed gas, residue gas, or gas plant products for the mutual benefit of the lessee and the lessor by transporting such products at a cost that is unreasonably high; or (3) ONRR cannot determine if the lessee properly calculated a transportation allowance under § 1206.153 or § 1206.154, for any reason. Under proposed paragraph (g)(2), ONRR may consider an allowance to be unreasonably high if it is 10-percent higher than the highest reasonable measures of transportation costs, including, but not limited to, transportation allowances lessees and others report to ONRR and tariffs for gas, residue gas, or gas plant products transported through the same system.

Finally, we propose a new provision under paragraph (h) to make clear that you do not need ONRR's approval before reporting a transportation allowance for costs that you incur. This provision is in the current regulations that apply to arm's-length transportation at 30 CFR 1206.157(a), but we propose to apply it to non-arm's-length

transportation as well. This is consistent with existing practice.

1206.153 How do I determine a transportation allowance if I have an arm's-length transportation contract?

Proposed § 1206.153 explains how lessees must determine a transportation allowance under arm's-length transportation contracts. As we discuss above, we propose to restructure this section for consistency with the Federal oil transportation allowance regulations. In addition, we move the requirements for non-arm's-length transportation allowances to a separate § 1206.154.

Proposed paragraph (a)(1) states that this section applies to both the lessee and its affiliate if the lessee chooses to use the affiliate's arm's-length sales contract for valuation and if that affiliate incurs transportation costs under an arm's-length transportation contract to move the lease production to the sales point. However, ONRR will determine your transportation allowance under § 1206.152(g) if ONRR determines there is misconduct, the arm's-length transportation cost is unreasonably high, or ONRR cannot determine if your transportation allowance is proper. This provision gives ONRR greater discretion and flexibility to determine transportation allowances (for example, when arm's-length transportation service providers charge bundled fees). See the discussion of bundled fees in proposed § 1206.141 above.

ONRR proposes to eliminate the provision in current 30 CFR 1206.157(a)(5) that allows lessees to report transportation costs, in certain circumstances, as a transportation factor. Rather, we propose that a lessee must report separately all transportation costs under both arm's-length and non-arm's-length sales contracts as a transportation allowance on Form ONRR–2014. ONRR believes that requiring lessees to report all deductions for transportation costs separately as allowances on Form ONRR–2014 is more transparent, supports ONRR's increased data mining efforts to promote accuracy, and assists State and Federal auditors with their compliance work. We propose this same change for oil produced from Federal lands.

Proposed paragraph (b) allows a lessee to include the same costs we allow under current 30 CFR 1206.157(f) in its transportation allowance. Under new paragraph (b)(11), we also propose that a lessee may include in its transportation allowance hurricane surcharges the lessee or its affiliate pay. This proposal is consistent with existing practice.

Under proposed paragraph (c), we specify transportation costs we would not allow a lessee to include in its transportation allowance. These non-allowable costs remain mostly the same as those we currently disallow under 30 CFR 1206.157(g). We believe it is already clear the cost of boosting gas (*e.g.* recompressing residue gas at the plant after processing) is not a deductible cost of transportation under current 30 CFR 1202.151(b) and the Assistant Secretary's decision at issue in *Devon.* Nevertheless, proposed paragraph (c)(8) specifically states that the costs of boosting residue gas are not allowable as a cost of transportation.

Finally, we propose a new paragraph (d) that applies if you have no written contract for the arm's-length transportation of gas. In that case, ONRR determines your transportation allowance under proposed § 1206.144. Under this proposal, you have to propose to ONRR a method to determine the allowance using the procedures in § 1206.148(a) and could use that method until ONRR issues its determination. This paragraph only applies when there is no contract for arm's-length transportation. Thus, it would not apply if lessees perform their own transportation. Rather, § 1206.154 regarding non-arm's-length transportation allowances applies.

1206.154 How do I determine a transportation allowance if I have a non-arm's-length transportation contract?

We propose § 1206.154 as a separate section explaining how to calculate transportation allowances under a non-arm's-length contract, such as where the lessee ships its production through its own pipeline or through a pipeline its affiliate owns. Under proposed paragraph (a), ONRR continues the provision in current 30 CFR 1206.157(b) that does not recognize contracts between the lessee and its affiliate or any other person without opposing economic interests regarding that contract. Like the current regulations, you will determine non-arm's-length transportation allowances based on your actual costs or the actual costs of the affiliated pipeline owner.

Proposed paragraph (b) generally explains costs you may include in your transportation allowance. Paragraph (b)(1) explains the lessee's or its affiliate's actual costs include capital costs and operating and maintenance expenses under paragraphs (e), (f), and (g) of this section. Proposed paragraph (b)(2) explains you also could include overhead under paragraph (h) of this section. Under proposed paragraph (b)(3), we revise the current regulation to clarify the methodology for the two options to calculate depreciation. Under this proposed rulemaking, we allow lessees to choose between depreciation and a return on undepreciated capital investment under paragraph (i)(1) of this section, or a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (i)(2) of this section. Finally, paragraph (b)(4) allows the lessee to continue to claim a rate of return on the reasonable salvage value of the transportation system after it is fully depreciated. For example, if the pipeline had a salvage value of 5 percent, the lessee may claim a rate of return on 5 percent of the system value, even though we would allow no further depreciation. See the discussion of reasonable salvage value in proposed § 1206.112(i)(1)(iii).

We also propose to remove the provisions of current § 1206.175(b)(5) that allow a lessee with a non-arm's-length contract to use FERC or State-regulatory-agency approved tariffs as an exception from the requirement to calculate actual costs. We remove this provision to make it consistent with the current Federal oil valuation regulations. Under the proposed rule, lessees must compute their actual costs to determine transportation allowances under non-arm's-length contracts even when a regulatory agency has approved a tariff.

Proposed paragraph (c) further explains the transportation costs you may and may not include in a transportation allowance. Proposed paragraph (c)(1) states that, to the extent that you have not already included in your transportation allowances the allowable costs under paragraphs (e) through (g) of this section, you may include in your allowance the actual transportation costs we list under § 1206.153(b)(2), (5), and (6) of this subpart (Gas supply realignment (GSR) costs, Gas Research Institute (GRI) fees, and Annual Charge Adjustment (ACA) fees that FERC imposes). ONRR proposes to disallow the remaining costs we allow a lessee to include in arm's-length transportation allowances under § 1206.153(b) because the lessee would not or should not ordinarily incur the costs as a pipeline owner or be charged for those costs by its affiliate. However, there may be instances when specific costs integral to transportation could be included in the pipeline owner's operating and maintenance costs. ONRR invites comments on what types of costs, other than those identified in § 1206.153(b)(2), (5), and (6), may be actual costs of transportation

under non-arm's-length transportation arrangements.

ONRR also proposes to eliminate the current provision allowing lessees to deduct the costs of pipeline losses, both actual and theoretical, under non-arm's-length transportation situations. These regulations prohibited actual or theoretical pipeline losses prior to the 1997 gas transportation allowance revisions that incorporated new costs resulting from FERC Order No. 636. The advent of Order No. 636 should not have had any bearing on such non-arm's-length costs. Therefore, ONRR proposes to remove this provision. ONRR recognizes that pipeline losses are distinct from transportation fuel that is used on a pipeline to power compressors used for actual transportation. Under the proposal, ONRR continues to permit lessees to claim an allowance for actual fuel used for qualifying transportation purposes. In addition, we continue to disallow fuel for non-approved off-lease compressors and off-lease fuel for other processes necessary to place lease production in marketable condition.

Proposed paragraph (c)(2) explains that we do not allow a lessee to include in its non-arm's-length transportation allowances the same costs we do not allow to be included in arm's-length transportation allowances under proposed § 1206.153(c).

Like the arm's-length provision, proposed paragraph (d) states that for non-arm's-length transportation allowances, the lessee may not duplicate allowable transportation costs when it calculates an allowance. For example, if the lessee includes GRI costs in its operating costs under paragraph (b), it may not also include those costs under paragraph (c).

Proposed paragraphs (e) through (h) contain the same requirements as current 30 CFR 1206.157(b)(2)(i), (ii), and (iii), but we rewrite the provisions in Plain Language and make them consistent with the current Federal oil regulations.

Proposed paragraph (i) retains the requirements of current 30 CFR 1206.157(b)(2)(iv) regarding depreciation, but we rewrite those provisions in Plain Language and make them consistent with the Federal oil regulations. ONRR proposes to eliminate the reference to transportation facilities first placed in service after March 1, 1988. When ONRR published its Federal gas valuation regulations on January 15, 1988, it changed the requirements necessary to receive transportation and processing allowances. In recognition that certain transportation and processing facilities had been given approval prior to those regulations' effective date (March 15, 1988), ONRR made the new requirements apply only to facilities that were placed in service on or after the effective date of those regulations. Now more than twenty years later, ONRR believes that none of the facilities placed in service before March 15, 1988, are still eligible for depreciation under the requirements in effect prior to March 15, 1988. Therefore, we propose to remove this outdated language from the proposed regulations.

Under paragraph (i)(3), ONRR proposes to revise the rate of return from 1.3 times the Standard & Poor's BBB bond rate in current 30 CFR 1206.157(b)(2)(v) to the rate without a multiplier, in other words 1 times the BBB bond rate. We make the same change to Federal oil, so please refer to our discussion of proposed § 1206.112(i)(3).

1206.155 What are my reporting requirements under an arm's-length transportation contract?

This section would contain essentially the same provisions as current 30 CFR 1206.157(c)(1). However, ONRR proposes to add the term ''affiliate'' to paragraph (b). Under the new proposed valuation provisions, which use an affiliate's arm's-length sales contract, ONRR allows a transportation allowance to the arm's-length sales point and, therefore, needs the associated transportation contracts. In addition, ONRR proposes to eliminate the reference to allowances in effect prior to March 1, 1988, under current 30 CFR 1206.157(c)(1)(iii). As stated above, ONRR believes that none of facilities predating the 1988 rule change are still eligible for depreciation under the requirements in effect prior to March 15, 1988. Therefore, we are removing this language from the proposed regulations.

1206.156 What are my reporting requirements under a non-arm's-length transportation contract?

This section contains essentially the same provisions as current 30 CFR 1206.157(c)(2). In this proposed rule, ONRR eliminates the reference in current 30 CFR 1206.157(c)(2)(v) to allowances in effect prior to March 1, 1988.

1206.157 What interest or penalties apply if I improperly report a transportation allowance?

Under proposed § 1206.157, ONRR consolidates the penalty and interest provisions for improper allowances. Currently, such provisions are contained under both the general transportation and determination of transportation allowances sections of the regulations. Proposed paragraph (a)(1) slightly modifies current 30 CFR 1206.156(d) by using the term ''unauthorized'' in the context of ''If ONRR determines that you took an unauthorized transportation allowance, then you must pay any additional royalties due. . . .'' However, this change would not alter the meaning of the current provisions. Examples of unauthorized transportation allowances include, but are not limited to, exceeding the 50-percent limitation, including costs necessary to place the gas into marketable condition, or including other costs that are not integral to the transportation of lease production. Proposed paragraph (a)(2) states that a lessee may be entitled to a credit with interest if it understated its transportation allowance. This provision amends current 30 CFR 1206.157(e) to comply with RSFA's provision that entitles lessees to interest on overpayments (30 U.S.C. 1721(h)).

Proposed paragraph (b) states that, if the lessee deducts a transportation allowance that exceeds 50 percent of the value of the gas, residue gas, or gas plant products transported, the lessee must pay late payment interest on the excess allowance amount taken from the date that amount is taken until the date it paid the additional royalties due. This changes the current requirement that interest is calculated from the date the allowance is taken until the lessee files a request for an exception. This change results from ONRR proposing to eliminate allowance exceptions.

Proposed paragraph (c) restates current 30 CFR 1206.156(d).

1206.158 What reporting adjustments must I make for transportation allowances?

Section 1206.158 restates the requirements of current 30 CFR 1206.157(e), except we rewrite the provisions in Plain Language.

1206.159 What general processing allowances requirements apply to me?

Like the amendments to transportation allowances discussed above, ONRR proposes to rewrite the current processing allowance regulations at 30 CFR 1206.158 in Plain Language, make them consistent with Federal oil, and reorganize them for clarity and visibility. We are not planning to make any substantive changes in proposed paragraph (a)(1) and paragraph (b); they will contain the same provisions as current 30 CFR 1206.158 (a) and (b). However, we

propose to add a new provision under paragraph (a)(2) to make clear that you do not need ONRR's approval before reporting a processing allowance for costs that you incur for arm's-length or non-arm's-length allowances. This is consistent with existing practice.

Proposed paragraph (c) continues the requirements of current 30 CFR 1206.158(c), with two substantive changes and one clarification to current 30 CFR 1206.158(c)(1). Current paragraph 1206.158 (c)(1) states that ''Except as provided in paragraph (d)(2) of this section, the processing allowance shall not be applied against the value of the residue gas. Where there is no residue gas ONRR may designate an appropriate gas plant product against which no allowance may be applied.'' We are removing the second sentence because we do not believe ONRR ever used this provision.

ONRR proposes to eliminate the exception under current 30 CFR 1206.158 (c)(3) allowing a lessee to request ONRR approval of a processing allowance that exceeds 66⅔ percent of the value of the plant products. We also propose to eliminate the provision allowing a lessee to request an extraordinary processing cost allowance under current 30 CFR 1206.158(d)(2). ONRR also proposes to terminate any approvals for the exception under proposed paragraph (c)(3) and the extraordinary cost processing allowance under proposed paragraph (c)(4) as of the effective date of the rule. Thus, we propose not to grandfather previously approved exceptions or extraordinary allowances. ONRR proposes these changes because, as with transportation allowances, ONRR believes the current 66⅔ percent limit on processing-related costs is adequate in the vast majority of situations. To date, we only have approved two extraordinary processing cost allowances. Given the age of the plants and improvements in technology, ONRR believes such extraordinary cost allowances no longer reflect current conditions. Furthermore, ONRR believes the current 66⅔ percent limitation on gas plant products ensures a fair return to the public.

Proposed paragraph (d) explains and clarifies that we continue to disallow deductions for costs necessary to place gas into marketable condition. ONRR proposes to retain the existing requirements of current 30 CFR 1206.158(d)(1) but proposes to recodify them as § 1206.159(d)(1), (2), (3), and (4). Also, the proposed rule makes clear that any cost a lessee incurs for stabilizing condensate or recovering gas vapors from condensate or oil is disallowed. The methods industry employs to perform these services are not within the proper definition of ''processing'' under these regulations and are, in fact, costs incurred to place the condensate or oil into marketable condition. Likewise, we currently analyze whether hydrocarbon dew point controls are actually functions that fall within the definition of ''processing'' under the regulations before qualifying for a processing allowance against the value of the liquids recovered. In conjunction with these efforts to clarify the costs that qualify as a processing allowance, ONRR proposes to add Joule-Thomson Units (JT Units) used to recover NGLs from gas to the definition of ''processing'' under proposed § 1206.20, regardless of the location of the JT Unit.

1206.160 How do I determine a processing allowance, if I have an arm's-length processing contract?

ONRR proposes this new section, which is essentially the same as current 30 CFR 1206.159(a), with no material modifications, except we add a new paragraph (c) we discuss below. Like transportation allowances, we are moving the requirements for non-arm's-length processing allowances to a separate § 1206.161. Because the requirements for determining processing allowances under an arm's-length contract are essentially the same as those for determining transportation allowances under an arm's-length contract, we make the same changes to processing allowances in this section as those we propose for arm's-length transportation allowances. Refer to the preamble discussion of § 1206.153 for an explanation of the changes.

We propose a new paragraph (c) that applies if you have no written contract for arm's-length processing of gas. In that case, ONRR will determine your processing allowance under § 1206.144. You will have to propose to ONRR a method to determine the allowance using the procedures in § 1206.148(a) and may use that method until ONRR issues a determination. This proposed paragraph only applies if there is no contract for arm's-length processing. It does not apply if a lessee performs its own processing. In that case, § 1206.161 applies.

ONRR also proposes new § 1206.161 through § 1206.165 to subpart D to codify and enhance current Federal gas valuation practices.

1206.161 How do I determine a processing allowance if I have a non-arm's-length processing contract?

This section contains the same requirements as current 30 CFR 1206.159(b). Because the requirements for determining processing allowances under a non-arm's-length contract are essentially the same as those for determining transportation allowances under a non-arm's-length contract, we make the same changes to processing allowances in this section as those we propose for non-arm's-length transportation allowances. Refer to the preamble discussion of § 1206.154 for an explanation of the changes.

ONRR proposes one material change to the current regulatory requirements. Under proposed paragraph (b)(4), we allow the lessee to continue claiming a rate of return on the reasonable salvage value of a processing plant after it is fully depreciated. For example, if the plant had a salvage value of 5 percent, the lessee could claim a rate of return on 5 percent of the plant value, even though we would allow no further depreciation. See the discussion of reasonable salvage value in proposed § 1206.112(i)(1)(iii).

1206.162 What are my reporting requirements under an arm's-length processing contract?

1206.163 What are my reporting requirements under a non-arm's-length processing contract?

1206.164 What interest or penalties apply if I improperly report a processing allowance?

1206.165 What reporting adjustments must I make for processing allowances?

These four proposed sections are the same as the reporting-related requirements in current 30 CFR 1206.159(c), (d), and (e). Also, they are the same changes as those discussed above for transportation allowances under §§ 1206.155 through 1206.158.

Subpart F—Federal Coal

1206.250 What is the purpose and scope of this subpart?

This proposed section is the same as current 30 CFR 1206.250, but we rewrite the current section in Plain Language and make it consistent with the other product valuation regulations. The substantive requirements remain unchanged.

1206.251 How do I determine royalty quantity and quality?

This proposed section is the same as current 30 CFR 1206.254, 1206.255, and 1206.260, but we rewrite the sections in Plain Language and combine multiple sections into this proposed section. We do not propose any substantive change. However, under proposed paragraph (e), we clarify the calculation you will have

to perform to allocate washed coal under current 30 CFR 1206.260 by attributing the washed coal to the leases from which it was extracted. Thus, proposed new paragraph (e) reads as set forth in the regulatory text.

1206.252 How do I calculate royalty value for coal I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

Current 30 CFR 1206.256 contains valuation standards for Federal coal leases having cents-per-ton royalty rates. The regulation we propose eliminates any reference to the valuation of coal from these leases because there are no longer any Federal cents-per-ton coal leases. Therefore, this proposed § 1206.252, and the rest of the proposed regulations, provide lessees with instructions for valuing coal from ad valorem Federal coal leases.

Consistent with the current Federal coal valuation regulations, under the proposed regulations, a lessee generally values Federal coal based on the gross proceeds accruing to the lessee from the first arm's-length sale. However, like the proposed amendments to the Federal gas rule we discuss above, we propose to eliminate the benchmarks for valuation of non-arm's-length sales. We also propose to add the same ''default'' mechanism under § 1206.254 discussed above. Please refer to proposed §§ 1206.141, 1206.142, and 1206.144 above for an explanation of the proposed changes.

The benchmarks applicable to value coal in non-arm's-length or no-sale situations have proven difficult to use in practice. In addition, the first benchmark does not allow the use of comparable arm's-length sales by the lessee or its affiliates, exacerbating the challenging process of obtaining and comparing relevant arm's-length sales contracts to value non-arm's-length sales. Furthermore, disputes arise over which sales are comparable, particularly because of the inherent ambiguity in applying the comparability factors.

ONRR is soliciting comments on how to simplify and improve the valuation of coal disposed of in non-arm's-length transactions and no-sale situations. We seek input on the merits of eliminating the benchmarks for valuation of non-arm's-length sales and comments on the following questions:

- Should the royalty value of coal initially sold under non-arm's-length conditions be based on the gross proceeds received from the first arm's-length sale of that coal in situations where there is a subsequent arm's-length sale?
- If you are a coal lessee, will adoption of this methodology substantively impact your current calculation and payment of royalties on coal and how?
- What other methodologies might ONRR use to determine the royalty value of coal not sold at arm's length that we may not have considered?

Under proposed paragraph (a), if the lessee sells coal to an affiliate or another person under a non-arm's-length sales contract, and the coal purchaser sells the coal under an arm's-length contract, the lessee must value the coal based on the first arm's-length contract, less applicable allowances, unless ONRR decides to value the coal under § 1206.254 (the new ''default'' provision). Please refer to proposed § 1206.141(b) above for an explanation of the proposed change.

A lessee that is part of a corporation with affiliates that produce coal and affiliates that consume the coal in an electrical generation plant may have transactions to transfer coal without a sale. If the affiliate consumes the coal to generate electricity, paragraph (a) of this proposed section would not provide a valuation methodology. Therefore, ONRR proposes paragraph (b) to explain how a lessee must value the coal in this circumstance.

Under proposed paragraph (b)(1), if a lessee or its affiliate sells electricity at arm's length, the royalty value is the sales value of the electricity, less applicable allowances. In proposed paragraph (b)(2), if a lessee or its affiliate did not sell electricity at arm's length, ONRR will determine the royalty value of the coal under the new ''default'' valuation provision in § 1206.254. In this situation, a lessee must propose a valuation method to ONRR and may use that method until we issue a determination on the lessee's proposal.

We also propose a new paragraph (c) to explain how to value coal that a coal cooperative sells. Please refer to § 1206.20 for the definition of a coal cooperative. A coal cooperative generally operates as a corporation, with members and owners associated for the purpose of obtaining a long-term, secure source of coal. This proposed rule will treat a coal cooperative and its members/owners as affiliated because they operate without opposing economic interests. Their collective need is to have a source of coal available to generate electric power and to be able to purchase that coal at reasonable prices, and, if possible, below-market prices. The coal cooperative's members are commonly electric power generation companies, or electric utility, generation, or transmission cooperatives. The coal cooperative may operate as a coal lessee, operator, or payor of these and may or may not be organized to make a profit. Coal cooperatives exist to avoid the vagaries and potentially higher prices of the free market.

One mechanism that some members of coal cooperatives use to maintain the lowest possible price for the coal mined and sold to other members is to refrain from making a profit on such transactions among members. A coal cooperative can underprice coal even when sales are arm's length, all other costs being equal. Thus, the proposed regulations include a new paragraph (c) to value coal sold in these circumstances.

Under proposed paragraph (c)(1), for sales of coal between the coal cooperative and coal cooperative members, if the coal is then sold at arm's-length, we require the lessee to value the coal under paragraph (a) of this section, regardless of the number of sales between the coal cooperative members or the coal cooperative and its members. For example, assume a coal cooperative sold its Federal coal to a coal cooperative member, and that coal cooperative member sold its coal to another coal cooperative member who then sold the coal at arm's-length. In that case, under the proposed rule, the coal would be valued under paragraph (a) of this section based on the first arm's-length sale.

Under proposed paragraph (c)(2), for sales of coal between the coal cooperative and coal cooperative members where the coal is consumed in a power generation plant to generate electricity owned by the coal cooperative or a coal cooperative member, we require a lessee to value the coal under proposed paragraph (b) of this section, regardless of the number of sales between coal cooperative members or between the coal cooperative and its members. For example, assume a coal cooperative sold its Federal coal to a coal cooperative member, and that coal cooperative member sold its coal to another coal cooperative member who then consumed the coal in its power generation plant and sold the electricity it generated. In that case, under the proposed rule, the coal would be valued under paragraph (b) of this section based on the sales of the electricity, less any allowable deductions.

ONRR believes all sales between cooperative members are non-arm's-length because they do not have opposing economic interests. However, we treat sales to non-members of the cooperative like any other arm's-length

sale under paragraph (a) or paragraph (b) of this section. ONRR seeks comments on this valuation proposal.

Proposed paragraph (d) states that if you are entitled to take a washing allowance and transportation allowance for royalty purposes under this section, the sum of the washing and transportation allowances may never reduce the royalty value of the coal to zero. This is the same as current 30 CFR 1206.258(a) and 1206.261(b), but we rewrite these sections in Plain Language. Unlike the Federal oil and gas rules, ONRR is not proposing to limit Federal and Indian coal washing and transportation allowances to 50 percent of the value of the coal. We specifically request comments as to whether we should limit coal allowances to 50 percent of the value of the coal.

1206.253 How will ONRR determine if my royalty payments are correct?

1206.254 How will ONRR determine the value of my coal for royalty purposes?

1206.255 What records must I keep to support my calculations of royalty under this subpart?

1206.256 What are my responsibilities to place production into marketable condition and to market production?

1206.257 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?

1206.258 How do I request a valuation determination or guidance?

1206.259 Does ONRR protect information I provide?

ONRR proposes the same changes to §§ 1206.253 through 1206.259 as those we propose for Federal gas valuation regulations under §§ 1206.143 through 1206.149. Please refer to those proposed sections for an explanation of changes.

1206.260 What general transportation allowance requirements apply to me?

Proposed § 1206.260 retains the provisions in current 30 CFR 1206.261 and makes the Federal coal regulations consistent with the Federal oil and gas regulations in this proposed rule. This section also consolidates provisions applicable to both arm's-length and non-arm's-length transportation in the current regulations, rather than repeating those provisions in the respective sections for those allowances. We also rewrite the current regulations in Plain Language and discuss only substantive changes or additions to this section below.

Proposed paragraph (a)(1) contains the same provision as current 30 CFR 1206.261(a) allowing you to take a deduction for the reasonable, actual costs to transport coal from the lease to a point off the lease or mine determined under §§ 1206.261 or 1206.262, as applicable. We propose a new provision under paragraph (a)(2) to make clear that you do not need our approval before reporting a transportation allowance for costs that you incur for arm's-length and non-arm's-length transportation. This proposal is consistent with existing practice. Proposed paragraph (b) would contain the remaining current requirements in 30 CFR 1206.261(a) regarding when you may take an allowance.

Proposed paragraph (c) explains when you cannot take an allowance. A new provision in paragraph (c)(1) states that you cannot take an allowance for transporting lease production that is not royalty bearing. This new provision is consistent with the existing and proposed Federal oil and gas regulations. Proposed paragraph (c)(2) contains the current requirement in 30 CFR 1206.261(a)(2) that you cannot take an allowance for in-mine movement of your coal. We also propose a new provision in paragraph (c)(3) that would state you may not deduct transportation costs to move a particular tonnage of production for which you did not incur those costs. This codifies our existing practice of only granting a transportation allowance if you actually move coal and pay for that movement.

Proposed paragraph (d) is the same as current 30 CFR 1206.261(c)(3) and permits you to claim a transportation allowance only when you sell the coal and pay royalties.

We propose to add paragraph (e) to contain and consolidate current requirements in 30 CFR 1206.261(c)(1), 1206.261(c)(2), and 1206.261(e) about allocation of transportations costs. This paragraph requires lessees to report their transportation costs on Form ONRR–4430 as a cost per ton of clean coal transported. We also explain how to calculate the cost per ton of clean coal transported.

In addition, we propose to add paragraph (f) to contain the requirement in current § 1206.262(a)(4) that you must express arm's-length coal transportation allowances as a dollar-value equivalent per ton of coal transported. We also make the provision applicable to non-arm's-length transportation allowances, consistent with existing practice. Under the proposed regulations, we further explain that if you do not base your or your affiliate's payments for transportation under a transportation contract on a dollar-per-unit basis, you must convert the consideration you or your affiliate paid to a dollar-value equivalent.

We propose to add paragraph (g), containing the same default provision as that for the Federal oil and gas transportation regulations discussed above under §§ 1206.110(f) and 1206.152(g), respectively. This proposal includes moving the requirements of current paragraphs 1206.262(a)(2) and 1206.262(a)(3) regarding additional consideration, misconduct, and breach of the duty to market to this new paragraph (g). We also propose to move the requirements for non-arm's-length transportation allowances to a separate § 1206.262.

1206.261 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?

Proposed section 1206.261 explains how lessees must determine transportation allowances under arm's-length transportation contracts. These requirements are in current 30 CFR 1206.262(a)(1). However, we rewrite this section in Plain Language and restructure it for consistency with the Federal gas transportation allowance regulations we discuss above in § 1206.153.

We propose to add a new paragraph (c) that would apply if you have no written contract for the arm's-length transportation of coal. In that case, ONRR will determine your transportation allowance under § 1206.254. You must propose to ONRR a method to determine the allowance using the procedures in § 1206.258(a). You may use that method to determine your allowance until ONRR issues a determination. This paragraph does not apply if a lessee performs its own transportation. Rather, proposed § 1206.262, regarding non-arm's-length transportation allowances, applies.

1206.262 How do I determine a transportation allowance if I have a non-arm's-length transportation contract?

ONRR proposes to revise § 1206.262 to explain how lessees must determine transportation allowances under non-arm's-length transportation contracts using paragraphs (a) through (k) of this section. These requirements are in current 30 CFR 1206.262(b). We rewrite the current requirements in Plain Language and restructure and amend this section for consistency with the Federal gas transportation allowance regulations we discuss above in § 1206.154. We also make several substantive changes discussed below.

The current coal rule at 30 CFR 1206.262(b)(3) provides that a lessee may request an exception from having to calculate actual costs for non-arm's-length or no-contract transportation allowances. The lessee may use the exception if there are Federal- or State-approved transportation rates. We propose to eliminate the exception for the following reasons: (1) No lessee has ever applied to use the exception; (2) the Federal Government no longer sets or approves rail transportation rates for coal; and (3) the administrative burden on ONRR to determine approved rates for every State in which coal is produced is too great.

The current coal rule at 30 CFR 1206.262(b)(2)(iv)(A) permits a return on undepreciated capital investment in the transportation system as one of the allowable costs a lessee may include in non-arm's-length or no-contract transportation allowances. However, under the current regulation, the return on investment ends after the capital costs are depreciated to (or below) a reasonable salvage value. In proposed paragraph (b)(4) of this section, we allow a lessee to continue to take a return on the reasonable salvage value under paragraph (i) of this section. Under proposed paragraph (i)(2), after you depreciated a transportation system to its reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value, multiplied by the Standard & Poor's BBB rate of return allowed under paragraph (k) of this section. We propose this change to make coal valuation regulations consistent with the Federal oil valuation amendments in proposed § 1206.112(b)(3)(ii) and the Federal gas valuation amendments in proposed § 1206.154(i)(1)(iii) (current Federal gas valuation regulation at § 1206.157(g)).

1206.263 What are my reporting requirements under an arm's-length transportation contract?

1206.264 What are my reporting requirements under a non-arm's-length transportation contract?

1206.265 What interest and penalties apply if I improperly report a transportation allowance?

1206.266 What reporting adjustments must I make for transportation allowances?

ONRR proposes the same revisions to §§ 1206.263 through 1206.265 as those we propose for Federal gas valuation regulations under §§ 1206.155 through 1206.157, with two exceptions. ONRR also proposes to add § 1206.266 to correspond with § 1206.158. Please refer to those sections for an explanation of the proposed changes.

The first exception is that these sections keep the same reporting requirements as current 30 CFR 1206.262(c), 1206.262(d), and 1206.262(e). In addition, proposed § 1206.265 (b)(1) replaces current 30 CFR 1206.262(d)(1) regarding assessments if you improperly net a transportation allowance against the sales value of the coal instead of reporting the allowance as a separate entry on Form ONRR–4430. Under this proposed regulation, ONRR eliminates assessments because ONRR is now authorized to assess civil penalties for solid mineral leases under FOGRMA, 30 U.S.C. 1719 and 30 U.S.C. 1720a. Penalties are a more effective enforcement mechanism to ensure lessee compliance with reporting requirements because ONRR can assess civil penalties that are significantly higher than the maximum assessment the current regulation authorizes.

1206.267 What general washing allowance requirements apply to me?

ONRR proposes to add this section to contain the requirements of current 30 CFR 1206.258. This proposal makes the Federal coal valuation regulations consistent with Federal oil and gas valuations regulations, and consolidates provisions applicable to both arm's-length and non-arm's-length washing in the current valuation regulations, rather than repeating those provisions in the respective sections explaining those allowances. We also rewrite the current valuation regulations in Plain Language. We only discuss any substantive changes or additions to this section below.

Proposed paragraph (a) contains the same information as current 30 CFR 1206.258(a) allowing you to deduct the reasonable, actual costs to wash coal if you determine the value of your coal under proposed § 1206.252. We also propose a new provision under paragraph (a)(2) to make clear you do not need ONRR's approval before reporting a washing allowance for costs that you incur consistent with existing practice.

Proposed paragraph (b) states what you cannot claim when you take a washing allowance. Paragraph (b)(1) of this section states that you cannot take an allowance for washing lease production that is not royalty-bearing. This new provision is consistent with the current and proposed Federal oil and gas valuation regulations and existing practices for coal valuation. Paragraph (b)(2) contains the current prohibition in 30 CFR 1206.258(c) that you cannot disproportionately allocate washing costs to Federal leases. New paragraph (b)(2) contains the allocation of washing allowance requirements under current 30 CFR 1206.260. However, new paragraph (b)(2) clarifies how to allocate washing costs by stating that you must allocate washing costs to washed coal attributable to each Federal lease by multiplying the input ratio, which you determine under proposed § 1206.251(e)(2)(i), by the total allowable costs.

Proposed paragraph (c) contains the requirement of current 30 CFR 1206.259(a)(4) that you must express arm's-length coal washing allowances as a dollar-value equivalent per ton of coal washed. We also apply that provision to non-arm's-length washing allowances and make the section consistent with existing practices. In addition, under this proposed paragraph, we state that, if you do not base your or your affiliate's payments for washing under an arm's-length contract on a dollar-per-unit basis, you have to convert the consideration you or your affiliate pay to a dollar-value equivalent.

We propose to add a new paragraph (d) containing the same default provision as that for the Federal oil, gas, and coal transportation regulations we discuss above under proposed §§ 1206.110(f), 1206.152(g), and § 1206.260(g), respectively.

Proposed new paragraph (e) would contain the same provision as current 30 CFR 1206.258(e) that you may only claim a washing allowance when you sell the washed coal and report and pay royalties.

1206.268 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?

ONRR proposes to add this section to contain the requirements under current 30 CFR 1206.259(a)(1), but we rewrite this section in Plain Language and restructure this section for consistency with the proposed Federal gas transportation allowance regulations we discussed above in § 1206.153. This proposal includes moving the requirements of current §§ 1206.259(a)(2) and 1206.259(a)(3) regarding additional consideration, misconduct, and breach of the duty to market to the proposed § 1206.267(d) we discussed above. We would move the requirements for non-arm's-length washing allowances to § 1206.269.

We propose to add a new paragraph (c) that applies if you have no written contract for the arm's-length washing of coal. In that case, ONRR may determine

your washing allowance under § 1206.254. You must propose to ONRR a method to determine the allowance using the procedures in § 1206.258(a). You may use that method to determine your allowance until ONRR issues a determination. This paragraph would not apply if a lessee performs its own washing. Rather, § 1206.269 regarding non-arm's-length washing allowances applies.

1206.269 How do I determine washing allowances if I have a non-arm's-length washing contract?

ONRR proposes to add new § 1206.269 to explain how lessees must determine a washing allowance under a non-arm's-length transportation contract using paragraphs (a) through (k) of this section. These requirements are in current 30 CFR 1206.259(b). We rewrite the current requirements in Plain Language and restructure, add, and amend this section for consistency with the Federal gas and coal transportation allowance regulations proposed above in §§ 1206.154 and 1206.262. We also propose to make several substantive changes we discuss below.

The current coal rule at 30 CFR 1206.259(b)(2)(iv)(A) permits a return on undepreciated capital investment in the wash plant as one of the allowable costs a lessee may include in non-arm's-length or no-contract transportation allowances. However, under the current regulation, the return on investment ends after the capital costs are depreciated to (or below) a reasonable salvage value. In proposed paragraph (b)(4) of this section, we allow lessees to continue to take a return on the reasonable salvage value under paragraph (i) of this section. Under proposed paragraph (i)(2), after you depreciated a wash plant to its reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by the Standard & Poor's BBB rate of return allowed under paragraph (k) of this section. We propose this change in order to make coal valuation regulations consistent with the Federal oil valuation amendments in proposed § 1206.112(b)(3)(ii) the Federal gas valuation amendments in proposed § 1206.154(i)(1)(iii) (current Federal gas valuation regulation at 30 CFR 1206.157(g)), and the Federal coal valuation regulation amendments proposed in § 1206.262 (b)(4) and in paragraph (i)(2) of this section.

1206.270 What are my reporting requirements under an arm's-length washing contract?

1206.271 What are my reporting requirements under a non-arm's-length washing contract?

1206.272 What interest and penalties apply if I improperly report a washing allowance?

1206.273 What reporting adjustments must I make for washing allowances?

ONRR proposes to add §§ 1206.270 through 1206.273, which are the same as we propose for Federal gas valuation regulations under §§ 1206.155 through 1206.158, with two exceptions. These two exceptions are the same as we propose in §§ 1206.263 through 1206.266. Please refer to those sections for an explanation of the proposed changes.

Subpart J—Indian Coal

1206.450 What is the purpose and scope of this subpart?

This section would be the same as current 30 CFR 1206.450. We rewrite the current section in Plain Language and make this section consistent with the other product valuation regulations. As we explained above in § 1206.20, we replace the term ''Indian allottee'' with ''individual Indian mineral owner.'' However, the substantive requirements remain unchanged.

1206.451 How do I determine royalty quantity and quality?

This proposed section is the same as current 30 CFR 1206.453, 1206.454, and 1206.459, except that we rewrite the sections in Plain Language and combine multiple current sections into this proposed section. We are not proposing any substantive change.

1206.452 How do I calculate royalty value for coal I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

1206.453 How will ONRR determine if my royalty payments are correct?

1206.454 How will ONRR determine the value of my coal for royalty purposes?

1206.455 What records must I keep to support my calculations of royalty under this subpart?

1206.456 What are my responsibilities to place production into marketable condition and to market production?

1206.457 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?

1206.458 How do I request a valuation determination or guidance?

1206.459 Does ONRR protect information I provide?

ONRR proposes the same changes to §§ 1206.452 through 1206.459 as those we proposed for Federal coal valuation regulations under §§ 1206.252 through 1206.259. Please refer to those proposed sections for an explanation of the changes.

1206.460 What general transportation allowance requirements apply to me?

We propose the same changes to this section as those we propose for Federal coal under § 1206.260, with two exceptions. Please refer to that section for an explanation of the proposed changes.

For Indian coal under current 30 CFR 1206.461(a)(1), a lessee must submit Form ONRR–4293, Coal Transportation Allowance Report, prior to taking an allowance. This provision is not in either the current or proposed Federal coal valuation regulations. However, ONRR proposes to retain this requirement for coal produced from Indian leases as part of our trust responsibility. This form submittal ensures that we continue the oversight and controls necessary on Indian leases.

The current Indian coal regulation at 30 CFR 1206.461(a)(1) also provide that a lessee who does not timely file Form ONRR–4293 may claim a transportation allowance retroactively for a period of not more than 3 months prior to the first day of the month that ONRR receives the lessee's Form ONRR–4293 ''unless ONRR approves a longer period upon a showing of good cause by the lessee.'' We propose to remove the good cause exception. We have found this exception is difficult to administer and is not applicable. See *Alexander Energy Corp.,* 153 IBLA 238 (2000), *Union Oil*

Company of California, 167 IBLA 263 (2005).

In addition, current 30 CFR 1206.461(c)(1)(vi) provides that ONRR will allow non-arm's-length contract or no written arm's-length contract-based transportation allowances in effect at the time these regulations become effective, to continue until such allowances terminate. ONRR eliminated this provision for Federal coal leases in its 1996 Federal coal amendments but left this intact for Indian leases (61 FR 5481 (1996)). To be consistent, we propose to remove this provision. ONRR also eliminated this provision for Federal gas leases (70 FR 11869). Therefore, we propose to add a new paragraph (a)(3) stating ''You may not use a transportation allowance that was in effect before the effective date of the final rule. You must use the provisions of this subpart to determine your transportation allowance.''

1206.461 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?

ONRR proposes the same changes to this section as we propose for Federal coal under § 1206.261. Please refer to that section for an explanation of the proposed changes.

1206.462 How do I determine a transportation allowance if I have a non-arm's-length transportation contract?

We propose the same changes to this section as we propose for Federal coal under § 1206.262, with one exception discussed below. Please refer to § 1206.262 for an explanation of the proposed changes.

For Federal coal under proposed § 1206.262, we allow a lessee to take a return on the reasonable salvage value of a transportation system. We are not proposing to make this change to Indian coal because we believe it would reduce the return to the Indian lessor while not providing a benefit to them. It would therefore not be in the best interest of the Indian lessor and be inconsistent with our trust responsibility.

1206.463 What are my reporting requirements under an arm's-length transportation contract?

We propose to make the same changes to this section as we propose for Federal coal under § 1206.263 with one exception. Please refer to § 1206.263 for an explanation of the proposed changes. We also propose substantive changes to current 30 CFR 1206.461(c) regarding reporting arm's-length transportation allowances.

Unlike the Federal coal regulation, this proposed Indian coal regulation would retain the requirement for a lessee to submit Form ONRR–4293 prior to taking a transportation allowance. These same provisions are in current 30 CFR 1206.458(c). Form submittal is not a requirement for Federal leases, but the form submittal ensures we continue the oversight and controls necessary on Indian leases.

In addition to the changes we make to the reporting requirements under this section, consistent with the Federal coal valuation regulations, we propose to eliminate three provisions in the current Indian coal regulations. First, under the current 30 CFR 1206.461(c)(1)(iii), a lessee may request special reporting procedures in unique circumstances. ONRR eliminated this provision for Federal coal leases in its 1996 Federal coal amendments but left it intact for Indian leases. We do not believe any lessee has ever used this provision. Therefore, we propose to remove this provision.

Second, the current coal regulation under 30 CFR 1206.461(c)(1)(vi) states ONRR may establish coal transportation allowance reporting requirements for individual leases different from those specified in this subpart to provide more effective administration. ONRR eliminated this provision for Federal coal leases in its 1996 Federal coal amendments but left it intact for Indian leases. We do not believe ONRR has ever used this provision. Therefore, we propose to remove this provision.

Finally, current 30 CFR 1206.461(c)(1)(vi) provides that ONRR will allow non-arm's-length contract or no arm's-length contract-based transportation allowances that are in effect at the time these regulations become effective to continue until such allowances terminate. We propose to eliminate this provision and to replace it with a new § 1206.460(a)(3) we discuss above.

1206.464 What are my reporting requirements under a non-arm's-length transportation contract?

We propose to make the same amendments to this section as those we propose for section §§ 1206.264 and 1206.463. Please refer to those proposed sections for an explanation of changes.

1206.465 What interest and penalties apply if I improperly report a transportation allowance?

We propose to make the same amendments to this section as those we propose for § 1206.265. Proposed paragraph (b) of this section prohibits the netting of transportation costs from gross proceeds received for a particular sale. When eligible to take a transportation allowance, a lessee must report gross proceeds without a deduction for transportation costs, and may simultaneously claim a transportation allowance for the cost of transporting the royalty fraction of Indian coal sold. Current Indian coal valuation regulations do not contain this provision. ONRR considers the change to be an enhancement to the Indian coal regulations that is already in the current Federal coal valuation regulations at 30 CFR 1206.262(d).

1206.466 What reporting adjustments must I make for transportation allowances?

We propose the same amendments to this section we propose for § 1206.266. Please refer to the proposed section for an explanation of the changes.

1206.467 What general washing allowance requirements apply to me?

We propose the same amendments to this section we propose for §§ 1206.267 and 1206.460. However, we propose to maintain the current requirement that a lessee must submit Form ONRR–4292, Coal Washing Allowance Report, prior to taking a washing allowance. Please refer to §§ 1206.267 and 1206.460 for an explanation of the changes.

1206.468 How do I determine a washing allowance if I have an arm's-length washing contract or no written arm's length contract?

We propose to make the same amendments to this section we propose for §§ 1206.268 and 1206.461. Please refer to §§ 1206.268 and 1206.461 for an explanation of the changes.

1206.469 How do I determine a washing allowance if I have a non-arm's-length washing contract?

We propose to make the same amendments to this section we propose for §§ 1206.269 and 1206.462, with one exception we discuss below. Please refer to §§ 1206.269 and 1206.462 for an explanation of the changes.

For Federal coal under proposed § 1206.269, we propose to allow a lessee to continually take a return on the reasonable salvage value of a wash plant. We do not propose to make this change to Indian coal because we believe it would reduce the return to the Indian lessor while not providing a benefit to them. It would therefore not be in the best interest of the Indian lessor and be inconsistent with our trust responsibility.

1206.470 What are my reporting requirements under an arm's-length washing contract?

We propose to make the same amendments to this section we propose for §§ 1206.270 and 1206.463. Please refer to §§ 1206.270 and 1206.463 for an explanation of the changes.

1206.471 What are my reporting requirements under a non-arm's-length washing contract?

We propose to make the same amendments to this section we propose for §§ 1206.271 and 1206.464. Please refer to §§ 1206.271 and 1206.464 for an explanation of changes.

1206.472 What interest and penalties apply if I improperly report a washing allowance?

We propose to make the same amendments to this section we propose for §§ 1206.272 and 1206.465. Please refer to §§ 1206.272 and 1206.465 for an explanation of changes.

1206.473 What reporting adjustments must I make for washing allowances?

We propose to make the same amendments to this section we propose for §§ 1206.273 and 1206.466. Please refer to §§ 1206.273 and 1206.466 for an explanation of changes.

III. Procedural Matters

1. Summary Cost and Royalty Impact Data

We have summarized estimated costs and benefits the proposed rule may have on potentially affected groups: Industry, the Federal Government, Indian lessors, and State and local governments. All of the proposed amendments that have cost impacts would result in increased royalty collections. The sum of the proposed amendments that have cost benefits are due to administrative cost savings to industry, not a decrease in royalties due. The net impact of the proposed amendments is an estimated annual increase in royalty collections of between $72.9 million and $87.3 million. This net impact represents a slight increase of between 0.8 percent and 1.0 percent of the total Federal oil, gas, and coal royalties ONRR collected in 2010. We also estimate that industry would experience reduced annual administrative costs of $3.61 million.

Please note that, unless otherwise indicated, numbers in the following tables are rounded to three significant digits.

A. Industry

The table below lists ONRR's low, mid-range, and high estimates of the costs, by component, industry would incur in the first year. Industry would incur these costs in the same amount each year thereafter.

SUMMARY OF ROYALTY IMPACTS TO INDUSTRY

Rule provision	Low	Mid	High
Gas—replace benchmarks			
Affiliate Resale	$0	$2,010,000	$4,030,000
Index	11,300,000	11,300,000	11,300,000
NGLs—replace benchmarks			
Affiliate Resale	0	256,000	510,000
Index	1,200,000	1,200,000	1,200,000
Gas transportation limited to 50%	4,170,000	4,170,000	4,170,000
Processing allowance limited to 66⅔%	5,440,000	5,440,000	5,440,000
POP contracts limited to 66⅔% processing allowance	0	0	0
Extraordinary processing allowance	18,500,000	18,500,000	18,500,000
BBB bond rate change for gas transportation	1,640,000	1,640,000	1,640,000
Eliminate deepwater gathering	17,400,000	20,500,000	23,600,000
Oil Transportation limited to 50%	6,430,000	6,430,000	6,430,000
Oil and gas line losses	4,570,000	4,570,000	4,570,000
Oil line fill	978,000	1,710,000	2,450,000
BBB bond rate change for oil transportation	2,380,000	2,380,000	2,380,000
Coal—non-arm's length netback & coop sales	(1,060,000)	0	1,060,000
Total	72,900,000	80,100,000	87,300,000

Note: Totals from this table and others in this analysis may not add due to rounding.

ONRR identified two proposed rule changes that would benefit industry by reducing their administrative costs. The benefits industry would realize for each of these components are as follows:

Rule provision	Benefit
Replace benchmarks—Gas & NGLs	$247,000
Eliminate deepwater gathering	3,360,000
Total	3,610,000

The table below lists the overall economic impact to industry from the proposed changes, based on the mid-range estimate of costs:

Description	Annual (cost)/benefit amount
Cost—All Rule Provisions	($80,100,000)
Benefit—Administrative Savings	3,610,000
Net Cost or Benefit to Industry	(76,500,000)

Cost—Using First Arm's-Length Sale To Value Non-Arm's-Length Sales of Federal Unprocessed Gas, Residue Gas, and Coalbed Methane

As discussed above, we propose replacing the current benchmarks in 30 CFR 1206.152(c) (unprocessed gas) and 1206.152(c) (processed gas) with a methodology that uses the gross proceeds under the lessee's affiliate's first arm's-length sale to value gas for royalty purposes. The lessee also would have the option to elect to pay royalties based on a value using the monthly high index price, less a standard deduction for transportation.

To perform this economic analysis, ONRR first extracted royalty data that we collected on residue gas, unprocessed gas, and coalbed methane (product codes 03, 04, 39, respectively) for calendar year 2010. We chose calendar year 2010 because the Royalty-in-Kind (RIK) volumes were minimal due to the 2010 termination of the RIK program. In previous years, RIK volumes were substantial. Data from RIK production is not representative of industry sales, so we excluded any

remaining RIK volumes from our analysis. We excluded calendar year 2011 because lessees are still adjusting reports for that year and the data reported is still going through ONRR's edits.

We then extracted gas royalty data for non-arm's-length transactions reported with a sales type code of NARM. We also extracted gas royalty data for sales type code POOL, because royalty reporters may also use this code to report non-arm's-length transactions. Based on ONRR's experience auditing transactions that use sales type code POOL, we know that only a relatively small portion of them are non-arm's length. Therefore, we used only 10 percent of the POOL volumes in our economic analysis of the volumes of gas sold non-arm's length.

Based on ONRR's experience auditing production sold under non-arm's-length contracts, we believe industry would incur a royalty increase in the range of 0 to 5 cents per MMBtu under our proposal to use the affiliate's first arm's-length resale to value gas production for royalty purposes. ONRR created a range of potential royalty increases by assuming no royalty increase for the low estimate, 2.5 cents per MMBtu for the mid-range estimate, and 5 cents per MMBtu for the high estimate. We then multiplied the NARM volume and 10 percent of the POOL volume reported to ONRR in 2010 by the potential royalty increases.

The results provided below are an estimated cost to industry due to an annual royalty increase of between zero and approximately $8 million. We reduced this estimate by one-half to $4.03 million, assuming 50 percent of the non-arm's-length lessees would choose this option.

	2010 MMBtu (non-rounded)	Royalty increase ($)		
		Low (0 cents)	Mid (2.5 cents)	High (5 cents)
NAL Volume	149,348,561	$0	$3,730,000	$7,470,000
10% of POOL Volume	11,606,523	0	290,000	580,000
Total	160,955,084	0	4,020,000	8,050,000
50% of lessees choose this option		0	2,010,000	4,030,000

Cost—Using Index Price Option To Value Non-Arm's-Length Sales of Federal Unprocessed Gas, Residue Gas, and Coalbed Methane

To estimate the royalty impact of the index-based option, we calculated a monthly weighted average price net of transportation using NARM and 10 percent of the POOL gas royalty data from six major geographic areas with active index prices—the Green River Basin, San Juan Basin, Piceance and Uinta Basins, Powder River and Wind River Basins, Permian Basin, and Offshore Gulf of Mexico (GOM). These six areas account for approximately 95 percent of all Federal gas produced. To calculate the estimated impact, we performed the following steps:

(1) Identified the *Platts Inside FERC* highest reported monthly price for the index price applicable to each area—Northwest Pipeline Rockies for Green River, El Paso San Juan for San Juan, Northwest Pipeline Rockies for Piceance and Uinta, Colorado Interstate Gas for Powder River and Wind River, El Paso Permian for Permian, and Henry Hub for GOM.

(2) Subtracted the transportation deduction we specified in the proposed rule from the highest index price that we identified in step (1).

(3) Subtracted the average monthly net royalty price reported to us for unprocessed gas from the highest index price for the same month we calculated in step (2).

(4) Multiplied the royalty volume by the monthly difference that we calculated in step (3) to calculate a monthly royalty difference for each region.

(5) Totaled the difference we calculated in step (4) for the regions.

Although the index-based methodology resulted in an annual increase in royalties due, the current average royalty prices reported to us were higher than the index-based option for 3 months in 2010.

ONRR estimates the cost to industry due to this change would be an increase in royalty collections of approximately $11.3 million annually. This estimate represents a small average increase of approximately 3.6 percent or 14 cents per MMBtu, based on an annual royalty volume of 160,955,084 MMBtu (for NARM and 10 percent POOL reported sales type codes). Because this is the first time we have offered this option, we don't know how many payors will choose it. For purposes of this analysis, we are assuming that 50 percent of lessees with non-arm's-length sales would choose this option and, therefore, have reduced this estimate by one-half. We would like to know from commenters if this 50-percent assumption is reasonable.

2010 Index analysis	GOM gas	Other gas	Total
Current Royalties (rounded to the nearest dollar)	$167,291,148	$435,222,354	$602,513,502
Royalty under Index Option	180,000,000	445,000,000	625,000,000
Difference	12,700,000	9,780,000	22,500,000
Per Unit Uplift ($/MMBtu)	0.297	0.083	0.140
% change	7.06	2.20	3.60
50% of lessees choose this option			$11,300,000

Cost—Using First Arm's-Length Sale To Value Non-Arm's-Length Sales of Federal NGLs

Like the valuation changes we discussed above, for Federal unprocessed, residue, and coalbed methane gas valuation changes, the proposed rule would value processed Federal NGLs based on the first arm's-length sale rather than the current benchmarks. The lessee would also have the option to pay royalties using an index price value derived from an NGL commercial price bulletin less a theoretical processing allowance that includes transportation and fractionation of the NGLs. We again used the 2010 NARM and POOL NGL data reported to ONRR for this analysis.

We performed the same analysis for valuation using the first arm's-length sale for Federal unprocessed, residue, and coalbed methane gas, as we discussed above. We identified the non-arm's-length volumes that would qualify for this option (for NARM and 10 percent POOL reported sales type codes) and estimated a cents-per-gallon royalty increase. Based on our experience, we believe that the NGLs resale margin is, similar to gas, relatively small, ranging from zero to 3 cents per gallon. Thus, our estimated royalty increase is zero for the low, 1.5 cents per gallon for the mid-range, and 3 cents per gallon for the high range. The results provided below show a mid-range royalty increase of $256,000 using these assumptions, and, again, we reduced them by one-half under the assumption that 50 percent of the lessees would choose this option. Again, we would ask for comments on the reasonableness of this 50-percent assumption.

	2010 Gallons (rounded to the nearest gallon)	Royalty increase ($)		
		Low (0 cents)	Mid (1.5 cents)	High (3 cents)
NAL Volume	6,170,341	$0	$92,600	$185,000
10% of POOL Volume	27,913,486	0	419,000	837,000
Total	34,083,827	0	512,000	1,020,000
50% of lessees choose this option		0	256,000	510,000

Cost—Using Index Price Option To Value Non-Arm's-Length Sales of Federal NGLs

Like the Federal unprocessed, residue, and coalbed methane gas changes we discuss above, lessees also would have the option to pay royalties on Federal NGLs using an index-based value less a theoretical processing allowance that includes transportation and fractionation. We used the same 2010 NARM and POOL transaction data for NGLs for this analysis. We were unable to compare NGLs prices reported on the Form ONRR–2014 to those in commercial price bulletins because prices lessees report on the Form ONRR–2014 are one rolled-up price for all NGLs, but the bulletins price each NGLs product (such as ethane and propane) separately. Therefore, we base our analysis on the royalty changes that would result from the theoretical processing allowance proscribed under this new option.

We chose a conservative number as a proxy for the processing allowance deduction that we would allow for this index option. To determine the cost of this option for NGLs, we calculated the difference between the average processing allowance reported on the Form ONRR–2014 and the proxy allowance we would allow under this option. That difference equaled an increase in value of approximately 7 cents per gallon. We then multiplied the total NAL volume of 34,083,827 gallons reported to us by the 7 cents per gallon, for an estimated royalty increase of $2.4 million. We reduced this number by one-half under the assumption that 50 percent of lessees would choose this option, resulting in a total cost to industry of $1.2 million. Again, we would ask for comments on the reasonableness of this 50-percent assumption.

Benefit—Using Index Price Option To Value Non-Arm's-Length Federal Unprocessed Gas, Residue Gas, Coalbed Methane, and NGLs

ONRR expects that industry would benefit by realizing administrative savings if they choose to use the index-based option to value non-arm's-length sales of Federal unprocessed gas, residue gas, coalbed methane, and NGLs. Lessees would know the price to use to value their production, saving the time it currently takes to calculate the correct price based on the current benchmarks. They would also save time using the ONRR-specified transportation rate for gas and the ONRR-specified processing allowance for NGLs, rather than having to calculate those values themselves.

Of the lessees that we estimate would use this option, we estimate the index-based option would shorten the time burden per line reported by 50 percent to 1.5 minutes for lines industry electronically submits and 3.5 minutes for lines they manually submit. We used tables from the Bureau of Labor Statistics (*www.bls.gov/oes132011.htm*) to estimate the hourly cost for industry accountants in a metropolitan area. We added a multiplier of 1.4 for industry benefits. The industry labor cost factor for accountants would be approximately $50.53 per hour = $36.09 [mean hourly wage] × 1.4 [benefits cost factor]. Using a labor cost factor of $50.53 per hour, we estimate the annual administrative benefit to industry would be approximately $247,000.

	Time burden per line reported	Estimated lines reported using index option (50%)	Annual burden hours
Electronic Reporting (99%)	1.5 min	190,872	4,772
Manual Reporting (1%)	3.5 min	1,928	112
Industry Labor Cost/hour			$50.53

	Time burden per line reported	Estimated lines reported using index option (50%)	Annual burden hours
Total Benefit to Industry			$247,000

Cost—Elimination of Transportation Allowances in Excess of 50 Percent of the Value of Federal Gas

The current Federal gas valuation regulations limit lessees' transportation allowances to 50 percent of the value of the gas unless they request and receive approval to exceed that limit. The proposed rule would eliminate the lessees' ability to exceed that limit. To estimate the costs associated with this change, we first identified all calendar year 2010 reported gas transportation allowances rates that exceeded the 50-percent limit. We then adjusted those allowances down to the 50-percent limit and totaled that value to estimate the economic impact of this provision. The result was an annual estimated cost to industry of $4.17 million in additional royalties.

Cost—Elimination of Transportation Allowances in Excess of 50 Percent of the Value of Federal Oil

The current Federal oil valuation regulations limit lessees' transportation allowances to 50 percent of the value of the oil unless they request and receive approval to exceed that limit. The proposed rule would eliminate the lessees' ability to exceed that limit. To estimate the costs associated with this change, we first identified all calendar year 2010 reported oil transportation allowance rates that exceeded the 50-percent limit. We then adjusted those allowances down to the 50-percent limit and totaled that value to estimate the economic impact of this provision. The result was an annual estimated cost to industry of $6.43 million in additional royalties.

Cost—Elimination of Processing Allowances in Excess of 66⅔ Percent of the Value of the NGLs for Federal Gas

The current Federal gas valuation regulations limit lessees' processing allowances to 66⅔ percent of the value of the NGLs unless they request and receive approval to exceed that limit. The proposed rule would eliminate the lessees' ability to exceed that limit. To estimate the cost to industry associated with this change, we first identified all calendar year 2010 reported processing allowances greater than 66⅔ percent. We then adjusted those allowances down to the 66⅔-percent limit and totaled that value to estimate the economic impact of this provision. The result was an annual estimated cost to industry of $5.44 million in additional royalties.

Cost—POP Contracts now Subject to the 66⅔ Percent Processing Allowance Limit for Federal Gas

Lessees with POP contracts currently pay royalties based on their gross proceeds as long as they pay a minimum value equal to 100 percent of the residue gas. Under the proposed rule, we also would not allow lessees with POP contracts to deduct more than the 66⅔ percent of the value of the NGLs. For example, a lessee with a 70-percent POP contract receives 70 percent of the value of the residue gas and 70 percent of the value of the NGLs. The 30 percent of each product the lessee gives up to the processing plant in the past could not, when combined, exceed an equivalent value of 100 percent of the NGLs' value. Under the proposed rule, the combined value of each product the lessee gives up to the processing plant cannot exceed two-thirds of the NGLs' value.

Lessees report POP contracts to ONRR using sales type code APOP for arm's-length POP contracts and NPOP for non-arm's-length POP contracts. Because lessees report APOP sales as unprocessed gas, there are no reported processing allowances for us to analyze and we cannot determine the breakout between residue gas and NGLs. Lessees do report residue gas and NGLs separately for NPOPs. However, NPOP volumes constitute only 0.02 percent of all the natural gas royalty volumes reported to ONRR. We deemed the NPOP volume to be too low to adequately assess the impact of this provision on both APOP and NPOP contracts.

Therefore, we decided to examine all reported calendar year 2010 onshore residue gas and NGLs royalty data and assumed it was processed and that lessees paid royalties as if they sold the residue gas and NGLs under a POP contract. We restricted our analysis to residue gas and NGLs volumes produced onshore because we are not aware of any offshore POP contracts. We first totaled the residue gas and NGLs' royalty value for calendar year 2010 for all onshore royalties. We then assumed that these royalties were subject to a 70-percent POP contract. Based on our experience, a 70/30 split is typical for POP contracts. We calculated 30 percent of both the value of residue gas and NGLs to approximate a theoretical 30-percent processing deduction. We then compared the 30-percent total of residue gas and NGLs values to 66⅔ percent of the NGLs value (the maximum allowance under the proposed rule). The table below summarizes these calculations which we rounded to the nearest dollar:

	2010 Royalty value	70%	30%
Residue Gas	$602,194,031	$421,535,822	$180,658,209
NGLs	506,818,440	354,772,908	152,045,532
Total	1,109,012,471	776,308,730	332,703,741
66.67% Limit	337,878,960	(506,818,440 × ⅔)	

Our analysis shows that the theoretical processing deduction for 30 percent of the value of residue gas and NGLs ($333 million) under our assumed onshore POP contract allowance would not exceed the 66⅔ cap ($338 million) under the proposed rule and, thus, we estimate that this change would be revenue neutral.

Cost—Termination of Policy Allowing Transportation Allowances for Deepwater Gathering Systems for Federal Oil and Gas

The Deep Water Policy we discuss above allows companies to deduct certain expenses for subsea gathering from their royalty payments, even though those costs do not meet ONRR's definition of transportation. The proposed rule would rescind and supersede the Deep Water Policy, and lessees would have to pay royalties under our proposed valuation regulations applicable to Federal oil and gas transportation allowances prospectively. To analyze the cost impact to industry of rescinding this policy, we used data from BSEE's Arc GIS TIMS (Technical Information Management System) database to estimate that 113 subsea pipeline segments serving 108 leases currently qualify for an allowance under the policy. We assumed all segments were the same—in other words, we did not take into account the size, length, or type of pipeline. We also considered only pipeline segments that were in active status and leases in producing status for our analysis. To determine a range (shown in the tables below as low, mid, and high estimates) for the cost to industry, ONRR estimated a 15-percent error rate in our identification of the 113 eligible pipeline segments, resulting in a range of 96 to 130 eligible pipeline segments.

Historical ONRR audit data is available for 13 subsea gathering segments serving 15 leases covering time periods from 1999 through 2010. We used this data to determine an average initial capital investment in pipeline segments. We used the initial capital investment amount to calculate depreciation and a return on undepreciated capital investment (ROI) for the eligible pipeline segments. We calculated depreciation using a straight-line depreciation schedule based on a 20-year useful life of the pipeline. We calculated ROI using 1.0 times the average BBB Bond rate for January 2012, which was the most recent full month of data when we performed this analysis. We based the calculations for depreciation and ROI on the first year a pipeline was in service.

From the same audit data, we calculated an average annual operating and maintenance (O&M) cost. We increased the O&M cost by 12 percent to account for overhead expenses. Based on experience and audit data, we assumed 12 percent is a reasonable increase for overhead. We then decreased the total annual O&M cost per pipeline segment by 9 percent because an average of 9 percent of offshore wellhead oil and gas production is water, which is not royalty bearing. Finally, we used an average royalty rate of 14 percent, which is the volume weighted average royalty rate for all non-Section 6 leases in the GOM. Based on these calculations, the average annual allowance per pipeline segment is approximately $226,000. This represents the estimated amount per pipeline segment ONRR will no longer allow a lessee to take as a transportation allowance based on our rescission of the Deep Water Policy in this proposed rulemaking.

The total cost to industry would be the $226,000 annual allowance per pipeline segment that we would disallow under this proposed rulemaking times the number of eligible segments. To calculate a range for the total cost, we multiplied the average annual allowance by the low (96), mid (113), and high (130) number of eligible segments. The low, mid, and high annual allowance estimates we would disallow are $21.8 million, $25.6 million, and $29.5 million, respectively.

Of currently eligible leases, 42 out of 108, or about 40 percent, qualify for deep water royalty relief. However, due to varying lease terms, royalty relief programs, price thresholds, volume thresholds, and other factors, ONRR estimated that only half of the 42 leases eligible for royalty relief (20 percent) actually received royalty relief. Therefore, we decreased the low, mid, and high estimated annual cost to industry by 20 percent. The table below shows the estimated royalty impact of this section of the proposed rule based on the allowances we would no longer allow under this proposed rule.

	Low	Mid	High
Estimated Royalty Impact	$17,400,000	$20,500,000	$23,600,000

Benefit—Termination of Policy Allowing Transportation Allowances for Deepwater Gathering Systems for Offshore Federal Oil and Gas

ONRR estimates the elimination of transportation allowances for deepwater gathering systems would provide industry with an administrative benefit because they would no longer have to perform this calculation. We believe the cost to perform this calculation is significant because industry has often hired outside consultants to calculate their subsea transportation allowances. Using this information, we estimated each company with leases eligible for transportation allowances for deepwater gathering systems would allocate one full-time FTE annually to perform this calculation, if they use consultants or perform the calculation in-house. We used the Bureau of Labor Statistics to estimate the hourly cost for industry accountants in a metropolitan area [$36.09 mean hourly wage] with a multiplier of 1.4 for industry benefits to equal approximately $50.53 per hour [$36.09 × 1.4]. Using this labor cost per hour, we estimate the annual administrative benefit to industry would be approximately $3,360,000.

	Annual burden hours per company	Industry labor cost/hour	Companies reporting eligible leases	Estimated benefit to industry
Deepwater Gathering	2,080	$50.53	32	$3,360,000

Cost—Elimination of Extraordinary Cost Gas Processing Allowances for Federal Gas

As we discuss above, we are proposing to eliminate the provision in our current regulations that allow a lessee to request an extraordinary processing cost allowance and to terminate any extraordinary cost processing allowances we previously granted. We have granted two such approvals in the past, so we know the lease universe that is claiming this allowance and were able to retrieve the processing allowance data lessees

deducted from the value of residue gas produced from the leases. We then calculated the annual total processing allowance lessees have claimed for 2007 through 2010 for the leases at issue. We then averaged the yearly totals for those 4 years to estimate an annual cost to industry of $18.5 million in increased royalties.

Cost—Decrease Rate of Return Used to Calculate Non-Arm's Length Transportation Allowances from 1.3 to 1 Times the Standard and Poor's BBB Bond for Federal Oil and Gas

For Federal oil transportation, ONRR does not maintain or request data identifying if transportation allowances are arm's length or non-arm's length. However, based on our experience, we believe that a large portion of GOM oil is transported through lessee-owned pipelines. In addition, many onshore transportation allowances include costs of trucking and rail and, most likely, this change would not impact those. Therefore, to calculate the costs associated with this change, we assumed that 50 percent of the GOM transportation allowances are non-arm's length and 10 percent of transportation allowances everywhere else (onshore and offshore other than the GOM) are non-arm's length. We also assumed that, over the life of the pipeline, allowance rates are made up of one-third rate of return on undepreciated capital investment, one-third depreciation expenses, and one-third operation, maintenance, and overhead expenses. These are the same assumptions we made when analyzing changes to both the Federal oil and Federal gas valuation rules in 2004.

In 2010, the total oil transportation allowances Federal lessees deducted were approximately $60 million from the GOM and $11 million from everywhere else. Based on these totals and our assumptions about the allowance components, the portion of the non-arm's-length allowances attributable to the rate of return would be approximately $10,000,000 for the GOM ($60,000,000 x ⅓ × 50%) and $367,000 ($11,000,000 × ⅓ × 10%) for the rest of the country. Therefore, we estimate that decreasing the basis for the rate of return by 23 percent could result in decreased yearly oil transportation allowance deductions of approximately $2,380,000 ($10,367,000 × 0.23). Thus, we estimate the net cost to industry as a result of this change would be an approximately $2,380,000 increase in royalties due.

With respect to Federal gas, like oil, ONRR does not maintain or request information on whether gas transportation allowances are arm's length or non-arm's length. However, unlike oil, we believe that it is not common for GOM gas to be transported through lessee-owned pipelines. Therefore, we assumed that only 10 percent of all gas transportation allowances are non-arm's length and made no distinction between the GOM and everywhere else. All other assumptions for natural gas are the same as those we made for oil above.

In 2010, the total gas transportation allowances Federal lessees deducted were approximately $214 million. Based on that total and our assumptions regarding the makeup of the allowance components, the portion of the non-arm's-length allowances attributable to the rate of return would be approximately $7.13 million ($214,000,000 × ⅓ × 10%). Therefore, we estimate that decreasing the basis for the rate of return by 23 percent could result in decreased yearly gas transportation allowance deductions of approximately $1.64 million ($7.13 million × 0.23). That is, the net increased cost to industry, based on this change, would be approximately $1,640,000 in additional royalties.

Cost—Allow a Rate of Return on Reasonable Salvage Value for Federal Oil, Gas, and Coal

For Federal oil and gas, after a transportation system or a processing plant has been depreciated to its reasonable salvage value, we propose to allow a lessee a return on that reasonable salvage value of the transportation system or processing plant as long as the lessee uses that system or plant for its Federal oil or gas production. We estimate the economic impact on industry would be small because we would continue the requirements of the current regulations that a lessee must base depreciation of a system or plant upon the useful life of the equipment or the expected life of the reserves served by the system or plant. Thus, when properly established, the depreciation schedule should reflect the useful life of the system or plant, and ONRR would not expect a lessee to continue to use a system or plant for periods significantly longer than the period reflected by the depreciation schedule the lessee established for royalty purposes. This assumption is true especially if the lessee did not make additional capital expenditures that extended the life of the system or plant. In that case, the lessee should have extended the depreciation schedule to reflect the extended life of the system or plant, and, possibly, the salvage value, itself. In other words, we believe the vast majority of systems would not be depreciated to salvage value while royalty is being paid because the system still has a useful life while production occurs. Thus, we do not believe there would be any costs to industry associated with this change.

With respect to Federal coal, we believe that the royalty impact for coal would be equally small for the same reasons we mention above.

Cost—Disallow Line Loss as a Component of Arm's-Length and Non-Arm's-Length Oil and Gas Transportation

ONRR also proposes to eliminate the current regulatory provision allowing a lessee to deduct costs of pipeline losses, both actual and theoretical, when calculating non-arm's-length transportation allowances. For this analysis, we assumed that pipeline losses are 0.2 percent of the volume transported through the pipeline, based on a survey of pipeline tariff. This 0.2 percent of the volume transported also equates to 0.2 percent of the value of the Federal royalty volume of oil and gas production transported.

For Federal oil produced in calendar year 2010, the total value of the Federal royalty volume subject to transportation allowances was $3,796,827,823 in the GOM and $1,204,177,633 everywhere else. Using our previous assumption that 50 percent of GOM and 10 percent of everywhere else's transportation allowances are non-arm's length, we estimated that the value of the line loss would be $4.04 million, as we detailed in the table below. Therefore, the annual cost to industry would be approximately $4.04 million in additional royalties.

OIL LINE LOSS ROYALTY IMPACT

		Line loss (%)	Royalty increase
50% of GOM royalty value	$1,898,413,912	0.2	$3,800,000
10% of everywhere else royalty value	120,417,763	0.2	241,000
Total			4,040,000

For Federal gas produced in calendar year 2010, the royalty value of the Federal gas royalty volume subject to transportation allowances was $2,656,843,158. Using our previous assumption that 10 percent of Federal gas transportation allowances are non-arm's length, we estimated the value of the line loss would be $530,000. Therefore, the annual cost to industry would be approximately $530,000 in increased royalties.

GAS LINE LOSS ROYALTY IMPACT

		Line loss (%)	Royalty increase
10% of royalty value	$265,684,316	0.2	$531,000

The total estimated royalty increase for both oil and gas due to this change would be $4.57 million [$4,040,000 (oil) plus $531,000 (gas) = $4,570,000].

Cost—Disallow Line Fill as a Component of Non-Arm's-Length Oil Transportation Allowances

We estimated that oil line fill costs ranged from a low $0.02 to a high of $0.05 per barrel, with a mid-range of $0.035. These are the same estimates we made in our 2004 oil valuation rule when we made a change to allow this component as a cost of oil transportation, and we believe these cost estimates are still valid. We restricted our analysis to only oil production from the GOM because we believe that including line fill as a component of transportation allowances is uncommon everywhere else. We then applied these estimates to the total 2010 GOM Federal oil royalty volume of 48,910,000 barrels to estimate the range of reduced transportation costs included in allowance calculations, as we detail in the table below.

LINE FILL ROYALTY IMPACT ESTIMATE

2010 Federal GOM Royalty Oil Volume (barrels)	Low	Mid	High
	($0.02 per barrel)	($0.035 per barrel)	($0.05 per barrel)
48,910,000	$978,000	$1,710,000	$2,450,000

In other words, based on this analysis, the proposed rule would not allow lessees to include the amounts in the table above as a component of their transportation allowance.

Cost—Depreciating Oil Pipeline Assets Only Once

ONRR proposes to allow depreciation of oil pipeline assets only one time. Under our current valuation regulations for Federal oil, if an oil pipeline is sold, ONRR allows the purchasing company to include the purchase price to establish a new depreciation schedule and, in essence, depreciate the same piece of pipe twice or more if it is sold again. Under this proposed rulemaking, we would allow depreciation only once. In theory, this change could result in additional royalties. However, based on our experience monitoring the oil markets, we believe that the sale of oil pipeline assets is rare, and we are not aware of any such sales in the last 5 calendar years. We are also not aware of any planned future sales of oil pipelines that this proposed rule change would impact. Therefore, although ONRR believes that there will be a cost to industry under this proposal, we cannot quantify the cost at this time.

Cost—Using First Arm's-Length Sale To Value Non-Arm's-Length Sales of Federal Coal and Sales of Federal Coal Between Coal Cooperatives and Coal Cooperative Members and Between Coal Cooperative Members

We discuss this cost in the next section.

Cost—Using Sales of Electricity To Value Non-Arm's-Length Sales of Federal Coal and Sales of Federal Coal Between Coal Cooperatives and Coal Cooperative Members and Between Coal Cooperative Members

In ONRR's experience, non-arm's-length sales of Federal coal that is then resold at arm's length are rare. Under the current valuation regulations, such sales result in royalty values equivalent to values that result under the proposed regulation at § 1206.252(a) based on arm's-length resale prices. Thus, ONRR estimates that there will be no royalty effect for these types of sales. In other words, there is no cost to lessees who produce Federal coal due to this valuation change in the proposed rule.

The remaining non-arm's-length dispositions of Federal coal (including lessees, their affiliates, coal cooperatives, and members of coal cooperatives) are when the lessee, its affiliate, coal cooperatives, or members of coal cooperatives consume(s) the Federal coal produced to generate electricity. These dispositions typically constitute from about one to two percent of royalties paid on Federal coal produced.

Under the proposed rule, a lessee, its affiliates, a coal cooperative, and a member of a coal cooperative generally would base the royalty value of such sales on the sales value of the electricity, less costs to generate and, in some cases, transmit the electricity to the buyers, and less applicable coal washing and transportation costs. ONRR has limited experience determining lease product royalty values using the

methodology under proposed § 1206.252(b)(1). Therefore, to perform an economic analysis, ONRR first determined the average royalties paid to ONRR in calendar years 2009 through 2011 for these Federal coal dispositions. Based on our experience with other dispositions of Federal coal, ONRR estimated that, at most, royalty values under the proposed rule would increase or decrease by 10 percent, compared to royalty values we determined under current regulations. Using these assumptions, ONRR estimated the annual average royalty impact and, thus, the cost or benefit to industry from the proposed rule.

Our methodology is the same for estimating the royalty impact of using sales of electricity to value non-arm's-length sales of Federal coal, sales of Federal coal between coal cooperatives and coal cooperative members, and sales between coal cooperative members. Therefore, the estimated royalty impact would be a combined figure covering all such valuation of Federal coal under the proposed rule. Accordingly, ONRR estimates the combined average annual royalty impacts for these coal dispositions would range from a royalty decrease of $1.06 million (benefit) to a royalty increase of $1.06 million (cost).

ONRR requests comments on its estimates of the cost regarding valuation of these dispositions of Federal coal under the proposed rule. In particular, we seek information on the costs of electric power generation and transmission and whether the proposed rule would result in royalty increases or decreases.

Cost—Using Default Provision To Value Non-Arm's-Length Sales of Federal Coal in Lieu of Sales of Electricity

If ONRR were unable to establish royalty values of Federal coal using the sales value of electricity generated from coal produced, royalty value would be based on a method the lessee proposes under § 1206.252(b)(2)(i), which ONRR approves, or on a method that ONRR determines under § 1206.254. In either case, ONRR would accept or would assign a royalty value that would approximate the market value of the coal. Whether valuing under §§ 1206.252(b)(2)(i) or 1206.254, the lessee and ONRR would employ a valuation method that uses or approximates market value. Current coal valuation regulations also attempt to provide royalty values that would approximate the market value of this coal. Thus, given the low percentage of non-arm's-length dispositions of Federal coal and the use of market-based methods to determine royalty value under the current regulations and the proposed rule, if valuation does not follow § 1206.252(a) or § 1206.252(b)(1), ONRR estimates that the royalty effect of the proposed rule on lessees of Federal coal would be nominal.

Cost—Using First Arm's-Length Sale To Value Non-Arm's-Length Sales of Indian Coal

Currently, lessees of Indian coal sell their entire production at arm's-length so this proposed change would have no cost impact on lessees of Indian coal.

Cost—Using Sales of Electricity To Value Non-Arm's-Length Sales of Indian Coal

Currently, lessees of Indian coal sell their entire production at arm's-length so this proposed change would have no cost impact on lessees of Indian coal.

Cost—Using First Arm's-Length Sale To Value Sales of Indian Coal Between Coal Cooperative Members

Currently, no coal cooperatives are lessees of Indian coal, so we do not expect there to be any royalty impact as a result of the proposed rule change.

Cost—DOI Use of Default Provision To Value Federal Oil, Gas, or Coal and Indian Coal

As we discussed above, we propose to add a ''default provision'' that addresses valuation when the Secretary cannot determine the value of production because of a variety of factors, or the Secretary determined the value is wrong for a multitude of reasons (for example, misconduct). In those cases, the Secretary would exercise his/her authority, and considerable discretion, to establish the reasonable value of production using a variety of discretionary factors and any other information the Secretary believes is appropriate. This default provision covers all products (Federal oil, gas and coal, and Indian coal) and all pertinent valuation factors (sales, transportation, processing, and washing).

Based on our experience, ONRR believes it would rarely use the default option. We also believe that assigning a royalty impact figure to any of the default provisions is speculative because (1) each instance would be case-specific, (2) we cannot anticipate when we would use the option, and (3) we cannot anticipate the value we would require companies to pay. Additionally, we believe the royalty impact would be relatively small because the default provisions would always establish a reasonable value of production using market-based transaction data, which has always been the basis for our royalty valuation rules in the first instance.

B. State and Local Governments

This proposed rule would not impose any additional burden on local governments. ONRR estimates that the States this rule impacts would receive an overall increase in royalties as follows:

States receiving revenues for offshore Outer Continental Shelf Lands Act Section 8(g) leases would share in a portion of the increased royalties resulting from this proposed rule, as would States receiving revenues from onshore Federal lands. Based on the ratio of Federal revenues disbursed to States for section 8(g) leases and onshore States we detail in the table below, ONRR assumed the same proportion of revenue increases for each proposal that would impact those State revenues for most of the provisions.

ROYALTY DISTRIBUTIONS BY LEASE TYPE

	Onshore (%)	Offshore (%)	8(g) (%)
Fed	50	100	73
State	50	0	0
State (8g)	0	0	27

Some provisions, such as deepwater gathering allowances, affect only Federal revenues, while others, such as the extraordinary processing allowance, affect only onshore States and Federal revenues. The table summarizing the State and local government royalty increases we provide in section E details these differences.

The State distribution for offshore royalties would increase at some point in time because of the provisions of the Gulf of Mexico Energy Security Act of 2006 (GOMESA) (Pub. Law No. 109–432, 120 Stat. 2922). Section 105 of GOMESA provides Outer Continental Shelf (OCS) oil and gas revenue sharing provisions for the four Gulf producing States (Alabama, Louisiana, Mississippi, and Texas) and their eligible coastal political subdivisions. Through fiscal year 2016, the only shareable qualified revenues originate from leases issued within two small geographic areas. Beginning in fiscal year 2017, qualified revenues originating from leases issued since the passing of GOMESA located within the balance of the GOM acreage will also become shareable. The majority of these leases are not yet producing. The time necessary to start production operations and to produce royalty-bearing quantities varies from

lease to lease, and these factors directly influence how the distribution of offshore royalties will change over time. None of the leases in these frontier areas have begun producing, and we believe it is speculative to anticipate when they will begin producing royalty-bearing quantities and impact the distribution of revenues to States.

C. Indian Lessors

ONRR estimates that the proposed changes to the coal regulations that apply to Indian lessors would have no impact on their royalties.

D. Federal Government

The impact to the Federal Government, like the States, would be a net overall increase in royalties as a result of these proposed changes. In fact, the royalty increase anticipated by the Federal Government would be the difference between the total royalty increase from industry and the royalty increase affecting the States. The net yearly impact on the Federal Government would be approximately $61.8 million we detail in section E.

E. Summary of Royalty Impacts and Costs to Industry, State and Local Governments, Indian Lessors, and the Federal Government.

In the table below, the negative values in the Industry column represent their estimated royalty increases, while the positive values in the other columns represent the increase in royalty receipts by each affected group. For purposes of this summary table, we assumed that the average for royalty increases is the midpoint of our range.

Rule provision	Industry	Federal	State	State 8(g)
Gas—replace benchmarks				
Affiliate Resale	($2,010,000)	$1,390,000	$605,000	$13,500
Index	(11,300,000)	7,820,000	3,400,000	75,700
NGLs—replace benchmarks				
Affiliate Resale	(256,000)	191,000	63,000	1,850
Index	(1,200,000)	896,000	295,000	8,650
Gas transportation limited to 50%	(4,170,000)	2,890,000	1,260,000	27,900
Processing allowance limited to 66⅔ %	(5,440,000)	4,060,000	1,340,000	39,200
POP contracts limited to 66⅔ %	0	0	0	0
Extraordinary processing allowance	(18,500,000)	9,250,000	9,250,000	0
BBB bond rate change for gas transportation	(1,640,000)	1,140,000	494,000	11,000
Eliminate deepwater gathering	(20,500,000)	20,500,000	0	0
Oil Transportation limited to 50%	(6,430,000)	5,810,000	594,000	27,100
Oil and gas line losses	(4,570,000)	4,130,000	422,000	19,200
Oil line fill	(1,710,000)	1,540,000	158,000	7,190
BBB bond rate change for oil transportation	(2,380,000)	2,150,000	220,000	10,000
Coal—non-arm's length netback & coop sales	0	0	0	0
Total	(80,100,000)	61,800,000	18,100,000	241,000

2. Regulatory Planning and Review (E.O. 12866)

This document is a significant rule, and the Office of Management and Budget (OMB) has reviewed this proposed rule under Executive Order 12866. We made the assessments that E.O. 12866 requires, and we provide the results below.

a. This proposed rule would not have an effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The Summary of Royalty Impacts table, in item 1 above, demonstrates that the economic impact on industry, State and local governments, and the Federal Government would be well below the $100 million threshold the Federal Government uses to define a rule as having a significant impact on the economy.

b. This proposed rule would not create a serious inconsistency or otherwise interfere with an action another agency has taken or planned. ONRR is the only agency that promulgates rules for royalty valuation on Federal oil and gas leases and Federal and Indian coal leases.

c. This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The scope of this proposed rule does not have a material impact in any of these areas.

d. This proposed rule would raise novel legal or policy issues but would simplify the valuation regulations, thus reducing the possibility of impacts as a result of any novel legal and policy issues.

3. Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*); see item 1 above for analysis.

4. Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more. We estimate the maximum effect would be $87,300,000. See item 1 above.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. See item 1 above.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule would be to the benefit of U.S.-based enterprises and would be a result of suggestions made through the Royalty Policy Committee made up, in part, of industry representatives.

5. Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on state, local, or tribal governments, or the private sector of more than $100 million per year. This proposed rule would not have a significant or unique effect on State, local, or tribal governments, or the private sector. Therefore, we are not providing a statement containing the information that the Unfunded

Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires. See item 1 above.

6. Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule would not have significant takings implications. This proposed rule would apply to Federal oil, Federal gas, Federal coal, and Indian coal leases only. This proposed rule would not be a governmental action capable of interference with constitutionally protected property rights. This proposed rule does not require a Takings Implication Assessment.

7. Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The management of Federal oil leases, Federal gas leases, and Federal and Indian coal leases is the responsibility of the Secretary of the Interior. This proposed rule would not impose administrative costs on States or local governments. Therefore, this proposed rule would not require a Federalism Assessment.

8. Civil Justice Reform (E.O. 12988)

This proposed rule would comply with the requirements of E.O. 12988, for the reasons we outline in the following paragraphs.

The proposed rule would meet the criteria of section 3(a), which requires that we write and review all regulations to eliminate errors and ambiguity in order to minimize litigation.

The proposed rule would meet the criteria of section 3(b)(2), which requires that we write all regulations in clear language with clear legal standards.

9. Consultation with Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we evaluated this proposed rule and determined it would have potential effects on federally recognized Indian tribes. Specifically, this rule would change the valuation methodology for coal produced from Indian leases as discussed above. Accordingly:

(a) We consulted with the affected tribes on a government-to-government basis.

(b) We will fully consider tribal views in the final rule.

10. Paperwork Reduction Act

This proposed rule also refers to, but does not change, the information collection requirements that OMB already approved under OMB Control Numbers 1012–0004, 1012–0005, and 1012–0010. Since the proposed rule is reorganizing our current regulations, please refer to the Derivations Table in Section III for specifics. The corresponding information collection burden tables will be updated during their normal renewal cycle. See 5 CFR 1320.4(a)(2).

11. National Environmental Policy Act

This proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this rule is categorically excluded under: ''(i) Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature.'' See 43 CFR 46.210(i) and the DOI Departmental Manual, part 516, section 15.4.D. We also have determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments would have no consequences with respect to the physical environment. This proposed rule would not alter in any material way natural resource exploration, production, or transportation.

12. Data Quality Act

In developing this proposed rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554), also known as the Information Quality Act. The Department of the Interior has issued guidance regarding the quality of information that it relies on for regulatory decisions. This guidance is available on DOI's Web site at *www.doi.gov/ocio/iq.html*.

13. Effects on the Energy Supply (E.O. 13211)

This proposed rule would not be a significant energy action under the definition in E.O. 13211, and, therefore, would not require a Statement of Energy Effects.

14. Clarity of this Regulation

Executive Orders 12866 and 12988 and the Presidential Memorandum of June 1, 1998, require us to write all rules in Plain Language. This means that each rule that we publish must: (a) Have logical organization; (b) use the active voice to address readers directly; (c) use clear language rather than jargon; (d) use short sections and sentences; and (e) use lists and tables wherever possible.

If you feel that we have not met these requirements, send your comments to *armand.southall@onrr.gov.* To better help us revise the rule, make your comments as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you think we wrote unclearly, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

15. 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 view, we cannot guarantee that we will be able to do so.

List of Subjects in 30 CFR Parts 1202 and 1206

Coal, Continental shelf, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: December 18, 2014.

Kris Sarri,

Principal Deputy Assistant Secretary for Policy, Management and Budget.

Authority and Issuance

For the reasons stated in the preamble, the Office of Natural Resources Revenue proposes to amend 30 CFR parts 1202 and 1206 as set forth below:

PART 1202—ROYALTIES

■ 1. The authority citation for part 1202 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.,* 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,*1701 *et seq.;* 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.,*1331 *et seq.,* and 1801 *et seq.*

Subpart B—Oil, Gas, and OCS Sulfur, General

■ 2. In § 1202.51,revise paragraph (b) to read as follows:

§ 1202.51 Scope and definitions.

* * * * *

(b) The définitions in § 1206.20 of this chapter are applicable to subparts B, C, D, and J of this part.

Subpart F—Coal

■ 3. Add § 1202.251 to subpart F to read as follows:

§ 1202.251 What coal is subject to royalties?

(a) All coal (except coal unavoidably lost as determined by BLM under 43 CFR part 3400) from a Federal or Indian lease is subject to royalty. This includes coal used, sold, or otherwise disposed of by you on or off the lease.

(b) If you receive compensation for unavoidably lost coal through insurance coverage or other arrangements, you must pay royalties at the rate specified in the lease on the amount of compensation you receive for the coal. No royalty is due on insurance compensation you received for other losses.

(c) If you rework waste piles or slurry ponds to recover coal, you must pay royalty at the rate specified in the lease at the time you use, sell, or otherwise finally dispose of the recovered coal.

(1) The applicable royalty rate depends on the production method you used to initially mine the coal contained in the waste pile or slurry pond (*i.e.,* underground mining method or surface mining method).

(2) You must allocate coal in waste pits or slurry ponds you initially mined from Federal or Indian leases to those Federal or Indian leases regardless of whether it is stored on Federal or Indian lands.

(3)You must maintain accurate records demonstrating how to allocate the coal in the waste pit or slurry pond to each individual Federal or Indian coal lease.

PART 1206—PRODUCT VALUATION

■ 4. The authority citation for part 1206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.,* 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

■ 5. Revise subpart A to read as follows:

Subpart A—General Provisions and Definitions

Sec.
1206.10 Has the Office of Management and Budget (OMB) approved the information collection requirements in this part?
1206.20 What definitions apply to this part?

Subpart A—General Provisions

§ 1206.10 Has the Office of Management and Budget (OMB) approved the information collection requirements in this part?

OMB has approved the information collection requirement contained in this part under 44 U.S.C. 3501 *et seq.* See 30 CFR part 1210 for details concerning the estimated reporting burden and how to comment on the accuracy of the burden estimate.

§ 1206.20 What definitions apply to this part?

Ad valorem lease means a lease where the royalty due to the lessor is based upon a percentage of the amount or value of the coal.

Affiliate means a person who controls, is controlled by, or is under common control with another person. For purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of noncontrol that ONRR may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, ONRR will consider the following factors to determine if there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership: the percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons, if a person is the greatest single owner, or if there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, pipeline, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

ANS means Alaska North Slope (ANS).

Area means a geographic region at least as large as the limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality and economic characteristics. Area boundaries are not officially designated and the areas are not necessarily named.

Arm's-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means an examination, conducted under the generally accepted Governmental Auditing Standards, of royalty reporting and payment compliance activities of lessees, designees or other persons who pay royalties, rents, or bonuses on Federal leases or Indian leases.

BIA means the Bureau of Indian Affairs, Department of the Interior.

BLM means the Bureau of Land Management, Department of the Interior.

BOEM means the Bureau of Ocean Energy Management, Department of the Interior.

BSEE means the Bureau of Safety and Environmental Enforcement, Department of the Interior.

Coal means coal of all ranks from lignite through anthracite.

Coal cooperative means an entity organized to provide coal or coal-related services to the entity's members (who may also be owners of the entity), partners, and others. The entity's members are commonly electric power generation companies, electric utilities, and electric generation and transmission cooperatives. The entity may operate as a coal lessee, operator, payor, or affiliate of these, and may or may not be organized to make a profit.

Coal washing means any treatment to remove impurities from coal. Coal washing may include, but is not limited to, operations such as flotation, air, water, or heavy media separation; drying; and related handling (or combination thereof).

Compression means the process of raising the pressure of gas.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Constraint means a reduction in, or elimination of, gas flow, deliveries or sales required by the delivery system.

Contract means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that with due consideration creates an obligation.

Designee means the person the lessee designates to report and pay the lessee's royalties for a lease.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement. Examples of other types of exchange agreements include, but are not limited to, exchanges of produced oil for specific types of crude oil (*e.g.,* West Texas Intermediate); exchanges of produced oil for other crude oil at other locations (Location Trades); exchanges of produced oil for other grades of oil (Grade Trades); and multi-party exchanges.

FERC means Federal Energy Regulatory Commission.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries. BOEM names and designates boundaries of OCS fields.

Gas means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

Gas plant products means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area that BLM or BSEE approves for onshore and offshore leases, respectively, including any movement of bulk production from the wellhead to a platform offshore.

Geographic region means, for Federal gas, an area at least as large as the defined limits of an oil and or gas field in which oil and/or gas lease products have similar quality and economic characteristics.

Gross proceeds means the total monies and other consideration accruing for the disposition of any of the following:

(1) *Oil.* Gross proceeds also include, but are not limited to, the following examples:

(i) Payments for services such as dehydration, marketing, measurement, or gathering which the lessee must perform at no cost to the Federal Government;

(ii) The value of services, such as salt water disposal, that the producer normally performs but that the buyer performs on the producer's behalf;

(iii) Reimbursements for harboring or terminalling fees, royalties, and any other reimbursements;

(iv) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation;

(v) Payments made to reduce or buy down the purchase price of oil produced in later periods, by allocating such payments over the production whose price the payment reduces and including the allocated amounts as proceeds for the production as it occurs; and

(vi) Monies and all other consideration to which a seller is contractually or legally entitled but does not seek to collect through reasonable efforts;

(2) *Gas, residue gas, and gas plant products.* Gross proceeds also include, but are not limited to, the following examples:

(i) Payments for services such as dehydration, marketing, measurement, or gathering that the lessee must perform at no cost to the Federal Government;

(ii) Reimbursements for royalties, fees, and any other reimbursements;

(iii) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation; and

(iv) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts; or

(3) *Coal.* Gross proceeds also include, but are not limited to, the following examples:

(i) Payments for services such as crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oil, and other preparation of the coal that the lessee must perform at no cost to the Federal Government or Indian lessor;

(ii) Reimbursements for royalties, fees, and any other reimbursements;

(iii) Tax reimbursements even though the Federal or Indian royalty interest may be exempt from taxation; and

(iv) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts.

Index means:

(1) For gas, the calculated composite price ($/MMBtu) of spot market sales a publication that meets ONRR-established criteria for acceptability at the index pricing point publishes; or

(2) For oil, the calculated composite price ($/barrel) of spot market sales a publication that meets ONRR-established criteria for acceptability at the index pricing point publishes.

Index pricing point means any point on a pipeline for which there is an index, which ONRR-approved publications may refer to as a trading location.

Index zone means a field or an area with an active spot market and published indices applicable to that field or an area that is acceptable to ONRR under § 1206.141(d)(1).

Indian Tribe means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any minerals or interest in minerals is held in trust by the United States or that is subject to Federal restriction against alienation.

Individual Indian mineral owner means any Indian for whom minerals or an interest in minerals is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Keepwhole contract means a processing agreement under which the processor delivers to the lessee a quantity of gas after processing equivalent to the quantity of gas the processor received from the lessee prior to processing, normally based on heat content, less gas used as plant fuel and gas unaccounted for and/or lost. This includes but is not limited to agreements under which the processor retains all NGLs it recovered from the lessee's gas.

Lease means any contract, profit-sharing arrangement, joint venture, or other agreement issued or approved by the United States under any mineral leasing law, including the Indian Mineral Development Act, 25 U.S.C. 2101–2108, that authorizes exploration for, extraction of, or removal of lease products, or the geographical area covered by that authorization, whichever is required by the context.

Lease products mean any leased minerals, attributable to, originating

from, or allocated to a lease or produced in association with a lease.

Lessee means any person to whom the United States, an Indian tribe, and/or individual Indian mineral owner issues a lease, and any person who has been assigned all or a part of record title, operating rights, or an obligation to make royalty or other payments required by the lease. This includes:

(1) Any person who has an interest in a lease; and

(2) In the case of leases for Indian coal or Federal coal, an operator, payor, or other person with no lease interest who makes royalty payments on the lessee's behalf.

Like quality means similar chemical and physical characteristics.

Location differential means an amount paid or received (whether in money or in barrels of oil) under an exchange agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

Market center means a major point ONRR recognizes for oil sales, refining, or transshipment. Market centers generally are locations where ONRR-approved publications publish oil spot prices.

Marketable condition means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area for Federal oil and gas, and region for Federal and Indian coal.

Mine means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of lease products.

Misconduct means any failure to perform a duty owed to the United States under a statute, regulation, or lease, or unlawful or improper behavior, regardless of the mental state of the lessee or any individual employed by or associated with the lessee.

Net output means the quantity of:

(1) Residue gas and each gas plant product that a processing plant produces; or

(2) The quantity of washed coal that a coal wash plant produces.

Netting means reducing the reported sales value to account for an allowance instead of reporting the allowance as a separate entry on Form ONRR–2014 or Form ONRR–4430.

NGLs means natural gas liquids.

NYMEX price means the average of the New York Mercantile Exchange (NYMEX) settlement prices for light sweet crude oil delivered at Cushing, Oklahoma, calculated as follows:

(1) Sum the prices published for each day during the calendar month of production (excluding weekends and holidays) for oil to be delivered in the prompt month corresponding to each such day; and

(2) Divide the sum by the number of days on which those prices are published (excluding weekends and holidays).

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is oil.

ONRR means the Office of Natural Resources Revenue, Department of the Interior.

ONRR-approved commercial price bulletin means a publication ONRR approves for determining NGLs prices.

ONRR-approved publication means:

(1) For oil, a publication ONRR approves for determining ANS spot prices or WTI differentials; or

(2) For gas, a publication ONRR approves for determining index pricing points.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Payor means any person who reports and pays royalties under a lease, regardless of whether that person also is a lessee.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Processing means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing. The use of a Joules-Thompson (JT) unit to remove NGLs from gas is considered processing regardless of where the JT unit is located provided that you market the NGLs as NGLs.

Processing allowance means a deduction in determining royalty value for the reasonable, actual costs the lessee incurs for processing gas.

Prompt month means the nearest month of delivery for which NYMEX futures prices are published during the trading month.

Quality differential means an amount paid or received under an exchange agreement (whether in money or in barrels of oil) that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

Region for coal means the eight Federal coal production regions, which the Bureau of Land Management designates as follows: Denver-Raton Mesa Region, Fort Union Region, Green River-Hams Fork Region, Powder River Region, San Juan River Region, Southern Appalachian Region, Uinta-Southwestern Utah Region, and Western Interior Region. See 44 FR 65197 (1979).

Residue gas means that hydrocarbon gas consisting principally of methane resulting from processing gas.

Rocky Mountain Region means the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming, except for those portions of the San Juan Basin and other oil-producing fields in the ''Four Corners'' area that lie within Colorado and Utah.

Roll means an adjustment to the NYMEX price that is calculated as follows: $\text{Roll} = .6667 \times (P_0 - P_1) + .3333 \times (P_0 - P_2)$, where: P_0 = the average of the daily NYMEX settlement prices for deliveries during the prompt month that is the same as the month of production, as published for each day during the trading month for which the month of production is the prompt month; P_1 = the average of the daily NYMEX settlement prices for deliveries during the month following the month of production, published for each day during the trading month for which the month of production is the prompt month; and P_2 = the average of the daily NYMEX settlement prices for deliveries during the second month following the month of production, as published for each day during the trading month for which the month of production is the prompt month. Calculate the average of

the daily NYMEX settlement prices using only the days on which such prices are published (excluding weekends and holidays).

(1) Example 1. Prices in Out Months are Lower Going Forward: The month of production for which you must determine royalty value is December. December was the prompt month (for year 2011) from October 21 through November 18. January was the first month following the month of production, and February was the second month following the month of production. P_0 therefore is the average of the daily NYMEX settlement prices for deliveries during December published for each business day between October 21 and November 18. P_1 is the average of the daily NYMEX settlement prices for deliveries during January published for each business day between October 21 and November 18. P_2 is the average of the daily NYMEX settlement prices for deliveries during February published for each business day between October 21 and November 18. In this example, assume that P_0 = \$95.08 per bbl, P_1 = \$95.03 per bbl, and P_2 = \$94.93 per bbl. In this example (a declining market), Roll = .6667 × (\$95.08 − \$95.03) + .3333 × (\$95.08 − \$94.93) = \$0.03 + \$0.05 = \$0.08. You add this number to the NYMEX price.

(2) Example 2. Prices in Out Months are Higher Going Forward: The month of production for which you must determine royalty value is November. November was the prompt month (for year 2012) from September 21 through October 22. December was the first month following the month of production, and January was the second month following the month of production. P_0 therefore is the average of the daily NYMEX settlement prices for deliveries during November published for each business day between September 21 and October 22. P_1 is the average of the daily NYMEX settlement prices for deliveries during December published for each business day between September 21 and October 22. P_2 is the average of the daily NYMEX settlement prices for deliveries during January published for each business day between September 21 and October 22. In this example, assume that P_0 = \$91.28 per bbl, P_1 = \$91.65 per bbl, and P_2 = \$92.10 per bbl. In this example (a rising market), Roll = .6667 × (\$91.28 − \$91.65) + .3333 × (\$91.28 − \$92.10) = (− \$0.25) + (− \$0.27) = (− \$0.52). You add this negative number to the NYMEX price (effectively a subtraction from the NYMEX price).

Sale means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil, gas, gas plant product, or coal to the buyer and does not retain any related rights such as the right to buy back similar quantities of oil, gas, gas plant product, or coal from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil, gas, gas plant product, or coal; and

(3) The parties' intent is for a sale of the oil, gas, gas plant product, or coal to occur.

Section 6 lease means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

Short tons means 2000 pounds.

Spot price means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration;

(2) No cancellation notice is required to terminate the sales agreement; and

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

Tonnage means tons of coal measured in short tons.

Trading month means the period extending from the second business day before the 25th day of the second calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the second business day before the last business day preceding the 25th day of that month) through the third business day before the 25th day of the calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the third business day before the last business day preceding the 25th day of that month), unless the NYMEX publishes a different definition or different dates on its official Web site, *www.nymex.com,* in which case the NYMEX definition will apply.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs the lessee incurs for moving:

(1) Oil to a point of sale or delivery off the lease, unit area, or communitized area. The transportation allowance does not include gathering costs; or

(2) Unprocessed gas, residue gas, or gas plant products to a point of sale or delivery off the lease, unit area, or communitized area, or away from a processing plant. The transportation allowance does not include gathering costs; or

(3) Coal to a point of sale remote from both the lease and mine or wash plant.

Washing allowance means a deduction in determining royalty value for the reasonable, actual costs the lessee incurs for coal washing.

WTI differential means the average of the daily mean differentials for location and quality between a grade of crude oil at a market center and West Texas Intermediate (WTI) crude oil at Cushing published for each day for which price publications perform surveys for deliveries during the production month, calculated over the number of days on which those differentials are published (excluding weekends and holidays). Calculate the daily mean differentials by averaging the daily high and low differentials for the month in the selected publication. Use only the days and corresponding differentials for which such differentials are published.

■ 6. Revise subpart C to read as follows:

Subpart C—Federal Oil

Sec.
1206.100 What is the purpose of this subpart?
1206.101 How do I calculate royalty value for oil I or my affiliate sell(s) under an arm's-length contract?
1206.102 How do I value oil that is not sold under an arm's-length contract?
1206.103 What publications does ONRR approve?
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1206.112 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?
1206.113 What adjustments and transportation allowances apply when I value oil production from my lease using NYMEX prices or ANS spot prices?
1206.114 How will ONRR identify market centers?
1206.115 What are my reporting requirements under an arm's-length transportation contract?
1206.116 What are my reporting requirements under a non-arm's-length transportation contract?
1206.117 What interest and penalties apply if I improperly report a transportation allowance?
1206.118 What reporting adjustments must I make for transportation allowances?
1206.119 How do I determine royalty quantity and quality?

Subpart C—Federal Oil

§ 1206.100 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Federal oil and gas leases onshore and on the OCS. It explains how you as a lessee must calculate the value of production for

royalty purposes consistent with mineral leasing laws, other applicable laws, and lease terms.

(b) If you are a designee and if you dispose of production on behalf of a lessee, the terms ''you'' and ''your'' in this subpart refer to you and not to the lessee. In this circumstance, you must determine and report royalty value for the lessee's oil by applying the rules in this subpart to your disposition of the lessee's oil.

(c) If you are a designee and only report for a lessee and do not dispose of the lessee's production, references to ''you'' and ''your'' in this subpart refer to the lessee and not the designee. In this circumstance, you as a designee must determine and report royalty value for the lessee's oil by applying the rules in this subpart to the lessee's disposition of its oil.

(d) If the regulations in this subpart are inconsistent with:

(1) A Federal statute;

(2) A settlement agreement between the United States and a lessee resulting from administrative or judicial litigation;

(3) A written agreement between the lessee and the ONRR Director establishing a method to determine the value of production from any lease that ONRR expects at least would approximate the value established under this subpart; or

(4) An express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(e) ONRR may audit, monitor, or review and adjust all royalty payments.

§ 1206.101 How do I calculate royalty value for oil I or my affiliate sell(s) under an arm's-length contract?

(a) The value of oil under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the arm's-length contract less applicable allowances determined under § 1206.111 or § 1206.112. This value does not apply if you exercise an option to use a different value provided in paragraph (c)(1) or (c)(2)(i) of this section or if ONRR decides to value your oil under § 1206.105. You must use this paragraph (a) to value oil when:

(1) You sell under an arm's-length sales contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract, unless you exercise the option provided in paragraph (c)(2)(i) of this section.

(b) If you have multiple arm's-length contracts to sell oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the volume-weighted average of the values established under this section for each contract for the sale of oil produced from that lease.

(c)(1) If you enter into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, and following the exchange(s) you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you may use either § 1206.101(a) or § 1206.102 to value your production for royalty purposes. If you fail to make the election required under this paragraph, you may not make a retroactive election and ONRR may decide your value under § 1206.105.

(i) If you use § 1206.101(a), your gross proceeds are the gross proceeds under your or your affiliate's arm's-length sales contract after the exchange(s) occur(s). You must adjust your gross proceeds for any location or quality differential, or other adjustments, you received or paid under the arm's-length exchange agreement(s). If ONRR determines that any arm's-length exchange agreement does not reflect reasonable location or quality differentials, ONRR may decide your value under § 1206.105. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(ii) When you elect under § 1206.101(c)(1) to use § 1206.101(a) or § 1206.102, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) sold under arm's-length contracts following arm's-length exchange agreements. You may not change your election more often than once every 2 years.

(2)(i) If you sell or transfer your oil production to your affiliate and that affiliate or another affiliate then sells the oil under an arm's-length contract, you may use either § 1206.101(a) or § 1206.102 to value your production for royalty purposes.

(ii) When you elect under § 1206.101(c)(2)(i) to use § 1206.101(a) or § 1206.102, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that your affiliates resell at arm's-length. You may not change your election more often than once every 2 years.

§ 1206.102 How do I value oil not sold under an arm's-length contract?

This section explains how to value oil that you may not value under § 1206.101 or that you elect under § 1206.101(c)(1) to value under this section, unless ONRR decides to value your oil under 1206.105. First, determine if paragraph (a), (b), or (c) of this section applies to production from your lease, or if you may apply paragraph (d) or (e) with ONRR approval.

(a) *Production from leases in California or Alaska.* Value is the average of the daily mean ANS spot prices published in any ONRR-approved publication during the trading month most concurrent with the production month. For example, if the production month is June, calculate the average of the daily mean prices using the daily ANS spot prices published in the ONRR-approved publication for all the business days in June.

(1) To calculate the daily mean spot price, you must average the daily high and low prices for the month in the selected publication.

(2) You must use only the days and corresponding spot prices for which such prices are published.

(3) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 1206.111.

(4) After you select an ONRR-approved publication, you may not select a different publication more often than once every 2 years, unless the publication you use is no longer published or ONRR revokes its approval of the publication. If you must change publications, you must begin a new 2-year period.

(b) *Production from leases in the Rocky Mountain Region.* This paragraph provides methods and options for valuing your production under different factual situations. You must consistently apply paragraph (b)(2) or (3) of this section to value all of your production from the same unit, communitization agreement, or lease (if the lease or a portion of the lease is not part of a unit or communitization agreement) that you cannot value under § 1206.101 or that you elect under § 1206.101(c)(1) to value under this section.

(1) You may elect to value your oil under either paragraph (b)(2) or (3) of this section. After you select either paragraph (b)(2) or (3) of this section, you may not change to the other method more often than once every 2 years, unless the method you have been using is no longer applicable and you must apply the other paragraph. If you change

methods, you must begin a new 2-year period.

(2) Value is the volume-weighted average of the gross proceeds accruing to the seller under your or your affiliate's arm's-length contracts for the purchase or sale of production from the field or area during the production month.

(i) The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliate's production from both Federal and non-Federal leases in the same field or area during that month.

(ii) Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliate's arm's-length purchases or sales to the same gravity as that of the oil produced from the lease.

(3) Value is the NYMEX price (without the roll), adjusted for applicable location and quality differentials and transportation costs under § 1206.113.

(4) If you demonstrate to ONRR's satisfaction that paragraphs (b)(2) through (3) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the ONRR Director may establish an alternative valuation method.

(c) *Production from leases not located in California, Alaska, or the Rocky Mountain Region.* (1) Value is the NYMEX price, plus the roll, adjusted for applicable location and quality differentials and transportation costs under § 1206.113.

(2) If the ONRR Director determines that use of the roll no longer reflects prevailing industry practice in crude oil sales contracts or that the most common formula used by industry to calculate the roll changes, ONRR may terminate or modify use of the roll under paragraph (c)(1) of this section at the end of each 2-year period [EFFECTIVE DATE OF THE FINAL RULE], through notice published in the **Federal Register** not later than 60 days before the end of the 2-year period. ONRR will explain the rationale for terminating or modifying the use of the roll in this notice.

(d) *Unreasonable value.* If ONRR determines that the NYMEX price or ANS spot price does not represent a reasonable royalty value in any particular case, ONRR may decide to value your oil under § 1206.105.

(e) *Production delivered to your refinery and the NYMEX price or ANS spot price is an unreasonable value.* If ONRR determines that the NYMEX price or ANS spot price does not represent a reasonable royalty value in any particular case, ONRR may decide to value under § 1206.105.

§ 1206.103 What publications does ONRR approve?

(a) ONRR periodically will publish to *www.onrr.gov* a list of ONRR-approved publications for the NYMEX price and ANS spot price based on certain criteria including, but not limited to:

(1) Publications buyers and sellers frequently use;

(2) Publications frequently mentioned in purchase or sales contracts;

(3) Publications that use adequate survey techniques, including development of estimates based on daily surveys of buyers and sellers of crude oil, and, for ANS spot prices, buyers and sellers of ANS crude oil; and

(4) Publications independent from ONRR, other lessors, and lessees.

(b) Any publication may petition ONRR to be added to the list of acceptable publications.

(c) ONRR will specify the tables you must use in the acceptable publications.

(d) ONRR may revoke its approval of a particular publication if it determines that the prices or differentials published in the publication do not accurately represent NYMEX prices or differentials or ANS spot market prices or differentials.

§ 1206.104 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties you report, and, if ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR may direct you to use a different measure of royalty value or decide your value under § 1206.105.

(2) If ONRR directs you to use a different royalty value, you must either pay any additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter) or report a credit for, or request a refund of, any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the oil. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under § 1206.105.

(c) ONRR may decide your value under § 1206.105 if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You have breached your duty to market the oil for the mutual benefit of yourself and the lessor by selling your oil at a value that is unreasonably low. ONRR may consider a sales price to be unreasonably low if it is 10 percent less than the lowest reasonable measures of market price, including but not limited to, index prices and prices reported to ONRR for like quality oil; or

(3) ONRR cannot determine if you properly valued your oil under § 1206.101 or § 1206.102 for any reason, including but not limited to, you or your affiliate's failure to provide documents ONRR requests under 30 CFR part 1212, subpart B.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include all of the consideration the buyer paid you or your affiliate, either directly or indirectly, for the oil.

(f)(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate make timely application for a price increase or benefit allowed under your or your affiliate's contract but the purchaser refuses and you or your affiliate take reasonable documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or timely, for a quantity of oil.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may determine your value under § 1206.105.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

§ 1206.105 How will ONRR determine the value of my oil for royalty purposes?

If ONRR decides that it will value your oil for royalty purposes under § 1206.104, or any other provision in

this subpart, then ONRR will determine value, for royalty purposes, by considering any information we deem relevant, which may include, but is not limited to:

(a) The value of like-quality oil in the same field or nearby fields or areas;

(b) The value of like-quality oil from the refinery or area;

(c) Public sources of price or market information that ONRR deems reliable;

(d) Information available and reported to ONRR, including but not limited to, on Form ONRR–2014 and Form ONRR–4054;

(e) Costs of transportation or processing if ONRR determines they are applicable; or

(f) Any information ONRR deems relevant regarding the particular lease operation or the salability of the oil.

§ 1206.106 What records must I keep to support my calculations of value under this subpart?

If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value.

(a) You must show:

(1) How you calculated the value you reported, including all adjustments for location, quality, and transportation; and

(2) How you complied with these rules.

(b) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(c) ONRR may review and audit your data, and ONRR will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this subpart.

§ 1206.107 What are my responsibilities to place production into marketable condition and to market production?

(a) You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal Government.

(b) If you use gross proceeds under an arm's-length contract in determining value, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform to place the oil in marketable condition or to market the oil.

§ 1206.108 How do I request a value determination?

(a) You may request a value determination from ONRR regarding any oil produced. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, all interest owners of those leases, the designee(s), and the operator(s) for those leases;

(3) Completely explain all relevant facts. You must inform ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest your proposed valuation method.

(b) In response to your request, ONRR may:

(1) Request that the Assistant Secretary for Policy, Management and Budget issue a valuation determination;

(2) Decide that ONRR will issue guidance; or

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to:

(i) Requests for guidance on hypothetical situations; and

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A value determination the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a value determination, you must make any adjustments to royalty payments that follow from the determination and, if you owe additional royalties, you must pay the additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(3) A value determination the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d) Guidance ONRR issues is not binding on ONRR, delegated States, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the guidance, you may appeal that order under 30 CFR part 1290.

(e) ONRR or the Assistant Secretary may use any of the applicable valuation criteria in this subpart to provide guidance or make a determination.

(f) A change in an applicable statute or regulation on which ONRR or the Assistant Secretary based any determination or guidance takes precedence over the determination or guidance, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the determination or guidance.

(g) ONRR or the Assistant Secretary generally will not retroactively modify or rescind a value determination issued under paragraph (d) of this section, unless:

(1) There was a misstatement or omission of material facts; or

(2) The facts subsequently developed are materially different from the facts on which the guidance was based.

(h) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.109.

§ 1206.109 Does ONRR protect information I provide?

(a) Certain information you or your affiliate submit(s) to ONRR regarding valuation of oil, including transportation allowances, may be exempt from disclosure.

(b) To the extent applicable laws and regulations permit, ONRR will keep confidential any data you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 1206.110 What general transportation allowance requirements apply to me?

(a) ONRR will allow a deduction for the reasonable, actual costs to transport oil from the lease to the point off the lease under § 1206.110, § 1206.111, or § 1206.112, as applicable. You may not deduct transportation costs you incur to move a particular volume of production to reduce royalties you owe on production for which you did not incur those costs. This paragraph applies when:

(1) You value oil under § 1206.101 based on a sale at a point off the lease, unit, or communitized area where the oil is produced;

(2)(i) The movement to the sales point is not gathering.

(ii) For oil produced on the OCS, the movement of oil from the wellhead to the first platform is not transportation; and

(3) You do not value your oil under § 1206.102(a)(3) or (b)(3).

(b) You must calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. If your or your affiliate's transportation contract includes more than one liquid product, you must allocate costs consistently and equitably to each of the liquid products transported. Your allocation must use the same proportion as the ratio of the volume of each liquid product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(1) You may not take an allowance for transporting lease production that is not royalty-bearing.

(2) You may propose to ONRR a prospective cost allocation method based on the values of the liquid products transported. ONRR will approve the method if it is consistent with the purposes of the regulations in this subpart.

(3) You may use your proposed procedure to calculate a transportation allowance beginning with the production month following the month ONRR received your proposed procedure until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your Form ONRR–2014 for the months that you used the rejected method and pay any additional royalty due, plus late payment interest.

(c)(1) Where you or your affiliate transport(s) both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR.

(2) You may use your proposed procedure to calculate a transportation allowance until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your Form ONRR–2014 for the months that you used the rejected method and pay any additional royalty and interest due.

(3) You must submit your initial proposal, including all available data, within 3 months after you first claim the allocated deductions on Form ONRR–2014.

(d)(1) Your transportation allowance may not exceed 50 percent of the value of the oil as determined under § 1206.101 of this subpart.

(2) If ONRR approved your request to take a transportation allowance in excess of the 50-percent limitation under former § 1206.109(c), that approval is terminated as of [effective date of final rule].

(e) You must express transportation allowances for oil as a dollar-value equivalent. If your or your affiliate's payments for transportation under a contract are not on a dollar-per-unit basis, you must convert whatever consideration you or your affiliate are paid to a dollar-value equivalent.

(f) ONRR may determine your transportation allowance under § 1206.105 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the oil for the mutual benefit of yourself and the lessor by transporting your oil at a cost that is unreasonably high. We may consider a transportation allowance to be unreasonably high if it is 10 percent higher than the highest reasonable measures of transportation costs, including but not limited to, transportation allowances reported to ONRR and tariffs for gas, residue gas, or gas plant product transported through the same system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under § 1206.111 or § 1206.112 for any reason, including, but not limited to, your or your affiliate's failure to provide documents ONRR requests under 30 CFR part 1212, subpart B.

(g) You do not need ONRR approval before reporting a transportation allowance.

§ 1206.111 How do I determine a transportation allowance if I have an arm's-length transportation contract?

(a)(1) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred as more fully explained in paragraph (b) of this section, except as provided in § 1206.110(f) and subject to the limitation in § 1206.110(d).

(2) You must be able to demonstrate that your or your affiliate's contract is at arm's-length.

(3) You do not need ONRR approval before reporting a transportation allowance for costs incurred under an arm's-length transportation contract.

(b) Subject to the requirements of paragraph (c) of this section, you may include, but are not limited to the following costs to determine your transportation allowance under paragraph (a) of this section. You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(1) The amount that you pay under your arm's-length transportation contract or tariff.

(2) Fees paid (either in volume or in value) for actual or theoretical line losses.

(3) Fees paid for administration of a quality bank.

(4) Fees paid to a terminal operator for loading and unloading of crude oil into or from a vessel, vehicle, pipeline, or other conveyance.

(5) Fees paid for short-term storage (30 days or less) incidental to transportation as required by a transporter.

(6) Fees paid to pump oil to another carrier's system or vehicles as required under a tariff.

(7) Transfer fees paid to a hub operator associated with physical movement of crude oil through the hub when you do not sell the oil at the hub. These fees do not include title transfer fees.

(8) Payments for a volumetric deduction to cover shrinkage when high-gravity petroleum (generally in excess of 51 degrees API) is mixed with lower gravity crude oil for transportation.

(9) Costs of securing a letter of credit, or other surety, that the pipeline requires you as a shipper to maintain.

(10) Hurricane surcharges you or your affiliate actually pay(s).

(c) You may not include the following costs to determine your transportation allowance under paragraph (a) of this section:

(1) Fees paid for long-term storage (more than 30 days);

(2) Administrative, handling, and accounting fees associated with terminalling;

(3) Title and terminal transfer fees;

(4) Fees paid to track and match receipts and deliveries at a market center or to avoid paying title transfer fees;

(5) Fees paid to brokers;

(6) Fees paid to a scheduling service provider;

(7) Internal costs, including salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production;

(8) Gauging fees; and

(9) The cost of carrying on your books as inventory a volume of oil that you or your affiliate, as the pipeline operator, maintain(s) in the line as line fill.

(d) If you have no written contract for the arm's-length transportation of oil, then ONRR will determine your

transportation allowance under § 1206.105. You may not use this paragraph (d) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.108(a).

(2) You may use that method to determine your allowance until ONRR issues its determination.

§ 1206.112 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. You must calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (e), (f), and (g) of this section;

(2) Overhead under paragraph (h) of this section; and

(3)(i) Depreciation and a return on undepreciated capital investment under paragraph (i)(1) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (i)(2) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month ONRR received your change request; and

(ii) A return on the reasonable salvage value under paragraph (i)(1)(iii) of this section, after you have depreciated the transportation system to its reasonable salvage value.

(c) To the extent not included in costs identified in paragraphs (e) through (h) of this section;

(1) If you or your affiliate incur(s) the following actual costs under your or your affiliate's non-arm's-length contract, you may include these costs in your calculations under this section.

(i) Fees paid to a non-affiliated terminal operator for loading and unloading of crude oil into or from a vessel, vehicle, pipeline, or other conveyance.

(ii) Transfer fees paid to a hub operator associated with physical movement of crude oil through the hub when you do not sell the oil at the hub. These fees do not include title transfer fees.

(iii) A volumetric deduction to cover shrinkage when high-gravity petroleum (generally in excess of 51 degrees API) is mixed with lower gravity crude oil for transportation.

(iv) Fees paid to a non-affiliated quality bank administrator for administration of a quality bank.

(2) You may not include in your transportation allowance:

(i) Any of the costs identified under § 1206.111(c); and

(ii) Fees paid (either in volume or in value) for actual or theoretical line losses.

(d) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(e) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(f) Allowable operating expenses include:

(i) Operations supervision and engineering;

(ii) Operations labor;

(iii) Fuel;

(iv) Utilities;

(v) Materials;

(vi) Ad valorem property taxes;

(vii) Rent;

(viii) Supplies; and

(ix) Any other directly allocable and attributable operating expense that you can document.

(g) Allowable maintenance expenses include:

(1) Maintenance of the transportation system;

(2) Maintenance of equipment;

(3) Maintenance labor; and

(4) Other directly allocable and attributable maintenance expenses that you can document.

(h) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(i)(1) To calculate depreciation and a return on undepreciated capital investment, you may elect to use either a straight-line depreciation method (based on the life of equipment or on the life of the reserves that the transportation system services) or a unit of production method. After you make an election, you may not change methods without ONRR approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month ONRR received your change request.

(i) A change in ownership of a transportation system will not alter the depreciation schedule the original transporter/lessee established for purposes of the allowance calculation.

(ii) You may depreciate a transportation system, with or without a change in ownership, only once.

(iii)(A) To calculate the return on undepreciated capital investment, you may use an amount equal to the undepreciated capital investment in the transportation system multiplied by the rate of return you determine under paragraph (i)(3) of this section.

(B) After you have depreciated a transportation system to the reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return under paragraph (i)(3) of this section.

(2) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (i)(3) of this section. You may not include depreciation in your allowance.

(3) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(i) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(ii) You must redetermine the rate at the beginning of each subsequent calendar year.

§ 1206.113 What adjustments and transportation allowances apply when I value oil production from my lease using NYMEX prices or ANS spot prices?

This section applies when you use NYMEX prices or ANS spot prices to calculate the value of production under § 1206.102. As specified in this section, you must adjust the NYMEX price to reflect the difference in value between your lease and Cushing, Oklahoma, or adjust the ANS spot price to reflect the difference in value between your lease and the appropriate ONRR-recognized market center at which the ANS spot price is published (for example, Long Beach, California, or San Francisco, California). Paragraph (a) of this section explains how you adjust the value between the lease and the market center,

and paragraph (b) of this section explains how you adjust the value between the market center and Cushing when you use NYMEX prices. Paragraph (c) of this section explains how adjustments may be made for quality differentials that are not accounted for through exchange agreements. Paragraph (d) of this section gives some examples. References in this section to ''you'' include your affiliates as applicable.

(a) To adjust the value between the lease and the market center:

(1)(i) For oil that you exchange at arm's-length between your lease and the market center (or between any intermediate points between those locations), you must calculate a lease-to-market center differential by the applicable location and quality differentials derived from your arm's-length exchange agreement applicable to production during the production month.

(ii) For oil that you exchange between your lease and the market center (or between any intermediate points between those locations) under an exchange agreement that is not at arm's-length, you must obtain approval from ONRR for a location and quality differential. Until you obtain such approval, you may use the location and quality differential derived from that exchange agreement applicable to production during the production month. If ONRR prescribes a different differential, you must apply ONRR's differential to all periods for which you used your proposed differential. You must pay any additional royalties due resulting from using ONRR's differential, plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties, plus interest, under 30 U.S.C. 1721(h).

(2) For oil that you transport between your lease and the market center (or between any intermediate points between those locations), you may take an allowance for the cost of transporting that oil between the relevant points as determined under § 1206.111 or § 1206.112, as applicable.

(3) If you transport or exchange at arm's-length (or both transport and exchange) at least 20 percent, but not all, of your oil produced from the lease to a market center, you must determine the adjustment between the lease and the market center for the oil that is not transported or exchanged (or both transported and exchanged) to or through a market center as follows:

(i) Determine the volume-weighted average of the lease-to-market center adjustment calculated under paragraphs (a)(1) and (2) of this section for the oil that you do transport or exchange (or both transport and exchange) from your lease to a market center.

(ii) Use that volume-weighted average lease-to-market center adjustment as the adjustment for the oil that you do not transport or exchange (or both transport and exchange) from your lease to a market center.

(4) If you transport or exchange (or both transport and exchange) less than 20 percent of the crude oil produced from your lease between the lease and a market center, you must propose to ONRR an adjustment between the lease and the market center for the portion of the oil that you do not transport or exchange (or both transport and exchange) to a market center. Until you obtain such approval, you may use your proposed adjustment. If ONRR prescribes a different adjustment, you must apply ONRR's adjustment to all periods for which you used your proposed adjustment. You must pay any additional royalties due resulting from using ONRR's adjustment, plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).

(5) You may not both take a transportation allowance and use a location and quality adjustment or exchange differential for the same oil between the same points.

(b) For oil that you value using NYMEX prices, you must adjust the value between the market center and Cushing, Oklahoma, as follows:

(1) If you have arm's-length exchange agreements between the market center and Cushing under which you exchange to Cushing at least 20 percent of all the oil you own at the market center during the production month, you must use the volume-weighted average of the location and quality differentials from those agreements as the adjustment between the market center and Cushing for all the oil that you produce from the leases during that production month for which that market center is used.

(2) If paragraph (b)(1) of this section does not apply, you must use the WTI differential published in an ONRR-approved publication for the market center nearest your lease, for crude oil most similar in quality to your production, as the adjustment between the market center and Cushing. For example, for light sweet crude oil produced offshore of Louisiana, you must use the WTI differential for Light Louisiana Sweet crude oil at St. James, Louisiana. After you select an ONRR-approved publication, you may not select a different publication more often than once every 2 years, unless the publication you use is no longer published or ONRR revokes its approval of the publication. If you must change publications, you must begin a new 2-year period.

(3) If neither paragraph (b)(1) nor (2) of this section applies, you may propose an alternative differential to ONRR. Until you obtain such approval, you may use your proposed differential. If ONRR prescribes a different differential, you must apply ONRR's differential to all periods for which you used your proposed differential. You must pay any additional royalties due resulting from using ONRR's differential, plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).

(c)(1) If you adjust for location and quality differentials or for transportation costs under paragraphs (a) and (b) of this section, you also must adjust the NYMEX price or ANS spot price for quality based on premiums or penalties determined by pipeline quality bank specifications at intermediate commingling points or at the market center if those points are downstream of the royalty measurement point approved by BSEE or BLM, as applicable. You must make this adjustment only if and to the extent that such adjustments were not already included in the location and quality differentials determined from your arm's-length exchange agreements.

(2) If the quality of your oil as adjusted is still different from the quality of the representative crude oil at the market center after making the quality adjustments described in paragraphs (a), (b), and (c)(1) of this section, you may make further gravity adjustments using posted price gravity tables. If quality bank adjustments do not incorporate or provide for adjustments for sulfur content, you may make sulfur adjustments, based on the quality of the representative crude oil at the market center, of 5.0 cents per one-tenth percent difference in sulfur content.

(i) You may request prior ONRR approval to use a different adjustment.

(ii) If ONRR approves your request to use a different quality adjustment, you may begin using that adjustment the production month following the month ONRR received your request.

(d) The examples in this paragraph illustrate how to apply the requirement of this section.

(1) *Example.* Assume that a Federal lessee produces crude oil from a lease near Artesia, New Mexico. Further, assume that the lessee transports the oil

to Roswell, New Mexico, and then exchanges the oil to Midland, Texas. Assume the lessee refines the oil received in exchange at Midland. Assume that the NYMEX price is $86.21/bbl, adjusted for the roll; that the WTI differential (Cushing to Midland) is −$2.27/bbl; that the lessee's exchange agreement between Roswell and Midland results in a location and quality differential of −$0.08/bbl; and that the lessee's actual cost of transporting the oil from Artesia to Roswell is $0.40/bbl. In this example, the royalty value of the oil is $86.21 − $2.27 − $0.08 − $0.40 = $83.46/bbl.

(2) *Example.* Assume the same facts as in the example in paragraph (d)(1) of this section, except that the lessee transports and exchanges to Midland 40 percent of the production from the lease near Artesia, and transports the remaining 60 percent directly to its own refinery in Ohio. In this example, the 40 percent of the production would be valued at $83.46/bbl, as explained in the previous example. In this example, the other 60 percent also would be valued at $83.46/bbl.

(3) *Example.* Assume that a Federal lessee produces crude oil from a lease near Bakersfield, California. Further, assume that the lessee transports the oil to Hynes Station and then exchanges the oil to Cushing, which it further exchanges with oil it refines. Assume that the ANS spot price is $105.65/bbl and that the lessee's actual cost of transporting the oil from Bakersfield to Hynes Station is $0.28/bbl. The lessee must request approval from ONRR for a location and quality adjustment between Hynes Station and Long Beach. For example, the lessee likely would propose using the tariff on Line 63 from Hynes Station to Long Beach as the adjustment between those points. Assume that adjustment to be $0.72, including the sulfur and gravity bank adjustments, and that ONRR approves the lessee's request. In this example, the preliminary (because the location and quality adjustment is subject to ONRR review) royalty value of the oil is $105.65 − $0.72 − $0.28 = $104.65/bbl. The fact that oil was exchanged to Cushing does not change use of ANS spot prices for royalty valuation.

§ 1206.114 How will ONRR identify market centers?

ONRR will monitor market activity and, if necessary, add to or modify the list of market centers published to *www.onrr.gov*. ONRR will consider the following factors and conditions in specifying market centers:

(a) Points where ONRR-approved publications publish prices useful for index purposes;

(b) Markets served;

(c) Input from industry and others knowledgeable in crude oil marketing and transportation;

(d) Simplification; and

(e) Other relevant matters.

§ 1206.115 What are my reporting requirements under an arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR–2014 to notify ONRR of an allowance based on transportation costs you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.116 What are my reporting requirements under a non-arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR–2014 to notify ONRR of an allowance based on transportation costs you or your affiliate incur(s).

(b)(1) For new non-arm's-length transportation facilities or arrangements, you must base your initial deduction on estimates of allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate, if available. If such data is not available, you must use estimates based on data for similar transportation systems.

(3) Section 1206.118 applies when you amend your report based on the actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You may find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d) If you are authorized under § 1206.112(j) to use an exception to the requirement to calculate your actual transportation costs, you must follow the reporting requirements of § 1206.115.

§ 1206.117 What interest and penalties apply if I improperly report a transportation allowance?

(a) If you deduct a transportation allowance on Form ONRR–2014 that exceeds 50 percent of the value of the oil transported, you must pay additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter, on the excess allowance amount taken from the date that amount is taken to the date you pay the additional royalties due.

(b) If you improperly net a transportation allowance against the oil instead of reporting the allowance as a separate entry on Form ONRR–2014, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.118 What reporting adjustments must I make for transportation allowances?

(a) If your actual transportation allowance is less than the amount you claimed on Form ONRR–2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter from the date you took the deduction to the date you repay the difference.

(b) If the actual transportation allowance is greater than the amount you claimed on Form ONRR–2014 for any month during the period reported on the allowance form, you are entitled to a credit plus interest.

§ 1206.119 How do I determine royalty quantity and quality?

(a) You must calculate royalties based on the quantity and quality of oil as measured at the point of royalty settlement that BLM or BSEE approves for onshore leases and OCS leases, respectively.

(b) If you base the value of oil determined under this subpart on a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement that BLM or BSEE approves, you must adjust that value for the differences in quantity and/or quality.

(c) You may not make any deductions from the royalty volume or royalty value for actual or theoretical losses. Any actual loss that you sustain before the royalty settlement metering or measurement point is not subject to royalty if BLM or BSEE, whichever is appropriate, determines that such loss was unavoidable.

(d) You must pay royalties on 100 percent of the volume measured at the approved point of royalty settlement. You may not claim a reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that you claim to have taken place either before or after the approved point of royalty settlement.

■ 7. Revise subpart D to read as follows:

Subpart D—Federal Gas

Sec.
1206.140 What is the purpose and scope of this subpart?

1206.141 How do I calculate royalty value for unprocessed gas I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?
1206.142 How do I calculate royalty value for processed gas I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?
1206.143 How will ONRR determine if my royalty payments are correct?
1206.144 How will ONRR determine the value of my gas for royalty purposes?
1206.145 What records must I keep to support my calculations of royalty under this subpart?
1206.146 What are my responsibilities to place production into marketable condition and to market production?
1206.147 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?
1206.148 How do I request a valuation determination or guidance?
1206.149 Does ONRR protect information I provide?
1206.150 How do I determine royalty quantity and quality?
1206.151 How do I perform accounting for comparison?
1206.152 What general transportation allowance requirements apply to me?
1206.153 How do I determine a transportation allowance if I have an arm's-length transportation contract?
1206.154 How do I determine a transportation allowance if I have a non-arm's-length transportation contract?
1206.155 What are my reporting requirements under an arm's-length transportation contract?
1206.156 What are my reporting requirements under a non-arm's-length transportation contract?
1206.157 What interest and penalties apply if I improperly report a transportation allowance?
1206.158 What reporting adjustments must I make for transportation allowances?
1206.159 What general requirements regarding processing allowances apply to me?
1206.160 How do I determine a processing allowance, if I have an arm's-length processing contract?
1206.161 How do I determine a processing allowance if I have a non-arm's-length processing contract?
1206.162 What are my reporting requirements under an arm's-length processing contract?
1206.163 What are my reporting requirements under a non-arm's-length processing contract?
1206.164 What interest and penalties apply if I improperly report a processing allowance?
1206.165 What reporting adjustments must I make for processing allowances?

Subpart D—Federal Gas

§ 1206.140 What is the purpose and scope of this subpart?

(a) This subpart applies to all gas produced from Federal oil and gas leases onshore and on the Outer Continental Shelf (OCS). It explains how you, as a lessee, must calculate the value of production for royalty purposes consistent with mineral leasing laws, other applicable laws, and lease terms.

(b) The terms ''you'' and ''your'' in this subpart refer to the lessee.

(c) If the regulations in this subpart are inconsistent with:

(1) A Federal statute;

(2) A settlement agreement between the United States and a lessee resulting from administrative or judicial litigation;

(3) A written agreement between the lessee and the ONRR Director establishing a method to determine the value of production from any lease that ONRR expects, at least, would approximate the value established under this subpart; or

(4) An express provision of an oil and gas lease subject to this subpart; then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(d) ONRR may audit and order you to adjust all royalty payments.

§ 1206.141 How do I calculate royalty value for unprocessed gas I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

(a) This section applies to unprocessed gas. Unprocessed gas is:

(1) Gas that is not processed;

(2) Any gas that you are not required to value under § 1206.142 or that ONRR does not value under § 1206.144;

(3) Processed gas that you must value prior to processing under § 1206.151 of this part; and

(4) Any gas you sell prior to processing based on a price per MMBtu or Mcf when the price is not based on the residue gas and gas plant products.

(b) The value of gas under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract less an applicable transportation allowance determined under § 1206.152. This value does not apply if you may exercise the option provided in paragraph (c) of this section or if ONRR decides to value your gas under § 1206.144. You must use this paragraph (b) to value gas when:

(1) You sell under an arm's-length contract;

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the gas under an arm's-length contract, unless you exercise the option provided in paragraph (c) of this section;

(3) You, your affiliate, or another person sell(s) under multiple arm's-length contracts for gas produced from a lease that is valued under this paragraph. In that case, unless you exercise the option provided in paragraph (c) of this section, because you sold non-arm's length to your affiliate or another person, the value of the gas is the volume-weighted average of the value established under this paragraph for each contract for the sale of gas produced from that lease; or

(4) You or your affiliate sell(s) under a pipeline cash-out program. In that case, for over-delivered volumes within the tolerance under a pipeline cash-out program, the value is the price the pipeline must pay you or your affiliate under the transportation contract. You must use the same value for volumes that exceed the over-delivery tolerances, even if those volumes are subject to a lower price under the transportation contract.

(c) If you do not sell under an arm's-length contract, you may elect to value your gas under this paragraph (c). You may not change your election more often than once every two years.

(1)(i) If you can only transport gas to one index pricing point published in an ONRR-approved publication, available at *www.onrr.gov,* your value, for royalty purposes, is the highest reported monthly bidweek price for that index pricing point for the production month.

(ii) If you can transport gas to more than one index pricing point published in an ONRR-approved publication, available at *www.onrr.gov,* your value, for royalty purposes, is the highest reported monthly bidweek price for the index pricing points to which your gas could be transported for the production month, whether or not there are constraints for that production month.

(iii) If there are sequential index pricing points on a pipeline, you must use the first index pricing point at or after your gas enters the pipeline.

(iv) You must reduce the number calculated under paragraphs (c)(1)(i) and (c)(1)(ii) of this section by 5 percent for sales from the OCS Gulf of Mexico and by 10 percent for sales from all other areas, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu.

(v) After you select an ONRR-approved publication available at *www.onrr.gov,* you may not select a different publication more often than once every two years.

(vi) ONRR may exclude an individual index pricing point found in an ONRR-approved publication, if ONRR determines that the index pricing point does not accurately reflect the values of

production. ONRR will publish a list of excluded index pricing points available at *www.onrr.gov*.

(2) You may not take any other deductions from the value calculated under this paragraph (c).

(d) If you have no written contract for the sale of gas or no sale of gas subject to this section and:

(1) There is an index pricing point for the gas, then you must value your gas under paragraph (c) of this section;

(2) There is not an index pricing point for the gas, then ONRR will decide the value under § 1206.144.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.148(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues its decision.

(iii) After ONRR issues its determination, you must make the adjustments under § 1206.143(a)(2).

§ 1206.142 How do I calculate royalty value for processed gas I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

(a) This section applies to the valuation of processed gas, including but not limited to:

(1) Gas you or your affiliate do not sell, or otherwise dispose of, under an arm's-length contract prior to processing;

(2) Gas where your or your affiliate's arm's-length contract for the sale of gas prior to processing provides for payment to be determined on the basis of the value of any products resulting from processing, including residue gas or natural gas liquids;

(3) Gas you or your affiliate process under an arm's-length keepwhole contract; and

(4) Gas where your or your affiliate's arm's-length contract includes a reservation of the right to process the gas and you or your affiliate exercise(s) that right.

(b) The value of gas subject to this section, for royalty purposes, is:

(1) The combined value of the residue gas and all gas plant products you determine under this section;

(2) Plus the value of any condensate recovered downstream of the point of royalty settlement without resorting to processing you determine under § 1206.141 of this part;

(3) Less applicable transportation and processing allowances you determine under this subpart, unless you exercise the option provided in paragraph (d) of this section.

(c) The value of residue gas or any gas plant product under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract. This value does not apply if you exercise the option provided in paragraph (d) of this section, or if ONRR decides to value your residue gas or any gas plant product under § 1206.144. You must use this paragraph (c) to value residue gas or any gas plant product when:

(1) You sell under an arm's-length contract;

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract, and that affiliate or person, or another affiliate of either of them then sells the residue gas or any gas plant product under an arm's-length contract, unless you exercise the option provided in paragraph (d) of this section;

(3) You, your affiliate, or another person sell(s) under multiple arm's-length contracts for residue gas or any gas plant products recovered from gas produced from a lease that you value under this paragraph. In that case, unless you exercise the option provided in paragraph (d) of this section, because you sold non-arm's-length to your affiliate or another person, the value of the residue gas or any gas plant product is the volume-weighted average of the gross proceeds established under this paragraph for each arm's-length contract for the sale of residue gas or any gas plant products recovered from gas produced from that lease; or

(4) You or your affiliate sell(s) under a pipeline cash-out program. In that case, for over-delivered volumes within the tolerance under a pipeline cash-out program, the value is the price the pipeline must pay you or your affiliate under the transportation contract. You must use the same value for volumes that exceed the over-delivery tolerances, even if those volumes are subject to a lower price under the transportation contract.

(d) If you do not sell under an arm's-length contract, you may elect to value your residue gas and natural gas liquids (NGLS) under this paragraph (d). You may not change your election more often than once every two years.

(1)(i) If you can only transport residue gas to one index pricing point published in an ONRR-approved publication, available at *www.onrr.gov,* your value, for royalty purposes, is the highest reported monthly bidweek price for that index pricing point for the production month.

(ii) If you can transport residue gas to more than one index pricing point published in an ONRR-approved publication, available at *www.onrr.gov,* your value, for royalty purposes, is the highest reported monthly bidweek price for the index pricing points to which your gas could be transported for the production month, whether or not there are constraints, for the production month.

(iii) If there are sequential index pricing points on a pipeline, you must use the first index pricing point at or after your residue gas enters the pipeline.

(iv) You must reduce the number calculated under paragraphs (d)(1)(i) and (ii) of this section by 5 percent for sales from the OCS Gulf of Mexico and by 10 percent for sales from all other areas, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu.

(v) After you select an ONRR-approved publication available at *www.onrr.gov,* you may not select a different publication more often than once every two years.

(vi) ONRR may exclude an individual index pricing point found in an ONRR-approved publication, if ONRR determines that the index pricing point does not accurately reflect the values of production. ONRR will publish a list of excluded index pricing points available at *www.onrr.gov.*

(2)(i) If you sell NGLs in an area with one or more ONRR-approved commercial price bulletins available at *www.onrr.gov,* you must choose one bulletin and your value, for royalty purposes, is the monthly average price for that bulletin for the production month.

(ii) You must reduce the number calculated under paragraph (d)(2)(i) of this section by the amounts ONRR posts at *www.onrr.gov* for the geographic location of your lease. The methodology ONRR will use to calculate the amounts is set forth in the preamble to this regulation. This methodology is binding on you and ONRR. ONRR will update the amounts periodically using this methodology.

(iii) After you select an ONRR-approved commercial price bulletin available at *www.onrr.gov,* you may not select a different commercial price bulletin more often than once every 2 years.

(3) You may not take any other deductions from the value calculated under this paragraph (d).

(4) ONRR will post changes to any of the rates in this paragraph (d) on its Web site.

(e) If you have no written contract for the sale of gas or no sale of gas subject to this section and:

(1) There is an index pricing point or commercial price bulletin for the gas, then you must value your gas under paragraph (d) of this section.

(2) There is not an index pricing point or commercial price bulletin for the gas, then ONRR will determine the value under § 1206.144.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.148(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues its decision.

(iii) After ONRR issues its determination, you must make the adjustments under § 1206.143(a)(2).

§ 1206.143 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties you report. If ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR will direct you to use a different measure of royalty value or decide your value under § 1206.144.

(2) If ONRR directs you to use a different royalty value, you must either pay any additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter or report a credit for, or request a refund of, any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the gas, residue gas, or gas plant products. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under § 1206.144.

(c) ONRR may decide your value under § 1206.144, if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You have breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor by selling your gas, residue gas, or gas plant products at a value that is unreasonably low. ONRR may consider a sales price unreasonably low, if it is 10 percent less than the lowest reasonable measures of market price, including but not limited to, index prices and prices reported to ONRR for like-quality gas, residue gas, or gas plant products; or

(3) ONRR cannot determine if you properly valued your gas, residue gas, or gas plant products under § 1206.141 or § 1206.142 for any reason, including but not limited to, your or your affiliate's failure to provide documents ONRR requests under 30 CFR part 1212, subpart B.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include(s) all of the consideration the buyer paid you or your affiliate, either directly or indirectly, for the gas, residue gas, or gas plant products.

(f)(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate make timely application for a price increase or benefit allowed under your or your affiliate's contract, but the purchaser refuses, and you or your affiliate take reasonable documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or timely, for a quantity of gas, residue gas, or gas plant products.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may decide your value under § 1206.144.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

§ 1206.144 How will ONRR determine the value of my gas for royalty purposes?

If ONRR decides to value your gas, residue gas, or gas plant products for royalty purposes under § 1206.143, or any other provision in this subpart, then ONRR will determine the value, for royalty purposes, by considering any information we deem relevant, which may include, but is not limited to:

(a) The value of like-quality gas in the same field or nearby fields or areas;

(b) The value of like-quality residue gas or gas plant products from the same plant or area;

(c) Public sources of price or market information that ONRR deems reliable;

(d) Information available or reported to ONRR, including but not limited to, on Form ONRR–2014 and Form ONRR–4054;

(e) Costs of transportation or processing, if ONRR determines they are applicable; or

(f) Any information ONRR deems relevant regarding the particular lease operation or the salability of the gas.

§ 1206.145 What records must I keep to support my calculations of royalty under this subpart?

If you value your gas under this subpart, you must retain all data relevant to the determination of the royalty you paid. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(a) You must show:

(1) How you calculated the royalty value, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR. You must comply with any such requirement within the time ONRR specifies.

§ 1206.146 What are my responsibilities to place production into marketable condition and to market production?

(a) You must place gas, residue gas, and gas plant products in marketable condition and market the gas, residue gas, and gas plant products for the mutual benefit of the lessee and the lessor at no cost to the Federal Government.

(b) If you use gross proceeds under an arm's-length contract to determine royalty, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that you normally are responsible to perform to place the gas, residue gas, and gas plant products in marketable condition or to market the gas.

§ 1206.147 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?

Notwithstanding any provision in these regulations to the contrary, ONRR does not consider any audit, review, reconciliation, monitoring, or other like process that results in ONRR redetermining royalty due, under this subpart, final or binding as against the Federal Government or its beneficiaries unless ONRR chooses to formally close the audit period in writing.

§ 1206.148 How do I request a valuation determination or guidance?

(a) You may request a valuation determination or guidance from ONRR regarding any gas produced. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, all interest owners of those

leases, the designee(s), and the operator(s) for those leases;

(3) Completely explain all relevant facts. You must inform ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest your proposed valuation method.

(b) In response to your request, ONRR may:

(1) Request that the Assistant Secretary for Policy, Management and Budget issue a determination; or

(2) Decide that ONRR will issue guidance; or

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to:

(i) Requests for guidance on hypothetical situations; and

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A determination the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a determination, you must make any adjustments to royalty payments that follow from the determination and, if you owe additional royalties, you must pay the additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(3) A determination the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d) Guidance ONRR issues is not binding on ONRR, delegated States, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the guidance, you may appeal that order under 30 CFR part 1290.

(e) ONRR or the Assistant Secretary may use any of the applicable criteria in this subpart to provide guidance or make a determination.

(f) A change in an applicable statute or regulation on which ONRR based any guidance, or the Assistant Secretary based any determination, takes precedence over the determination or guidance after the effective date of the statute or regulation, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the guidance or determination.

(g) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.149.

§ 1206.149 Does ONRR protect information I provide?

(a) Certain information you or your affiliate submit(s) to ONRR regarding royalties on gas, including deductions and allowances, may be exempt from disclosure.

(b) To the extent applicable laws and regulations permit, ONRR will keep confidential any data you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 1206.150 How do I determine royalty quantity and quality?

(a)(1) You must calculate royalties based on the quantity and quality of unprocessed gas as measured at the point of royalty settlement that BLM or BSEE approves for onshore leases and OCS leases, respectively.

(2) If you base the value of gas determined under this subpart on a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement that BLM or BSEE approves, you must adjust that value for the differences in quantity and/or quality.

(b)(1) For residue gas and gas plant products, the quantity basis for computing royalties due is the monthly net output of the plant, even though residue gas and/or gas plant products may be in temporary storage.

(2) If you value residue gas and/or gas plant products determined under this subpart on a quantity and/or quality of residue gas and/or gas plant products that is different from that which is attributable to a lease determined under paragraph (c) of this section, you must adjust that value for the differences in quantity and/or quality.

(c) You must determine the quantity of the residue gas and gas plant products attributable to a lease based on the following procedure:

(1) When you derive the net output of the processing plant from gas obtained from only one lease, you must base the quantity of the residue gas and gas plant products for royalty computation on the net output of the plant.

(2) When you derive the net output of a processing plant from gas obtained from more than one lease producing gas of uniform content, you must base the quantity of the residue gas and gas plant products allocable to each lease on the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of non-uniform content:

(i) You must determine the quantity of the residue gas allocable to each lease by multiplying the amount of gas delivered to the plant from the lease by the residue gas content of the gas, and dividing that arithmetical product by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of the residue gas by the arithmetic quotient obtained.

(ii) You must determine the net output of gas plant products allocable to each lease by multiplying the amount of gas delivered to the plant from the lease by the gas plant product content of the gas, and dividing that arithmetical product by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of each gas plant product by the arithmetic quotient obtained.

(4) You may request prior ONRR approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If approved, you must apply that method to all gas production from Federal leases that is processed in the same plant beginning with the production month following the month ONRR received your request to use another method.

(d)(1) You may not make any deductions from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas that you sustain before the royalty settlement meter or measurement point is not subject to royalty; if BLM or BSEE, whichever is appropriate, determines that such loss was unavoidable.

(2) Except as provided in paragraph (d)(1) of this section and § 1202.151(c), you must pay royalties due on 100 percent of the volume determined under paragraphs (a) through (c) of this

section. You may not reduce that determined volume for actual losses after you have determined the quantity basis, or for theoretical losses that you claim to have taken place. Royalties are due on 100 percent of the value of the unprocessed gas, residue gas, and/or gas plant products, as provided in this subpart, less applicable allowances. You may not take any deduction from the value of the unprocessed gas, residue gas, and/or gas plant products to compensate for actual losses after you have determined the quantity basis or for theoretical losses that you claim to have taken place.

§ 1206.151 How do I perform accounting for comparison?

(a) Except as provided in paragraph (b) of this section, if you or your affiliate (or a person to whom you have transferred gas under a non-arm's-length contract or without a contract) processes your or your affiliate's gas and after processing the gas, you or your affiliate do not sell the residue gas under an arm's-length contract, the value, for royalty purposes, will be the greater of:

(1) The combined value, for royalty purposes, of the residue gas and gas plant products resulting from processing the gas determined under § 1206.142 of this subpart, plus the value, for royalty purposes, of any condensate recovered downstream of the point of royalty settlement without resorting to processing determined under § 1206.102 of this subpart; or

(2) The value, for royalty purposes, of the gas prior to processing as determined under § 1206.141 of this subpart.

(b) The requirement for accounting for comparison contained in the terms of leases will govern as provided in § 1206.142(a)(2) of this subpart.

(c) When lease terms require accounting for comparison, you must perform accounting for comparison under paragraph (a) of this section.

§ 1206.152 What general transportation allowance requirements apply to me?

(a) ONRR will allow a deduction for the reasonable, actual costs to transport residue gas, gas plant products, or unprocessed gas from the lease to the point off the lease under § 1206.153 or § 1206.154, as applicable. You may not deduct transportation costs you incur to move a particular volume of production to reduce royalties you owe on production for which you did not incur those costs. This paragraph applies when:

(1) You value unprocessed gas under § 1206.141(b) or residue gas and gas plant products under § 1206.142(b) based on a sale at a point off the lease, unit, or communitized area where the residue gas, gas plant products, or unprocessed gas is produced; and

(2)(i) The movement to the sales point is not gathering.

(ii) For gas produced on the OCS, the movement of gas from the wellhead to the first platform is not transportation.

(b) You must calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. If your or your affiliate's transportation contract includes more than one product in a gaseous phase, you must allocate costs consistently and equitably to each of the products transported. Your allocation must use the same proportion as the ratio of the volume of each product (excluding waste products with no value) to the volume of all products in the gaseous phase (excluding waste products with no value).

(1) You may not take an allowance for transporting lease production that is not royalty-bearing.

(2) You may propose to ONRR a prospective cost allocation method based on the values of the products transported. ONRR will approve the method, if it is consistent with the purposes of the regulations in this subpart.

(3) You may use your proposed procedure to calculate a transportation allowance beginning with the production month following the month ONRR received your proposed procedure until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your Form ONRR–2014 for the months that you used the rejected method and pay any additional royalty due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(c)(1) Where you or your affiliate transport(s) both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR.

(2) You may use your proposed procedure to calculate a transportation allowance until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your Form ONRR–2014 for the months that you used the rejected method and pay any additional royalty due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(3) You must submit your initial proposal, including all available data, within 3 months after you first claim the allocated deductions on Form ONRR–2014.

(d) If you value unprocessed gas under § 1206.141(c) or residue gas and gas plant products under § 1206.142 (d), you may not take a transportation allowance.

(e)(1) Your transportation allowance may not exceed 50 percent of the value of the residue gas, gas plant products, or unprocessed gas as determined under § 1206.141 or § 1206.142 of this subpart.

(2) If ONRR approved your request to take a transportation allowance in excess of the 50-percent limitation under former § 1206.156(c)(3), that approval is terminated as of the effective date of the final rule.

(f) You must express transportation allowances for residue gas, gas plant products, or unprocessed gas as a dollar-value equivalent. If your or your affiliate's payments for transportation under a contract are not on a dollar-per-unit basis, you must convert whatever consideration you or your affiliate are paid to a dollar-value equivalent.

(g) ONRR may determine your transportation allowance under § 1206.144 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor by transporting your gas, residue gas, or gas plant products at a cost that is unreasonably high. We may consider a transportation allowance unreasonably high if it is 10-percent higher than the highest reasonable measures of transportation costs including, but not limited to, transportation allowances reported to ONRR and tariffs for gas, residue gas, or gas plant products transported through the same system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under § 1206.153 or § 1206.154 for any reason, including but not limited to, you or your affiliate's failure to provide documents ONRR requests under 30 CFR part 1212, subpart B.

(h) You do not need ONRR approval before reporting a transportation allowance.

§ 1206.153 How do I determine a transportation allowance if I have an arm's-length transportation contract?

(a)(1) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred as

more fully explained in paragraph (b) of this section, except as provided in § 1206.152(g) and subject to the limitation in § 1206.152(e).

(2) You must be able to demonstrate that your or your affiliate's contract is arm's-length.

(b) Subject to the requirements of paragraph (c) of this section, you may include, but are not limited to, the following costs to determine your transportation allowance under paragraph (a) of this section. You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(1) *Firm demand charges paid to pipelines.* You may deduct firm demand charges or capacity reservation fees you or your affiliate paid to a pipeline, including charges or fees for unused firm capacity you or your affiliate have not sold before you report your allowance. If you or your affiliate receive(s) a payment from any party for release or sale of firm capacity after reporting a transportation allowance that included the cost of that unused firm capacity, or if you or your affiliate receive(s) a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form ONRR–2014 by the amount of that payment. You must modify the Form ONRR–2014 by the amount received or credited for the affected reporting period, and pay any resulting royalty due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter;

(2) *Gas supply realignment (GSR) costs.* The GSR costs result from a pipeline reforming or terminating supply contracts with producers to implement the restructuring requirements of FERC Orders in 18 CFR part 284;

(3) *Commodity charges.* The commodity charge allows the pipeline to recover the costs of providing service;

(4) *Wheeling costs.* Hub operators charge a wheeling cost for transporting gas from one pipeline to either the same or another pipeline through a market center or hub. A hub is a connected manifold of pipelines through which a series of incoming pipelines are interconnected to a series of outgoing pipelines;

(5) *Gas Research Institute (GRI) fees.* The GRI conducts research, development, and commercialization programs on natural gas related topics for the benefit of the U.S. gas industry and gas customers. GRI fees are allowable provided such fees are mandatory in FERC-approved tariffs;

(6) *Annual Charge Adjustment (ACA) fees.* FERC charges these fees to pipelines to pay for its operating expenses;

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* However, theoretical losses are not deductible in transportation arrangements unless the transportation allowance is based on arm's-length transportation rates charged under a FERC- or State regulatory-approved tariff, or ONRR approves your use of a FERC or State regulatory-approved tariff as an exception from the requirement to calculate actual costs under § 1206.154(l) of this subpart. If you or your affiliate receive(s) volumes or credit for line gain, you must reduce your transportation allowance accordingly and pay any resulting royalties, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter;

(8) *Temporary storage services.* This includes short duration storage services offered by market centers or hubs (commonly referred to as ''parking'' or ''banking''), or other temporary storage services provided by pipeline transporters, whether actual or provided as a matter of accounting. Temporary storage is limited to 30 days or less;

(9) *Supplemental costs for compression, dehydration, and treatment of gas.* ONRR allows these costs only if such services are required for transportation and exceed the services necessary to place production into marketable condition required under § 1206.146 of this part;

(10) *Costs of surety.* You may deduct the costs of securing a letter of credit, or other surety, that the pipeline requires you or your affiliate as a shipper to maintain under a transportation contract; and

(11) *Hurricane Surcharges.* You may deduct hurricane surcharges you or your affiliate actually pay(s).

(c) You may not include the following costs to determine your transportation allowance under paragraph (a) of this section:

(1) *Fees or costs incurred for storage.* This includes storing production in a storage facility, whether on or off the lease, for more than 30 days;

(2) *Aggregator/marketer fees.* This includes fees you or your affiliate pay(s) to another person (including your affiliates) to market your gas, including purchasing and reselling the gas, or finding or maintaining a market for the gas production;

(3) *Penalties you or your affiliate incur(s) as shipper.* These penalties include, but are not limited to:

(i) *Over-delivery cash-out penalties.* This includes the difference between the price the pipeline pays you or your affiliate for over-delivered volumes outside the tolerances and the price you or your affiliate receive(s) for over-delivered volumes within the tolerances;

(ii) *Scheduling penalties.* This includes penalties you or your affiliate incur(s) for differences between daily volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point;

(iii) *Imbalance penalties.* This includes penalties you or your affiliate incur(s) (generally on a monthly basis) for differences between volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point; and

(iv) *Operational penalties.* This includes fees you or your affiliate incur(s) for violation of the pipeline's curtailment or operational orders issued to protect the operational integrity of the pipeline.

(4) *Intra-hub transfer fees.* These are fees you or your affiliate pay(s) to hub operators for administrative services (*e.g.,* title transfer tracking) necessary to account for the sale of gas within a hub;

(5) *Fees paid to brokers.* This includes fees you or your affiliate pay(s) to parties who arrange marketing or transportation, if such fees are separately identified from aggregator/marketer fees;

(6) *Fees paid to scheduling service providers.* This includes fees you or your affiliate pay(s) to parties who provide scheduling services, if such fees are separately identified from aggregator/marketer fees;

(7) *Internal costs.* This includes salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production; and

(8) *Other nonallowable costs.* Any cost you or your affiliate incur(s) for services you are required to provide at no cost to the lessor, including but not limited to, costs to place your gas, residue gas, or gas plant products into marketable condition disallowed under § 1206.146 and costs of boosting residue gas disallowed under 30 CFR 1202.151(b).

(d) If you have no written contract for the transportation of gas, then ONRR will determine your transportation allowance under § 1206.144. You may not use this paragraph (d), if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.148(a).

(2) You may use that method to determine your allowance until ONRR issues its determination.

§ 1206.154 How do I determine a transportation allowance if I have a non-arm's-length transportation contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. You must calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (e), (f), and (g) of this section;

(2) Overhead under paragraph (h) of this section;

(3) Depreciation and a return on undepreciated capital investment under paragraph (i)(1) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (i)(2) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month ONRR received your change request; and

(4) A return on the reasonable salvage value under paragraph (i)(1)(iii) of this section, after you have depreciated the transportation system to its reasonable salvage value.

(c)(1) To the extent not included in costs identified in paragraphs (e) through (g) of this section, if you or your affiliate incur(s) the actual transportation costs listed under § 1206.153(b)(2), (5), and (6) of this subpart under your or your affiliate's non-arm's-length contract, you may include those costs in your calculations under this section. You may not include any of the other costs identified under § 1206.153 (b); and

(2) You may not include in your calculations under this section any of the nonallowable costs listed under § 1206.153(c).

(d) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(e) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(f) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Fuel;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating expense that you can document.

(g) Allowable maintenance expenses include:

(i) Maintenance of the transportation system;

(ii) Maintenance of equipment;

(iii) Maintenance labor; and

(iv) Other directly allocable and attributable maintenance expenses that you can document.

(h) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(i)(1) To calculate depreciation and a return on undepreciated capital investment, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the transportation system services, or a unit of production method. After you make an election, you may not change methods without ONRR approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month ONRR received your change request.

(i) A change in ownership of a transportation system will not alter the depreciation schedule the original transporter/lessee established for purposes of the allowance calculation.

(ii) You may depreciate a transportation system only once with or without a change in ownership.

(iii)(A) To calculate the return on undepreciated capital investment, you may use an amount equal to the undepreciated capital investment in the transportation system multiplied by the rate of return you determine under paragraph (i)(3) of this section.

(B) After you have depreciated a transportation system to the reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return under paragraph (i)(3) of this section.

(2) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (i)(3) of this section. You may not include depreciation in your allowance.

(3) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(i) You must use the monthly average that BBB rate Standard & Poor's publishes for the first month for which the allowance is applicable.

(ii) You must redetermine the rate at the beginning of each subsequent calendar year.

§ 1206.155 What are my reporting requirements under an arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR–2014 to notify ONRR of an allowance based on transportation costs you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.156 What are my reporting requirements under a non-arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR–2014 to notify ONRR of an allowance based on non-arm's-length transportation costs you or your affiliate incur(s).

(b)(1) For new non-arm's-length transportation facilities or arrangements, you must base your initial deduction on estimates of allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate. If such data is not available, you must use estimates based on data for similar transportation systems.

(3) Section 1206.158 applies when you amend your report based on your actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You

can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d) If you are authorized under § 1206.154(j) to use an exception to the requirement to calculate your actual transportation costs, you must follow the reporting requirements of § 1206.155.

§ 1206.157 What interest and penalties apply if I improperly report a transportation allowance?

(a)(1) If ONRR determines that you took an unauthorized transportation allowance, then you must pay any additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(2) If you understated your transportation allowance, you may be entitled to a credit with interest.

(b) If you deduct a transportation allowance on Form ONRR–2014 that exceeds 50 percent of the value of the gas, residue gas, or gas plant products transported, you must pay late payment interest on the excess allowance amount taken from the date that amount is taken until the date you pay the additional royalties due.

(c) If you improperly net a transportation allowance against the sales value of the residue gas, gas plant products, or unprocessed gas instead of reporting the allowance as a separate entry on Form ONRR–2014, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.158 What reporting adjustments must I make for transportation allowances?

(a) If your actual transportation allowance is less than the amount you claimed on Form ONRR–2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter from the date you took the deduction to the date you repay the difference.

(b) If the actual transportation allowance is greater than the amount you claimed on Form ONRR–2014 for any month during the period reported on the allowance form, you are entitled to a credit plus interest.

§ 1206.159 What general processing allowances requirements apply to me?

(a)(1) When you value any gas plant product under § 1206.142(c) of this subpart, you may deduct from value the reasonable actual costs of processing.

(2) You do not need ONRR approval before reporting a processing allowance.

(b) You must allocate processing costs among the gas plant products. You must determine a separate processing allowance for each gas plant product and processing plant relationship. ONRR considers NGLs one product.

(c)(1) You may not apply the processing allowance against the value of the residue gas.

(2) The processing allowance deduction on the basis of an individual product may not exceed 66⅔ percent of the value of each gas plant product determined under § 1206.142(c). Before you calculate the 66⅔ percent limit, you must first reduce the value for any transportation allowances related to post-processing transportation authorized under § 1206.152.

(3) If ONRR approved your request to take a processing allowance in excess of the limitation in paragraph (c)(2) of this section under former § 1206.158(c)(3), that approval is terminated as of [EFFECTIVE DATE OF FINAL RULE].

(4) If ONRR approved your request to take an extraordinary cost processing allowance under former § 1206.158(d), ONRR terminates that approval as of [EFFECTIVE DATE OF FINAL RULE].

(d)(1) ONRR will not allow a processing cost deduction for the costs of placing lease products in marketable condition, including dehydration, separation, compression, or storage, even if those functions are performed off the lease or at a processing plant.

(2) Where gas is processed for the removal of acid gases, commonly referred to as ''sweetening,'' ONRR will not allow processing cost deductions for such costs unless the acid gases removed are further processed into a gas plant product.

(A) In such event, you are eligible for a processing allowance determined under this subpart.

(B) ONRR will not grant any processing allowance for processing lease production that is not royalty bearing.

§ 1206.160 How do I determine a processing allowance, if I have an arm's-length processing contract?

(a)(1) If you or your affiliate incur processing costs under an arm's-length processing contract, you may claim a processing allowance for the reasonable, actual costs incurred as more fully explained in paragraph (b) of this section, except as provided in paragraphs (a)(3)(1) and (a)(3)(ii) of this section and subject to the limitation in § 1206.159(c)(2).

(2) You must be able to demonstrate that your or your affiliate's contract is arm's length.

(3) ONRR may determine your processing allowance under § 1206.144, if:

(i) ONRR determines that your or your affiliate's contract reflects more than the consideration actually transferred either directly or indirectly from you or your affiliate to the processor for processing; or

(ii) ONRR determines that the consideration you or your affiliate paid under an arm's-length processing contract does not reflect the reasonable cost of the processing because you breached your duty to market the gas for the mutual benefit of yourself and the lessor by processing your gas at a cost that is unreasonably high. We may consider a processing allowance unreasonably high, if it is 10-percent higher than the highest reasonable measures of processing costs, including but not limited to processing allowances reported to ONRR for gas processed in the same plant or area.

(b)(1) If your or your affiliate's arm's-length processing contract includes more than one gas plant product and you can determine the processing costs for each product based on the contract, then you must determine the processing costs for each gas plant product under the contract.

(2) If your or your affiliate's arm's-length processing contract includes more than one gas plant product and you cannot determine the processing costs attributable to each product from the contract, you must propose an allocation procedure to ONRR.

(i) You may use your proposed allocation procedure until ONRR issues its determination.

(ii) You must submit all relevant data to support your proposal.

(iii) ONRR will determine the processing allowance based upon your proposal and any additional information ONRR deems necessary.

(iv) You must submit the allocation proposal within 3 months of claiming the allocated deduction on Form ONRR–2014.

(3) You may not take an allowance for the costs of processing lease production that is not royalty-bearing.

(4) If your or your affiliate's payments for processing under an arm's-length contract are not based on a dollar-per-unit basis, you must convert whatever consideration you or your affiliate paid to a dollar-value equivalent.

(c) If you have no written contract for the arm's-length processing of gas, then ONRR will determine your processing allowance under § 1206.144. You may not use this paragraph (c) if you or your affiliate perform(s) your own processing.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.148(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.161 How do I determine a processing allowance if I have a non-arm's-length processing contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length processing contract, including situations where you or your affiliate provide your own processing services. You must calculate your processing allowance based on you or your affiliate's reasonable, actual costs for processing during the reporting period using the procedures prescribed in this section.

(b) You or your affiliate's actual costs include the following:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section;

(2) Overhead under paragraph (g) of this section;

(3) Depreciation and a return on undepreciated capital investment in accordance with paragraph (h)(1) of this section, or you may elect to use a cost equal to the initial depreciable capital investment in the processing plant under paragraph (h)(2) of this section. After you have elected to use either method for a processing plant, you may not later elect to change to the other alternative without ONRR approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month ONRR received your change request; and

(4) A return on the reasonable salvage value under paragraph (h)(1)(iii) of this section, after you have depreciated the processing plant to its reasonable salvage value.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the processing plant.

(e) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Fuel;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating expense that you can document.

(f) Allowable maintenance expenses include:

(1) Maintenance of the processing plant;

(2) Maintenance of equipment;

(3) Maintenance labor; and

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the processing plant, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation and a return on undepreciated capital investment, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the processing plant services, or a unit-of-production method. After you make an election, you may not change methods without ONRR approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month ONRR received your change request.

(i) A change in ownership of a processing plant will not alter the depreciation schedule that the original processor/lessee established for purposes of the allowance calculation.

(ii) You may depreciate a processing plant only once with or without a change in ownership.

(iii)(A) To calculate a return on undepreciated capital investment, you may use an amount equal to the undepreciated capital investment in the processing plant multiplied by the rate of return you determine under paragraph (h)(3) of this section.

(B) After you have depreciated a processing plant to its reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return under paragraph (h)(3) of this section.

(2) You may use as a cost an amount equal to the allowable initial capital investment in the processing plant multiplied by the rate of return determined under paragraph (h)(3) of this section. You may not include depreciation in your allowance.

(3) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(i) You must use the monthly average that BBB rate Standard & Poor's publishes for the first month for which the allowance is applicable.

(ii) You must redetermine the rate at the beginning of each subsequent calendar year.

(i)(1) You must determine the processing allowance for each gas plant product based on your or your affiliate's reasonable and actual cost of processing the gas. You must base your allocation of costs to each gas plant product upon generally accepted accounting principles.

(2) You may not take an allowance for processing lease production that is not royalty-bearing.

(j) You may apply for an exception from the requirement to calculate actual costs under paragraphs (a) and (b) of this section.

(1) ONRR will grant the exception, if:

(i) You have or your affiliate has arm's-length contracts for processing other gas production at the same processing plant; and

(ii) At least 50-percent of the gas processed annually at the plant is processed under arm's-length processing contracts.

(2) If ONRR grants the exception, you must use as your processing allowance the volume-weighted average prices charged other persons under arm's-length contracts for processing at the same plant.

§ 1206.162 What are my reporting requirements under an arm's-length processing contract?

(a) You must use a separate entry on Form ONRR–2014 to notify ONRR of an allowance based on arm's-length processing costs you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length processing contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.163 What are my reporting requirements under a non-arm's-length processing contract?

(a) You must use a separate entry on Form ONRR–2014 to notify ONRR of an allowance based on non-arm's-length processing costs you or your affiliate incur(s).

(b)(1) For new non-arm's-length processing facilities or arrangements, you must base your initial deduction on estimates of allowable gas processing costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the processing plant as your estimate, if available. If such data is not available, you must use estimates based on data for similar processing plants.

(3) Section 1206.165 applies when you amend your report based on your actual costs.

(c) ONRR may require you or your affiliate to submit all data used to

calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d) If you are authorized under § 1206.161(j) to use an exception to the requirement to calculate your actual processing costs, you must follow the reporting requirements of § 1206.162.

§ 1206.164 What interest and penalties apply if I improperly report a processing allowance?

(a)(1) If ONRR determines that you took an unauthorized processing allowance, then you must pay any additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(2) If you understated your processing allowance, you may be entitled to a credit with interest.

(b) If you deduct a processing allowance on Form ONRR–2014 that exceeds 66⅔ percent of the value of a gas plant product, you must pay late payment interest on the excess allowance amount taken from the date that amount is taken until the date you pay the additional royalties due.

(c) If you improperly net a processing allowance against the sales value of a gas plant product instead of reporting the allowance as a separate entry on Form ONRR–2014, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.165 What reporting adjustments must I make for processing allowances?

(a) If your actual processing allowance is less than the amount you claimed on Form ONRR–2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter from the date you took the deduction to the date you repay the difference.

(b) If the actual processing allowance is greater than the amount you claimed on Form ONRR–2014 for any month during the period reported on the allowance form, you are entitled to a credit plus interest.

■ 8. Revise subpart F to read as follows:

Subpart F—Federal Coal

Sec.

1206.250 What is the purpose and scope of this subpart?
1206.251 How do I determine royalty quantity and quality?
1206.252 How do I calculate royalty value for coal I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?
1206.253 How will ONRR determine if my royalty payments are correct?
1206.254 How will ONRR determine the value of my coal for royalty purposes?
1206.255 What records must I keep to support my calculations of royalty under this subpart?
1206.256 What are my responsibilities to place production into marketable condition and to market production?
1206.257 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?
1206.258 How do I request a valuation determination or guidance?
1206.259 Does ONRR protect information I provide?
1206.260 What general transportation allowance requirements apply to me?
1206.261 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?
1206.262 How do I determine a transportation allowance if I have a non-arm's-length transportation contract?
1206.263 What are my reporting requirements under an arm's-length transportation contract?
1206.264 What are my reporting requirements under a non-arm's-length transportation contract?
1206.265 What interest and penalties apply if I improperly report a transportation allowance?
1206.266 What reporting adjustments must I make for transportation allowances?
1206.267 What general washing allowance requirements apply to me?
1206.268 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?
1206.269 How do I determine washing allowances if I have a non-arm's-length washing contract?
1206.270 What are my reporting requirements under an arm's-length washing contract?
1206.271 What are my reporting requirements under a non-arm's-length washing contract?
1206.272 What interest and penalties apply if I improperly report a washing allowance?
1206.273 What reporting adjustments must I make for washing allowances?

Subpart F—Federal Coal

§ 1206.250 What is the purpose and scope of this subpart?

(a) This subpart applies to all coal produced from Federal coal leases. It explains how you, as the lessee, must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws and lease terms.

(b) The terms ''you'' and ''your'' in this subpart refer to the lessee.

(c) If the regulations in this subpart are inconsistent with:

(1) A Federal statute;

(2) A settlement agreement between the United States and a lessee resulting from administrative or judicial litigation;

(3) A written agreement between the lessee and the ONRR Director establishing a method to determine the value of production from any lease that ONRR expects, at least, would approximate the value established under this subpart; or

(4) An express provision of a coal lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(d) ONRR may audit and order you to adjust all royalty payments.

§ 1206.251 How do I determine royalty quantity and quality?

(a) You must calculate royalties based on the quantity and quality of coal at the royalty measurement point that ONRR and BLM jointly determine.

(b) You must measure coal in short tons using the methods BLM prescribes for Federal coal leases under 43 CFR part 3000. You must report coal quantity on appropriate forms required in 30 CFR part 1210—Forms and Reports.

(c)(1) You are not required to pay royalties on coal you produce and add to stockpiles or inventory until you use, sell, or otherwise finally dispose of such coal.

(2) ONRR may request BLM to require you to increase your lease bond if BLM determines that stockpiles or inventory are excessive such that they increase the risk of resource degradation.

(d) You must pay royalty at the rate specified in your lease at the time you use, sell, or otherwise finally dispose of the coal.

(e) You must allocate washed coal by attributing the washed coal to the leases from which it was extracted.

(1) If the wash plant washes coal from only one lease, the quantity of washed coal allocable to the lease is the total output of washed coal from the plant.

(2) If the wash plant washes coal from more than one lease, you must determine the tonnage of washed coal attributable to each lease by:

(i) First, calculating the input ratio of washed coal allocable to each lease by dividing the tonnage of coal you input to the wash plant from each lease by the total tonnage of coal input to the wash plant from all leases; and

(ii) Then multiplying the input ratio derived under paragraph (e)(2)(i) of this section by the tonnage of total output of washed coal from the plant.

§ 1206.252 How do I calculate royalty value for coal I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

(a) The value of coal under this section for royalty purposes is the gross

proceeds accruing to you or your affiliate under the first arm's-length contract less an applicable transportation allowance determined under §§ 1206.260 through 1206.262 and washing allowance under §§ 1206.267 through 1206.269. You must use this paragraph (a) to value coal when:

(1) You sell under an arm's-length contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract, and that affiliate or person, or another affiliate of either of them, then sells the coal under an arm's-length contract.

(b) If you have no contract for the sale of coal subject to this section because you or your affiliate used the coal in a power plant you or your affiliate own(s) for the generation and sale of electricity and;

(1) You or your affiliate sell(s) the electricity, then the value of the coal subject to this section, for royalty purposes, is the gross proceeds accruing to you for the power plant's arm's-length sales of the electricity less applicable transportation and washing deductions determined under §§ 1206.260 through 1206.262 and §§ 1206.267 through 1206.269 of this subpart and, if applicable, transmission and generation deductions determined under §§ 1206.353 and 1206.352 of subpart H;

(2) You or your affiliate do(es) not sell the electricity at arm's length (*i.e.* you or your affiliate deliver(s) the electricity directly to the grid), then ONRR will determine the value of the coal under § 1206.254.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.258(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues a determination.

(iii) After ONRR issues a determination, you must make the adjustments under § 1206.253(a)(2).

(c) If you are a coal cooperative, or a member of a coal cooperative, and:

(1) You sell or transfer coal to another member of the coal cooperative, and that member of the coal cooperative then sells the coal under an arm's-length contract, then you must value the coal under paragraph (a) of this section; or

(2) You sell or transfer coal to another member of the coal cooperative and the coal is used by you, the coal cooperative, or another member of the coal cooperative in a power plant for the generation and sale of electricity, then you must value the coal under paragraph (b) of this section.

(d) If you are entitled to take a washing allowance and transportation allowance for royalty purposes under this section, under no circumstances may the washing allowance plus the transportation allowance reduce the royalty value of the coal to zero.

(e) The values in this section do not apply, if ONRR decides to value your coal under § 1206.254.

§ 1206.253 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties you report. If ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR will direct you to use a different measure of royalty value, or decide your value, under § 1206.254.

(2) If ONRR directs you to use a different royalty value, you must either pay any underpaid royalties due, plus late payment interest calculated under § 1218.202 of this chapter or report a credit for, or request a refund of, any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the coal. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under § 1206.254.

(c) ONRR may decide to value your coal under § 1206.254 if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You breached your duty to market the coal for the mutual benefit of yourself and the lessor by selling your coal at a value that is unreasonably low. ONRR may consider a sales price unreasonably low if it is 10-percent less than the lowest other reasonable measures of market price, including but not limited to, prices reported to ONRR for like-quality coal; or

(3) ONRR cannot determine if you properly valued your coal under § 1206.252 for any reason, including but not limited to, your or your affiliate's failure to provide documents to ONRR under 30 CFR part 1212, subpart E.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include(s) all of the consideration the buyer paid you or your affiliate, either directly or indirectly, for the coal.

(f)(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate make timely application for a price increase or benefit allowed under your or your affiliate's contract, but the purchaser refuses, and you or your affiliate take reasonable documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or timely, for a quantity of coal.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may decide to value your coal under § 1206.254.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

§ 1206.254 How will ONRR determine the value of my coal for royalty purposes?

If ONRR decides to value your coal for royalty purposes under § 1206.254, or any other provision in this subpart, then ONRR will determine value by considering any information we deem relevant, which may include, but is not limited to:

(a) The value of like-quality coal from the same mine, nearby mines, same region, or other regions, or washed in the same or nearby wash plant;

(b) Public sources of price or market information that ONRR deems reliable, including but not limited to, the price of electricity;

(c) Information available to ONRR and information reported to it, including but not limited to, on Form ONRR–4430;

(d) Costs of transportation or washing, if ONRR determines they are applicable; or

(e) Any other information ONRR deems relevant regarding the particular lease operation or the salability of the coal.

§ 1206.255 What records must I keep to support my calculations of royalty under this subpart?

If you value your coal under this subpart, you must retain all data relevant to the determination of the royalty you paid. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(a) You must show:

(1) How you calculated the royalty value, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR. You must comply with any such requirement within the time ONRR specifies.

§ 1206.256 What are my responsibilities to place production into marketable condition and to market production?

(a) You must place coal in marketable condition and market the coal for the mutual benefit of the lessee and the lessor at no cost to the Federal Government.

(b) If you use gross proceeds under an arm's-length contract to determine royalty, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that you normally are responsible to perform to place the coal in marketable condition or to market the coal.

§ 1206.257 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?

Notwithstanding any provision in these regulations to the contrary, ONRR will not consider any audit, review, reconciliation, monitoring, or other like process that results in ONRR redetermining royalty due, under this subpart, final or binding as against the Federal Government or its beneficiaries unless ONRR chooses to formally close the audit period in writing.

§ 1206.258 How do I request a valuation determination or guidance?

(a) You may request a valuation determination or guidance from ONRR regarding any coal produced. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, all interest owners of those leases, and the operator(s) for those leases;

(3) Completely explain all relevant facts. You must inform ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest a proposed valuation method.

(b) In response to your request, ONRR may:

(1) Request that the Assistant Secretary for Policy, Management and Budget issue a determination; or

(2) Decide that ONRR will issue guidance; or

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to:

(i) Requests for guidance on hypothetical situations; and

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A determination the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(3) A determination the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d) Guidance ONRR issues is not binding on ONRR, delegated States, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the guidance, you may appeal that order under 30 CFR part 1290.

(e) ONRR or the Assistant Secretary may use any of the applicable criteria in this subpart to provide guidance or make a determination.

(f) A change in an applicable statute or regulation on which ONRR based any guidance, or the Assistant Secretary based any determination, takes precedence over the determination or guidance after the effective date of the statute or regulation, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the guidance or determination.

(g) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.259.

§ 1206.259 Does ONRR protect information I provide?

(a) Certain information you or your affiliate submit(s) to ONRR regarding royalties on coal, including deductions and allowances, may be exempt from disclosure.

(b) To the extent applicable laws and regulations permit, ONRR will keep confidential any data you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 1206.260 What general transportation allowance requirements apply to me?

(a)(1) ONRR will allow a deduction for the reasonable, actual costs to transport coal from the lease to the point off the lease or mine as determined under § 1206.261 or § 1206.262, as applicable.

(2) You do not need ONRR approval before reporting a transportation allowance for costs incurred.

(b) You may take a transportation allowance when:

(1) You value coal under § 1206.252 of this part;

(2) You transport the coal from a Federal lease to a sales point, which is remote from both the lease and mine; or

(3) You transport the coal from a Federal lease to a wash plant when that plant is remote from both the lease and mine and, if applicable, from the wash plant to a remote sales point.

(c) You may not take an allowance for:

(1) Transporting lease production that is not royalty-bearing;

(2) In-mine movement of your coal; or

(3) Costs to move a particular tonnage of production for which you did not incur those costs.

(d) You only may claim a transportation allowance when you sell the coal and pay royalties.

(e) You must allocate transportation allowances to the coal attributed to the lease from which it was extracted.

(1) If you commingle coal produced from Federal and non-Federal leases, you may not disproportionately allocate transportation costs to Federal lease production. Your allocation must use the same proportion as the ratio of the tonnage from the Federal lease production to the tonnage from all production.

(2) If you commingle coal produced from more than one Federal lease, you

must allocate transportation costs to each Federal lease as appropriate. Your allocation must use the same proportion as the ratio of the tonnage of each Federal lease production to the tonnage of all production.

(3) For washed coal, you must allocate the total transportation allowance only to washed products.

(4) For unwashed coal, you may take a transportation allowance for the total coal transported.

(5)(i) You must report your transportation costs on Form ONRR–4430 as clean coal short tons sold during the reporting period multiplied by the sum of the per-short-ton cost of transporting the raw tonnage to the wash plant and, if applicable, the per-short-ton cost of transporting the clean coal tons from the wash plant to a remote sales point.

(ii) You must determine the cost per short ton of clean coal transported by dividing the total applicable transportation cost by the number of clean coal tons resulting from washing the raw coal transported.

(f) You must express transportation allowances for coal as a dollar-value equivalent per short ton of coal transported. If you do not base your or your affiliate's payments for transportation under a transportation contract on a dollar-per-unit basis, you must convert whatever consideration you or your affiliate paid to a dollar-value equivalent.

(g) ONRR may determine your transportation allowance under § 1206.254 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by transporting your coal at a cost that is unreasonably high. We may consider a transportation allowance unreasonably high if it is 10-percent higher than the highest reasonable measures of transportation costs including, but not limited to, transportation allowances reported to ONRR and the cost to transport coal through the same transportation system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under § 1206.261 or § 1206.262 for any reason including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

§ 1206.261 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?

(a) If you or your affiliate incur(s) transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred for transporting the coal under that contract.

(b) You must be able to demonstrate that your or your affiliate's contract is at arm's length.

(c) If you have no written contract for the arm's-length transportation of coal, then ONRR will determine your transportation allowance under § 1206.254. You may not use this paragraph (c) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.258(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.262 How do I determine a transportation allowance for a non-arm's-length transportation contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. You must calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section;

(2) Overhead under paragraph (g) of this section;

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (j) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month ONRR received your change request; and

(4) A return on the reasonable salvage value, under paragraph (i) of this section, after you have depreciated the transportation system to its reasonable salvage value.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the transportation system.

(e) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Fuel;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating expenses that you can document.

(f) Allowable maintenance expenses include:

(1) Maintenance of the transportation system;

(2) Maintenance of equipment;

(3) Maintenance labor; and

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either (i) a straight-line depreciation method based on the life of the transportation system or the life of the reserves which the transportation system services, or (ii) a unit-of-production method. After you make an election, you may not change methods without ONRR approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month ONRR received your change request.

(2) A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for purposes of the allowance calculation.

(3) You may depreciate a transportation system only once with or without a change in ownership.

(i)(1) To calculate a return on undepreciated capital investment, you must multiply the remaining undepreciated capital balance as of the beginning of the period for which you

are calculating the transportation allowance by the rate of return provided in paragraph (k) of this section.

(2) After you have depreciated a transportation system to its reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return determined under paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (k) of this section. You may not include depreciation in your allowance

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must redetermine the rate at the beginning of each subsequent calendar year.

(3) After ONRR issues a determination, you must make the adjustments under § 1206.266.

§ 1206.263 What are my reporting requirements under an arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on transportation costs you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.264 What are my reporting requirements under a non-arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on non-arm's-length transportation costs you or your affiliate incur(s).

(b)(1) For new non-arm's-length transportation facilities or arrangements, you must base your initial deduction on estimates of allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate, if available. If such data is not available, you must use estimates based on data for similar transportation systems.

(3) Section 1206.266 applies when you amend your report based on the actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.265 What interest and penalties apply if I improperly report a transportation allowance?

(a)(1) If ONRR determines that you took an unauthorized transportation allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your transportation allowance, you may be entitled to a credit without interest.

(b) If you improperly net a transportation allowance against the sales value of the coal instead of reporting the allowance as a separate entry on Form ONRR–4430, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.266 What reporting adjustments must I make for transportation allowances?

(a) If your actual transportation allowance is less than the amount you claimed on Form ONRR–4430 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter from the date you took the deduction to the date you repay the difference.

(b) If the actual transportation allowance is greater than the amount you claimed on Form ONRR–4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

§ 1206.267 What general washing allowance requirements apply to me?

(a)(1) If you determine the value of your coal under § 1206.252 of this subpart, you may take a washing allowance for the reasonable, actual costs to wash coal. The allowance is a deduction when determining coal royalty value for the costs you incur to wash coal.

(2) You do not need ONRR approval before reporting a washing allowance.

(b) You may not:

(1) Take an allowance for the costs of washing lease production that is not royalty bearing;

(2) Disproportionately allocate washing costs to Federal leases. You must allocate washing costs to washed coal attributable to each Federal lease by multiplying the input ratio determined under § 1206.251(e)(2)(i) by the total allowable costs.

(c)(1) You must express washing allowances for coal as a dollar-value equivalent per short ton of coal washed.

(2) If you do not base your or your affiliate's payments for washing under an arm's-length contract on a dollar-per-unit basis, you must convert whatever consideration you or your affiliate paid to a dollar-value equivalent.

(d) ONRR may determine your washing allowance under § 1206.254 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration you or your affiliate paid under an arm's-length washing contract does not reflect the reasonable cost of the washing because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by washing your coal at a cost that is unreasonably high. We may consider a washing allowance unreasonably high if it is 10-percent higher than the highest other reasonable measures of washing, including but not limited to, washing allowances reported to ONRR and costs for coal washed in the same plant or other plants in the region; or

(3) ONRR cannot determine if you properly calculated a washing allowance under §§ 1206.267 through 1206.269 for any reason, including but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

(e) You only may claim a washing allowance, when you sell the washed coal and report and pay royalties.

§ 1206.268 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?

(a) If you or your affiliate incur(s) washing costs under an arm's-length washing contract, you may claim a washing allowance for the reasonable, actual costs incurred.

(b) You must be able to demonstrate that your or your affiliate's contract is arm's length.

(c) If you have no written contract for the arm's-length washing of coal, then ONRR will determine your washing allowance under § 1206.254. You may not use this paragraph (c) if you or your affiliate perform(s) your own washing. If you or your affiliate perform(s) the washing, then:

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.258(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.269 How do I determine washing allowances if I have a non-arm's-length washing contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length washing contract, including situations where you or your affiliate provides your own washing services. You must calculate your washing allowance based on your or your affiliate's reasonable, actual costs for washing during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs can include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section;

(2) Overhead under paragraph (g) of this section;

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the wash plant under paragraph (j) of this section. After you have elected to use either method for a wash plant, you may not later elect to change to the other alternative without ONRR approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month ONRR received your change request; and

(4) A return on the reasonable salvage value, under paragraph (i) of this section, after you have depreciated the wash plant to its reasonable salvage value.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the wash plant.

(e) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Fuel;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating expenses that you can document.

(f) Allowable maintenance expenses include:

(1) Maintenance of the wash plant;

(2) Maintenance of equipment; and

(3) Maintenance labor.

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the wash plant, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either a straight-line depreciation method based on the life of the wash plant or the life of the reserves which the wash plant services, or a unit-of-production method. After you make an election, you may not change methods without ONRR approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month ONRR received your change request.

(2) A change in ownership of a wash plant will not alter the depreciation schedule that the original washer/lessee established for purposes of the allowance calculation.

(3) With or without a change in ownership, you may depreciate a wash plant only once.

(i)(1) To calculate a return on undepreciated capital investment, you must multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the washing allowance by the rate of return provided in paragraph (k) of this section.

(2) After you have depreciated a wash plant to its reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the salvage value multiplied by a rate of return determined under paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the wash plant multiplied by the rate of return as determined under paragraph (k) of this section. You may not include depreciation in your allowance.

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must redetermine the rate at the beginning of each subsequent calendar year.

(3) After ONRR issues its determination, you must make the adjustments under § 1206.273.

§ 1206.270 What are my reporting requirements under an arm's-length washing contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on washing costs you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length washing contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.271 What are my reporting requirements under a non-arm's-length washing contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on non-arm's-length washing costs you or your affiliate incur(s).

(b)(1) For new non-arm's-length washing facilities or arrangements, you must base your initial deduction on estimates of allowable washing costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the wash plant as your estimate, if available. If such data is not available, you must use estimates based on data for similar wash plants.

(3) Section 1206.273 applies when you amend your report based on the actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.272 What interest and penalties apply if I improperly report a washing allowance?

(a)(1) If ONRR determines that you took an unauthorized washing allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your washing allowance, you may be entitled to a credit without interest.

(b) If you improperly net a washing allowance against the sales value of the coal instead of reporting the allowance as a separate entry on Form ONRR–4430, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.273 What reporting adjustments must I make for washing allowances?

(a) If your actual washing allowance is less than the amount you claimed on Form ONRR–4430 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter from the date you took the deduction to the date you repay the difference.

(b) If the actual washing allowance is greater than the amount you claimed on Form ONRR–4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

■ 9. Revise subpart J to read as follows:

Subpart J—Indian Coal

Sec.

1206.450 What is the purpose and scope of this subpart?
1206.451 How do I determine royalty quantity and quality?
1206.452 How do I calculate royalty value for coal I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?
1206.453 How will ONRR determine if my royalty payments are correct?
1206.454 How will ONRR determine the value of my coal for royalty purposes?
1206.455 What records must I keep to support my calculations of royalty under this subpart?
1206.456 What are my responsibilities to place production into marketable condition and to market production?
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1206.461 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?
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1206.465 What interest and penalties apply if I improperly report a transportation allowance?
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1206.467 What general washing allowance requirements regarding apply to me?
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1206.470 What are my reporting requirements under an arm's-length washing contract?
1206.471 What are my reporting requirements under a non-arm's-length washing contract or no written arm's-length contract?
1206.472 What interest and penalties apply if I improperly report a washing allowance?
1206.473 What reporting adjustments must I make for washing allowances?

Subpart J—Indian Coal

§ 1206.450 What is the purpose and scope of this subpart?

(a) This subpart applies to all coal produced from Indian tribal coal leases and coal leases on land held by individual Indian mineral owners. It explains how you, as the lessee, must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

(b) The terms ''you'' and ''your'' in this subpart refer to the lessee.

(c) If the regulations in this subpart are inconsistent with:

(1) A Federal statute or treaty;

(2) A settlement agreement;

(3) A written agreement between the lessee and the ONRR Director establishing a method to determine the value of production from any lease that ONRR expects, at least, would approximate the value established under this subpart; or

(4) An express provision of a coal lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(d) ONRR may audit and order you to adjust all royalty payments.

(e) The regulations in this subpart, intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian coal leases, are discharged under the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 1206.451 How do I determine royalty quantity and quality?

(a) You must calculate royalties based on the quantity and quality of coal at the royalty measurement point that ONRR and BLM jointly determine.

(b) You must measure coal in short tons using the methods BLM prescribes for Indian coal leases. You must report coal quantity on appropriate forms required in 30 CFR part 1210.

(c)(1) You are not required to pay royalties on coal you produce and add to stockpiles or inventory until you use, sell, or otherwise finally dispose of such coal.

(2) ONRR may request BLM to require you to increase your lease bond if BLM determines that stockpiles or inventory are excessive such that they increase the risk of resource degradation.

(d) You must pay royalty at the rate specified in your lease at the time you use, sell, or otherwise finally dispose of the coal.

(e) You must allocate washed coal by attributing the washed coal to the leases from which it was extracted.

(1) If the wash plant washes coal from only one lease, the quantity of washed coal allocable to the lease is the total output of washed coal from the plant.

(2) If the wash plant washes coal from more than one lease, you must determine the tonnage of washed coal attributable to each lease by:

(i) First, calculating the input ratio of washed coal allocable to each lease by dividing the tonnage of coal you input to the wash plant from each lease by the total tonnage of coal input to the wash plant from all leases; and

(ii) Then multiplying the input ratio derived under paragraph (e)(2)(i) of this section by the tonnage of total output of washed coal from the plant.

§ 1206.452 How do I calculate royalty value for coal I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

(a) The value of coal under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract less an applicable transportation allowance determined under §§ 1206.460 through 1206.462 and washing allowance under §§ 1206.467 through 1206.469. You must use this paragraph (a) to value coal when:

(1) You sell under an arm's-length contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract, and that affiliate or person, or another affiliate of either of them, then sells the coal under an arm's-length contract.

(b) If you have no contract for the sale of coal subject to this section because you or your affiliate used the coal in a power plant you or your affiliate own(s) for the generation and sale of electricity and;

(1) You or your affiliate sell(s) the electricity, then the value of the coal subject to this section, for royalty purposes, is the gross proceeds accruing to you for the power plant's arm's-

length sales of the electricity less applicable transportation and washing deductions determined under §§ 1206.460 through 1206.462 and §§ 1206.467 through 1206.469 of this subpart and, if applicable, transmission and generation deductions determined under §§ 1206.353 and 1206.352 of subpart H;

(2) You or your affiliate do(es) not sell the electricity at arm's length (*i.e.* you or your affiliate deliver(s) the electricity directly to the grid), then ONRR will determine the value of the coal under § 1206.454.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.458(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues a determination.

(iii) After ONRR issues a determination, you must make the adjustments under § 1206.453(a)(2).

(c) If you are a coal cooperative, or a member of a coal cooperative, and;

(1) You sell or transfer coal to another member of the coal cooperative, and that member of the coal cooperative then sells the coal under an arm's-length contract, then you must value the coal under paragraph (a) of this section; or

(2) You sell or transfer coal to another member of the coal cooperative, and the coal is used by you, the coal cooperative, or another member of the coal cooperative, in a power plant for the generation and sale of electricity, then you must value the coal under paragraph (b) of this section.

(d) If you are entitled to take a washing allowance and transportation allowance for royalty purposes under this section, under no circumstances may the washing allowance plus the transportation allowance reduce the royalty value of the coal to zero.

(e) The values in this section do not apply, if ONRR decides to value your coal under § 1206.454.

§ 1206.453 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties you report. If ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR will direct you to use a different measure of royalty value, or decide your value, under § 1206.454.

(2) If ONRR directs you to use a different royalty value, you must either pay any underpaid royalties plus late payment interest calculated under § 1218.202 of this chapter or report a credit for, or request a refund of, any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the coal. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under § 1206.454.

(c) ONRR may decide to value your coal under § 1206.454, if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You breached your duty to market the coal for the mutual benefit of yourself and the lessor by selling your coal at a value that is unreasonably low. ONRR may consider a sales price unreasonably low, if it is 10-percent less than the lowest other reasonable measures of market price, including but not limited to, prices reported to ONRR for like-quality coal; or

(3) ONRR cannot determine if you properly valued your coal under § 1206.452 for any reason, including but not limited to, your or your affiliate's failure to provide documents to ONRR under 30 CFR part 1212, subpart E.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include(s) all of the consideration the buyer paid you or your affiliate, either directly or indirectly, for the coal.

(f)(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate make timely application for a price increase or benefit allowed under your or your affiliate's contract, but the purchaser refuses, and you or your affiliate take reasonable documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or timely, for a quantity of coal.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may decide to value your coal under § 1206.454.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

§ 1206.454 How will ONRR determine the value of my coal for royalty purposes?

If ONRR decides to value your coal for royalty purposes under § 1206.454, or any other provision in this subpart, then ONRR will determine value by considering any information we deem relevant, which may include, but is not limited to:

(a) The value of like-quality coal from the same mine, nearby mines, same region, or other regions, or washed in the same or nearby wash plant;

(b) Public sources of price or market information that ONRR deems reliable, including but not limited to, the price of electricity;

(c) Information available to ONRR and information reported to it, including but not limited to, on Form ONRR–4430;

(d) Costs of transportation or washing, if ONRR determines they are applicable; or

(e) Any other information ONRR deems relevant regarding the particular lease operation or the salability of the coal.

§ 1206.455 What records must I keep to support my calculations of royalty under this subpart?

If you value your coal under this subpart, you must retain all data relevant to the determination of the royalty you paid. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(a) You must show:

(1) How you calculated the royalty value, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR or the representative of the Indian lessor, or to the Inspector General of the Department of the Interior or other persons authorized to receive such information. Such data may include arm's-length sales and sales quantity data for like-quality coal sold, purchased, or otherwise obtained by you or your affiliate from the same mine, nearby mines, same region, or other regions. You must comply with any such requirement within the time ONRR specifies.

§ 1206.456 What are my responsibilities to place production into marketable condition and to market production?

(a) You must place coal in marketable condition and market the coal for the mutual benefit of the lessee and the lessor at no cost to the Indian lessor.

(b) If you use gross proceeds under an arm's-length contract to determine royalty, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that you normally are responsible to perform to place the coal in marketable condition or to market the coal.

§ 1206.457 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?

Notwithstanding any provision in these regulations to the contrary, ONRR will not consider any audit, review, reconciliation, monitoring, or other like process that results in ONRR redetermining royalty due, under this subpart, final or binding as against the Federal Government or its beneficiaries unless ONRR chooses to formally close the audit period in writing.

§ 1206.458 How do I request a valuation determination or guidance?

(a) You may request a valuation determination or guidance from ONRR regarding any coal produced. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, all interest owners of those leases, and the operator(s) for those leases;

(3) Completely explain all relevant facts. You must inform ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest a proposed valuation method.

(b) In response to your request, ONRR may:

(1) Request that the Assistant Secretary for Policy, Management and Budget issue a determination; or

(2) Decide that ONRR will issue guidance; or

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to:

(i) Requests for guidance on hypothetical situations; and

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A determination the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(3) A determination the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d) Guidance ONRR issues is not binding on ONRR, Tribes, individual Indian mineral owners, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the guidance, you may appeal that order under 30 CFR part 1290.

(e) ONRR or the Assistant Secretary may use any of the applicable criteria in this subpart to provide guidance or make a determination.

(f) A change in an applicable statute or regulation on which ONRR based any guidance, or the Assistant Secretary based any determination, takes precedence over the determination or guidance after the effective date of the statute or regulation, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the guidance or determination.

(g) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.459.

§ 1206.459 Does ONRR protect information I provide?

(a) Certain information you or your affiliate submit(s) to ONRR regarding royalties on coal, including deductions and allowances, may be exempt from disclosure.

(b) To the extent applicable laws and regulations permit, ONRR will keep confidential any data you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 1206.460 What general transportation allowance requirements apply to me?

(a)(1) ONRR will allow a deduction for the reasonable, actual costs to transport coal from the lease to the point off the lease or mine as determined under § 1206.461 or § 1206.462, as applicable.

(2) Before you may take any transportation allowance, you must submit a completed page 1 of Form ONRR–4293, Coal Transportation Allowance Report, under sections § 1206.463 and § 1206.464 of this subpart. You may claim a transportation allowance retroactively for a period of not more than 3 months prior to the first day of the month that ONRR receives your Form ONRR–4293.

(3) You may not use a transportation allowance that was in effect before [EFFECTIVE DATE OF THE FINAL RULE]. You must use the provisions of this subpart to determine your transportation allowance.

(b) You may take a transportation allowance when:

(1) You value coal under § 1206.452 of this part;

(2) You transport the coal from an Indian lease to a sales point which, is remote from both the lease and mine; or

(3) You transport the coal from an Indian lease to a wash plant when that plant is remote from both the lease and mine and, if applicable, from the wash plant to a remote sales point.

(c) You may not take an allowance for:

(1) Transporting lease production that is not royalty-bearing;

(2) In-mine movement of your coal; or

(3) Costs to move a particular tonnage of production for which you did not incur those costs.

(d) You only may claim a transportation allowance when you sell the coal and pay royalties.

(e) You must allocate transportation allowances to the coal attributed to the lease from which it was extracted.

(1) If you commingle coal produced from Indian and non-Indian leases, you may not disproportionately allocate transportation costs to Indian lease production. Your allocation must use the same proportion as the ratio of the tonnage from the Indian lease production to the tonnage from all production.

(2) If you commingle coal produced from more than one Indian lease, you must allocate transportation costs to each Indian lease as appropriate. Your allocation must use the same proportion as the ratio of the tonnage of each Indian

leases production to the tonnage of all production.

(3) For washed coal, you must allocate the total transportation allowance only to washed products.

(4) For unwashed coal, you may take a transportation allowance for the total coal transported.

(5)(i) You must report your transportation costs on Form ONRR–4430 as clean coal short tons sold during the reporting period multiplied by the sum of the per short-ton cost of transporting the raw tonnage to the wash plant and, if applicable, the per short-ton cost of transporting the clean coal tons from the wash plant to a remote sales point.

(ii) You must determine the cost per short ton of clean coal transported by dividing the total applicable transportation cost by the number of clean coal tons resulting from washing the raw coal transported.

(f) You must express transportation allowances for coal as a dollar-value equivalent per short ton of coal transported. If you do not base your or your affiliate's payments for transportation under a transportation contract on a dollar-per-unit basis, you must convert whatever consideration you or your affiliate paid to a dollar-value equivalent.

(g) ONRR may determine your transportation allowance under § 1206.454 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by transporting your coal at a cost that is unreasonably high. We may consider a transportation allowance unreasonably high if it is 10-percent higher than the highest reasonable measures of transportation costs including, but not limited to, transportation allowances reported to ONRR and the cost to transport coal through the same transportation system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under § 1206.461 or § 1206.462 for any reason including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

§ 1206.461 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?

(a) If you or your affiliate incur(s) transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred for transporting the coal under that contract.

(b) You must be able to demonstrate that your or your affiliate's contract is at arm's length.

(c) If you have no written contract for the arm's-length transportation of coal, then ONRR will determine your transportation allowance under § 1206.454. You may not use this paragraph (c) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.458(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.462 How do I determine a transportation allowance if I have a non-arm's-length transportation contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. Calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section;

(2) Overhead under paragraph (g) of this section; and

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (j) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month ONRR received your change request.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(e) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Fuel;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating expense that you can document.

(f) Allowable maintenance expenses include:

(1) Maintenance of the transportation system;

(2) Maintenance of equipment;

(3) Maintenance labor; and

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and Indian tribal severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either a straight-line depreciation method based on the life of the transportation system or the life of the reserves which the transportation system services, or a unit-of-production method. After you make an election, you may not change methods without ONRR approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month ONRR received your change request.

(2) A change in ownership of a transportation system will not alter the depreciation schedule the original transporter/lessee established for purposes of the allowance calculation.

(3) You may depreciate a transportation system only once with or without a change in ownership.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the transportation allowance by the rate of return provided in paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on

undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (k) of this section. You may not include depreciation in your allowance.

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must redetermine the rate at the beginning of each subsequent calendar year.

(3) After ONRR issues a determination, you must make the adjustments under § 1206.466.

§ 1206.463 What are my reporting requirements under an arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on transportation costs you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d)(1) You must submit page 1 of the initial Form ONRR–4293 prior to, or at the same time as, you report the transportation allowance determined under an arm's-length contract on Form ONRR–4430.

(2) The initial Form ONRR–4293 is effective beginning with the production month that you are first authorized to deduct a transportation allowance and continues until the end of the calendar year, or until the termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3) After the initial period that ONRR first authorized you to deduct a transportation allowance and for succeeding periods, you must submit the entire Form ONRR–4293 by the earlier of:

(i) Within 3 months after the end of the calendar year; or

(ii) After the termination, modification, or amendment of the applicable contract or rate.

(4) You may request to use an allowance for a longer period than that required under paragraph (d)(2) of this section.

(i) You may use that allowance beginning with the production month following the month ONRR received your request to use the allowance for a longer period until ONRR decides whether to approve the longer period.

(ii) ONRR's decision whether or not to approve a longer period is not appealable under 30 CFR part 1290.

(iii) If ONRR does not approve the longer period, you must adjust your transportation allowance under § 1206.466.

§ 1206.464 What are my reporting requirements under a non-arm's-length transportation contract or no written arm's-length contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on non-arm's-length transportation costs you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(c)(1) You must submit an initial Form ONRR–4293 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no written arm's-length contract situation that you report on Form ONRR–4430. If ONRR receives a Form ONRR–4293 by the end of the month that the Form ONRR–4430 is due, ONRR will consider the form timely received. You may base the initial form on estimated costs.

(2) The initial Form ONRR–4293 is effective beginning with the production month that you are first authorized to deduct a transportation allowance and continues until the end of the calendar year or termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3)(i) At the end of the calendar-year for which you submitted a Form ONRR–4293 based on estimates, you must submit another completed Form ONRR–4293 containing the actual costs for that calendar year.

(ii) If the transportation continues, you must include on Form ONRR–4293 your estimated costs for the next calendar year.

(A) You must base the estimated transportation allowance on the actual costs for the previous reporting period plus or minus any adjustments based on your knowledge of decreases or increases that will affect the allowance.

(B) ONRR must receive Form ONRR–4293 within 3 months after the end of the previous calendar year.

(d)(1) For new non-arm's-length transportation facilities or arrangements, on your initial Form ONRR–4293, you must include estimates of the allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate, if available. If such data is not available, you must use estimates based on data for similar transportation systems.

(e) Upon ONRR's request, you must submit all data used to prepare your Form ONRR–4293. You must provide the data within a reasonable period of time, as ONRR determines.

(f) Section 1206.466 applies when you amend your Form ONRR–4293 based on the actual costs.

§ 1206.465 What interest and penalties apply if I improperly report a transportation allowance?

(a)(1) If ONRR determines that you took an unauthorized transportation allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your transportation allowance, you may be entitled to a credit without interest.

(b) If you improperly net a transportation allowance against the sales value of the coal instead of reporting the allowance as a separate entry on Form ONRR–4430, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.466 What reporting adjustments must I make for transportation allowances?

(a) If your actual transportation allowance is less than the amount you claimed on Form ONRR–4430 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter from the date you took the deduction to the date you repay the difference.

(b) If the actual transportation allowance is greater than the amount you claimed on Form ONRR–4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

§ 1206.467 What general washing allowance requirements apply to me?

(a)(1) If you determine the value of your coal under § 1206.452 of this subpart, you may take a washing allowance for the reasonable, actual costs to wash coal. The allowance is a deduction when determining coal royalty value for the costs you incur to wash coal.

(2) Before you may take any deduction, you must submit a completed page one of Form ONRR–

4292, Coal Washing Allowance Report, under §§ 1206.470 and 1206.471 of this subpart. You may claim a washing allowance retroactively for a period of not more than 3 months prior to the first day of the month that you have filed Form ONRR–4292 with ONRR.

(3) You may not use a washing allowance that was in effect before the effective date of the final rule. You must use the provisions of this subpart to determine your washing allowance.

(b) You may not:

(1) Take an allowance for the costs of washing lease production that is not royalty bearing;

(2) Disproportionately allocate washing costs to Indian leases. You must allocate washing costs to washed coal attributable to each Indian lease by multiplying the input ratio determined under § 1206.451(e)(2)(i) by the total allowable costs.

(c)(1) You must express washing allowances for coal as a dollar-value equivalent per short ton of coal washed.

(2) If you do not base your or your affiliate's payments for washing under an arm's-length contract on a dollar-per-unit basis, you must convert whatever consideration you or your affiliate paid to a dollar-value equivalent.

(d) ONRR may determine your washing allowance under § 1206.454 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration you or your affiliate paid under an arm's-length washing contract does not reflect the reasonable cost of the washing because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by washing your coal at a cost that is unreasonably high. We may consider a washing allowance unreasonably high if it is 10-percent higher than the highest other reasonable measures of washing, including but not limited to, washing allowances reported to ONRR and costs for coal washed in the same plant or other plants in the region; or

(3) ONRR cannot determine if you properly calculated a washing allowance under §§ 1206.467 through 1206.469 for any reason, including but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

(e) You only may claim a washing allowance, if you sell the washed coal and report and pay royalties.

§ 1206.468 How do I determine a washing allowance if I have an arm's-length washing contract or no written arm's-length contract?

(a) If you or your affiliate incur(s) washing costs under an arm's-length washing contract, you may claim a washing allowance for the reasonable, actual costs incurred.

(b) You must be able to demonstrate that your or your affiliate's contract is arm's length.

(c) If you have no contract for the washing of coal, then ONRR will determine your transportation allowance under § 1206.454. You may not use this paragraph (c), if you or your affiliate perform(s) your own washing. If you or your affiliate perform(s) the washing, then:

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.458(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.469 How do I determine a washing allowance if I have a non-arm's-length washing contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length washing contract, including situations where you or your affiliate provides your own washing services. Calculate your washing allowance based on your or your affiliate's reasonable, actual costs for washing during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section;

(2) Overhead under paragraph (g) of this section; and

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or a cost equal to a return on the initial depreciable capital investment in the wash plant under paragraph (j) of this section. After you have elected to use either method for a wash plant, you may not later elect to change to the other alternative without ONRR approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month ONRR received your change request.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the wash plant.

(e) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Fuel;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating expenses that you can document.

(f) Allowable maintenance expenses include:

(1) Maintenance of the wash plant;

(2) Maintenance of equipment;

(3) Maintenance labor; and

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the wash plant is an allowable expense. State and Federal income taxes and Indian tribal severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either (i) a straight-line depreciation method based on the life of the wash plant or the life of the reserves which the wash plant services, or (ii) a unit-of-production method. After you make an election, you may not change methods without ONRR approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month ONRR received your change request.

(2) A change in ownership of a wash plant will not alter the depreciation schedule the original washer/lessee established for purposes of the allowance calculation.

(3) With or without a change in ownership, you may depreciate a wash plant only once.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the washing allowance by the rate of return provided in paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial

capital investment in the wash plant multiplied by the rate of return as determined under paragraph (k) of this section. You may not include depreciation in your allowance.

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must redetermine the rate at the beginning of each subsequent calendar year.

(3) After ONRR issues its determination, you must make the adjustments under § 1206.473.

§ 1206.470 What are my reporting requirements under an arm's-length washing contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on washing costs you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length washing contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d)(1) You must file an initial Form ONRR–4292 prior to, or at the same time, as the washing allowance determined under an arm's-length contract or no written arm's-length contract situation that you report on Form ONRR–4430. If ONRR receives a Form ONRR–4292 by the end of the month that the Form ONRR–4430 is due, ONRR will consider the form timely received.

(2) The initial Form ONRR–4292 is effective beginning with the production month that you are first authorized to deduct a washing allowance and continues until the end of the calendar year, or until the termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3) After the initial period that ONRR first authorized you to deduct a washing allowance, and for succeeding periods, you must submit the entire Form ONRR–4292 by the earlier of:

(i) Within 3 months after the end of the calendar year; or

(ii) After the termination, modification, or amendment of the applicable contract or rate.

(4) You may request to use an allowance for a longer period than that required under paragraph (d)(2) of this section.

(i) You may use that allowance beginning with the production month following the month ONRR received your request to use the allowance for a longer period until ONRR decides whether to approve the longer period.

(ii) ONRR's decision whether or not to approve a longer period is not appealable under 30 CFR part 1290.

(iii) If ONRR does not approve the longer period, you must adjust your transportation allowance under § 1206.466.

§ 1206.471 What are my reporting requirements under a non-arm's-length washing contract or no written arm's-length contract?

(a) You must use a separate entry on Form ONRR–4430 to notify ONRR of an allowance based on non-arm's-length washing costs you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(c)(1) You must submit an initial Form ONRR–4292 prior to, or at the same time as, the washing allowance determined under a non-arm's-length contract or no written arm's-length contract situation that you report on Form ONRR–4430. If ONRR receives a Form ONRR–4292 by the end of the month that the Form ONRR–4430 is due, ONRR will consider the form received timely. You may base the initial reporting on estimated costs.

(2) The initial Form ONRR–4292 is effective beginning with the production month that you are first authorized to deduct a washing allowance and continues until the end of the calendar year or termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3)(i) At the end of the calendar year for which you submitted a Form ONRR–4292, you must submit another completed Form ONRR–4292 containing the actual costs for that calendar year.

(ii) If coal washing continues, you must include on Form ONRR–4292 your estimated costs for the next calendar year.

(A) You must base the estimated coal washing allowance on the actual costs for the previous period plus or minus any adjustments based on your knowledge of decreases or increases that will affect the allowance.

(B) ONRR must receive Form ONRR–4292 within 3 months after the end of the previous calendar year.

(d)(1) For new non-arm's-length washing facilities or arrangements on your initial Form ONRR–4292, you must include estimates of allowable washing costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the wash plant as your estimate, if available. If such data is not available, you must use estimates based on data for similar wash plants.

(e) Upon ONRR's request, you must submit all data you used to prepare your Forms ONRR–4293. You must provide the data within a reasonable period of time, as ONRR determines.

(f) Section 1206.472 applies when you amend your Form ONRR–4292 based on the actual costs.

§ 1206.472 What interest and penalties apply if I improperly report a washing allowance?

(a)(1) If ONRR determines that you took an unauthorized washing allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your washing allowance, you may be entitled to a credit without interest.

(b) If you improperly net a washing allowance against the sales value of the coal instead of reporting the allowance as a separate entry on Form ONRR–4430, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.473 What reporting adjustments must I make for washing allowances?

(a) If your actual washing allowance is less than the amount you claimed on Form ONRR–4430 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter from the date you took the deduction to the date you repay the difference.

(b) If the actual washing allowance is greater than the amount you claimed on Form ONRR–4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

40 CFR Part 660

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2015–2016 Biennial Specifications and Management Measures; Amendment 24; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140904754–4999–01]

RIN 0648–BE27

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2015–2016 Biennial Specifications and Management Measures; Amendment 24

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish the 2015–2016 harvest specifications and management measures for groundfish taken in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Pacific Coast Groundfish Fishery Management Plan (PCGFMP). This proposed rule would also revise the management measures that are intended to keep the total catch of each groundfish species or species complex within the harvest specifications. This action also includes regulations to implement Amendment 24 to the PCGFMP, which establishes default harvest control rules for setting harvest specifications after 2015–2016.

DATES: Comments must be received no later than January 26, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0138, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0138,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to William W. Stelle, Jr., Regional Administrator, 7600 Sand Point Way NE., Seattle, WA 98115.
- *Fax:* 206–525–4736; Attn: Sarah Williams.

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.

Information relevant to this proposed rule, which includes a draft environmental impact statement (EIS), a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) are available for public review during business hours at the office of the Pacific Fishery Management Council (Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280. Copies of additional reports referred to in this document may also be obtained from the Council.

FOR FURTHER INFORMATION CONTACT: Sarah Williams, phone: 206–526–4646, fax: 206–526–6736, or email: *sarah.williams@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the Federal Register Web site at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html* and at the Council's Web site at *http://www.pcouncil.org.*

Executive Summary

Purpose of the Regulatory Action

This proposed rule would implement the 2015–2016 harvest specifications and management measures for groundfish species taken in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California, and establish default harvest control rules consistent with Amendment 24 to the PCGFMP. The purpose of the proposed action is to conserve and manage Pacific Coast groundfish fishery resources to prevent overfishing, to rebuild overfished stocks, to ensure conservation, to facilitate long-term protection of essential fish habitats (EFH), and to realize the full potential of the Nation's fishery resources. This proposed action would set catch limit specifications for 2015–2016 consistent with existing or revised harvest control rules for all stocks, and establish management measures designed to keep catch within the appropriate limits. The harvest specifications are set consistent with the optimum yield (OY) harvest management framework described in Chapter 4 of the PCGFMP. The proposed rule would also implement Amendment 24 to PCGFMP. Amendment 24 establishes default harvest control rules that would be used to determine harvest specifications after 2015–2016. This rule is authorized by 16 U.S.C. 1854–55 and by the PCGFMP.

Major Provisions

This proposed rule contains two types of major provisions. The first are the harvest specifications (overfishing limits (OFLs), acceptable biological catches (ABCs), and annual catch limits (ACLs)), and the second are management measures designed to keep fishing mortality within the ACLs. The harvest specifications (OFLs, ABCs, and ACLs) in this rule have been developed through a rigorous scientific review and decision-making process, which is described in detail later in this proposed rule.

In summary, the OFL is the maximum sustainable yield (MSY) harvest level and is an estimate of the catch level above which overfishing is occurring. OFLs are based on recommendations by the Council's Scientific and Statistical Committee (SSC) as the best scientific information available. The ABC is an annual catch specification that is the stock or stock complex's OFL reduced by an amount associated with scientific uncertainty. The SSC-recommended method for incorporating scientific uncertainty is referred to as the P star-sigma approach and is discussed in detail in the proposed and final rules for the 2011–2012 (75 FR 67810, November 3, 2010 and 76 FR 27508, May 11, 2011) and 2013–2014 (77 FR 67974, November 12, 2012, and 78 FR 580, January 3, 2013) biennial harvest specifications and management measures. The ACL is a harvest specification set equal to or below the ABC. The ACLs are decided in a manner to achieve OY from the fishery, which is the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems. The ACLs are based on consideration of conservation objectives, socio-economic concerns, management uncertainty, and other factors. All known sources of fishing and scientific research catch are counted against the ACL.

This proposed rule includes ACLs for the seven overfished species managed under the PCGFMP. For the 2015–2016 biennium only one species, cowcod, requires rebuilding plan changes to its T_{MAX} and T_{TARGET} rebuilding parameters. T_{MAX} is the maximum permissible time period for rebuilding the stock its target biomass. T_{TARGET} is the year by which the stock can be rebuilt as soon as possible, taking into account the status and biology of the stock, the needs of fishing communities, and the interaction of the stock of fish within the marine ecosystem. The changes are necessary because the rebuilding analyses prepared showed that the current T_{TARGET} is 9 years longer than the new T_{MAX}. Accordingly, for cowcod, the T_{TARGET} would be revised from 2068 to 2020, which is the median time to rebuild based on the existing harvest control rule. The remaining overfished species are making adequate progress towards rebuilding or are estimated to be rebuilt in 2015. Therefore, this rule proposes to establish harvest specifications consistent with the existing rebuilding plan provisions for those species.

This rule also proposes to implement Amendment 24 to the PCGFMP. Amendment 24 consists of three components: (1) Default harvest control rules; (2) a suite of minor changes, including clarification of routine management measures and adjustments to those measures, clarification to the harvest specifications decision making schedule, changes to the description of biennial management cycle process, updates to make the FMP consistent with SSC guidance on the F_{MSY} proxy for elasmobranchs, and clarifications to definitions; and (3) addition of two rockfish species to the PCGFMP and the designation of ecosystem component (EC) species.

In order to keep mortality of the species managed under the PCGFMP within the ACLs the Council also recommended management measures. Generally speaking, management measures are intended to rebuild overfished species, prevent ACLs from being exceeded, and allow for the harvest of healthy stocks. Management measures include time and area restrictions, gear restrictions, trip or bag limits, size limits, and other management tools. Management measures may vary by fishing sector because different fishing sectors require different types of management to control catch. Most of the management measures the Council recommended for 2015–2016 were slight variations to existing management measures and do not represent a change from current management practices. These types of changes include changes to trip limits, bag limits, closed areas, etc. Additionally, several new management measures were recommended by the Council including: Changes to lingcod retention in previously closed cumulative limit periods and canary rockfish retention in the Oregon recreational fishery, along with a few others.

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I. Background

The Pacific Coast Groundfish fishery is managed under the PCGFMP. The PCGFMP was prepared by the Council, approved on July 30, 1984, and has been amended numerous times. Regulations at 50 CFR part 660, subparts C through G, implement the provisions of the PCGFMP.

The PCGFMP requires the harvest specifications and management measures for groundfish to be set at least biennially. This proposed rule is based on the Council's final recommendations that were made at its June 2014 meeting with updated harvest specifications for some stocks adopted at its November 2014 meeting.

A. Specification and Management Measure Development Process

The process for setting the 2015–2016 harvest specifications began in 2012 with the preparation of stock assessments. A stock assessment is the scientific and statistical process where the status of a fish population or subpopulation (stock) is assessed in terms of population size, reproductive status, fishing mortality, and sustainability. In the terms of the PCGFMP, stock assessments generally provide: (1) An estimate of the current biomass (reproductive potential); (2) an F_{MSY} or proxy (a default harvest rate for the fishing mortality rate that is expected to achieve the maximum sustainable yield), translated into exploitation rate; (3) an estimate of the biomass that produces the maximum sustainable yield (B_{MSY}); and, (4) a precision estimate (*e.g.,* confidence interval) for current biomass. Stock assessments, including data moderate assessments, are reviewed by the Council's stock assessment review panel (STAR panel). The STAR panel is designed to review the technical merits of stock assessments and is responsible for determining if a stock assessment document is sufficiently complete. Finally, the SSC reviews the stock assessment and STAR panel reports and makes recommendations to the Council. In addition to full stock assessments, stock assessment updates that run new data through existing models without changing the model are also prepared.

When spawning stock biomass falls below the minimum stock size threshold (MSST), a stock is declared overfished and a rebuilding plan must be developed that determines the strategy for rebuilding the stock to B_{MSY} in the shortest time possible while considering needs of fishing communities and other factors (16 U.S.C. 1854(e)). The current MSST reference point for assessed flatfish stocks is 12.5 percent of initial biomass or $B_{12.5\%}$. For all other assessed groundfish stocks, the current MSST reference point is 25 percent of initial biomass or $B_{25\%}$. The following overfished groundfish stocks would be managed under rebuilding plans in 2015–2016: Bocaccio south of 40°10′ N. lat.; canary rockfish; cowcod south of

40°10′ N. lat.; darkblotched rockfish; Pacific Ocean Perch (POP); petrale sole; and yelloweye rockfish.

For overfished stocks, in addition to any stock assessments or stock assessment updates, rebuilding analyses may also be prepared. The rebuilding analysis is used to project the future status of the overfished resource under a variety of alternative harvest strategies and to determine the probability of recovering to B_{MSY} or its proxy within a specified time-frame.

The Council considered new stock assessments, stock assessment updates, a new rebuilding analysis for cowcod, public comment, and advice from its advisory bodies over the course of six Council meetings during development of its recommendations for the 2015–2016 harvest specifications and management measures. At each Council meeting between June 2013 and June 2014, the Council made a series of decisions and recommendations that were in some cases refined after further analysis and discussion. Detailed information, including the supporting documentation the Council considered at each meeting is available at the Council's Web site, *www.pcouncil.org.*

A draft EIS identifying the preferred alternative for each decision point published on October 24, 2014 (79 FR 63622). A preliminary version of the draft EIS was made available to the public, the Council, and the Council's advisory bodies at the Council's June 2014 meeting. At that meeting, following public comment and Council consideration, the Council made its final recommendations for the 2015–2016 harvest specifications and management measures as well as Amendment 24 to the PCGFMP.

Information regarding the OFLs, ABCs, and ACLs being proposed for groundfish stocks and stock complexes in 2015–2016 is presented below, followed by a discussion of the species assemblages and use of stock complexes, concluding with descriptions of the proposed management measures for commercial and recreational groundfish fisheries.

II. Harvest Specifications

The PCGFMP requires the Council to set harvest specifications and management measures for groundfish at least biennially. This proposed rule would set 2015–2016 harvest specifications and management measures for all of the 90 plus groundfish species or species groups managed under the PCGFMP, except for Pacific whiting. Pacific whiting harvest specifications are established annually through a separate bilateral process with Canada. The Council received notification at its November 2014 meeting that the OFLs adopted in June 2014 for English sole, yellowtail rockfish north of 40°10′ N. lat.; sharpchin rockfish, and rex sole were incorrect. The OFLs from June were based on maximum likelihood estimates, however, the SSC recommended that the 2015–2016 OFLs from the Bayesian data-moderate assessment be based on the median of the posterior distribution of the estimated OFLs. The SSC reviewed and endorsed the updated harvest specifications at the November 2014 Council meeting and the Council recommended those changes. Therefore, this rule proposes the updated OFLs, ABCs, ACLs, and HGs for English sole, yellowtail rockfish north of 40°10′ N. lat., as well as the Minor Slope Rockfish north and south complexes and the Other Flatfish Complex coastwide because sharpchin rockfish contributes to the Minor Slope Rockfish complex harvest specifications and rex sole contributes to the harvest specifications for the Other Flatfish complex.

A. Proposed OFLs for 2015 and 2016

This section describes the proposed OFLs for overfished species managed under rebuilding plans, non-overfished species managed with individual species-specific harvest specifications, and species managed within stock complexes. The stock complex section below also discusses data moderate assessments.

The OFL is the MSY harvest level associated with the current stock abundance and is an estimate of the level of total catch of a stock or stock complex above which overfishing is occurring. The OFLs for groundfish species with stock assessments are derived by applying the F_{MSY} harvest rate proxy to the current estimated biomass. $F_{x\%}$ harvest rates are the rates of fishing mortality that will reduce the female spawning biomass per recruit (SPR) to X percent of its unfished level. A rate of $F_{40\%}$ is a more aggressive harvest rate than $F_{45\%}$ or $F_{50\%}$.

For 2015–2016, the Council maintained a policy of using a default harvest rate as a proxy for the fishing mortality rate that is expected to achieve the maximum sustainable yield (F_{MSY}). A proxy is used because there is insufficient information for most Pacific Coast groundfish stocks to estimate species-specific F_{MSY} values. Taxon-specific proxy fishing mortality rates are used due to perceived differences in the productivity among different taxa of groundfish. A lower value is used for stocks with relatively high resilience to fishing while higher values are used for less resilient stocks with low productivity. In 2015–2016, the following default harvest rate proxies, based on the SSC's recommendations, were used: $F_{30\%}$ for flatfish, $F_{40\%}$ for whiting, $F_{50\%}$ for rockfish (including longspine and shortspine thornyheads), $F_{50\%}$ for elasmobranchs, and $F_{45\%}$ for other groundfish such as sablefish and lingcod.

For the 2015–2016 biennial specification process, eight full stock assessments and four stock assessment updates were prepared. Full stock assessments, those that consider the appropriateness of the assessment model and that revise the model as necessary, were prepared for the following stocks: Darkblotched rockfish, petrale sole, shortspine thornyhead, longspine thornyhead, aurora rockfish, rougheye/blackspotted rockfish, Pacific sanddab, and cowcod. A stock assessment update, which runs new data through an existing model, was prepared for bocaccio. Catch reports, which evaluate whether recent mortality has remained at or below the appropriate limits, were also prepared for canary rockfish, POP, and yelloweye rockfish.

Each new stock assessment includes a base model and two alternative models. The alternative models are developed from the base model by bracketing the dominant dimension of uncertainty (*e.g.,* stock-recruitment steepness, natural mortality rate, survey catchability, recent year-class strength, weights on conflicting catch per unit effort series, etc.) and are intended to be a means of expressing uncertainty within the model by showing the contrast in management implications. Once a base model has been bracketed on either side by alternative model scenarios, capturing the overall degree of uncertainty in the assessment, a two-way decision table analysis (states-of-nature versus management action) is used to present the repercussions of uncertainty to decision makers. As noted above, the SSC makes recommendations to the Council on the appropriateness of using the different stock assessments for management purposes, after which the Council considers adoption of the stock assessments, use of the stock assessments for the development of rebuilding analyses, and the OFLs resulting from the base model runs of the stock assessments.

1. Overfished Species OFLs

This section describes the OFLs for overfished species managed under rebuilding plans in 2015–2016.

Bocaccio (Sebastes paucispinis) S. of 40°10′ N. lat.

A stock assessment update was prepared for bocaccio between the U.S.-Mexico border and Cape Blanco, OR. The bocaccio OFLs of 1,444 mt for 2015 and 1,351 mt for 2016 are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2013 stock assessment update. For setting harvest specifications, six percent of the assessed biomass was estimated to occur north of 40°10′ N. lat. The projected OFLs from the assessment were adjusted accordingly.

Canary Rockfish (Sebastes pinniger)

A catch report was prepared for canary rockfish off Washington, Oregon, and California. The canary rockfish OFLs of 733 mt for 2015 and 729 mt for 2016 are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2011 rebuilding analysis.

Cowcod (Sebastes levis) S. of 40°10′ N. lat.

A full stock assessment was prepared for cowcod in the area south of 34°27′ N. lat. The cowcod OFLs of 67 mt for 2015 and 68 mt for 2016 are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2013 stock assessment added to the revised 2011 Depletion-Based Stock Reduction Analysis OFL estimate for the Monterey area.

Darkblotched Rockfish (Sebastes crameri)

A full stock assessment was prepared for darkblotched rockfish off Washington, Oregon, and California. The darkblotched rockfish OFLs of 574 mt for 2015 and 580 mt for 2016 are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2013 stock assessment.

Petrale Sole (Eopsetta jordani)

A full stock assessment was prepared for petrale sole off Washington, Oregon, and California. The assessment treats the U.S. petrale sole resource from the Mexican border to the Canadian border as a single coastwide stock. The petrale sole OFLs of 2,946 mt for 2015 and 3,044 mt for 2016 are based on the F_{MSY} harvest rate proxy of $F_{30\%}$ as applied to the estimated exploitable biomass from the 2013 stock assessment.

Pacific Ocean Perch (Sebastes alutus)

A catch report was prepared for Pacific Ocean perch (POP) off Washington, Oregon, and California. The POP OFLs of 842 mt for 2015 and 850 mt for 2016 are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2011 rebuilding analysis.

Yelloweye Rockfish (Sebastes ruberrimus)

A catch report was prepared for yelloweye rockfish off Washington, Oregon, and California. The yelloweye rockfish OFLs of 52 mt for 2015 and 2016 are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2011 rebuilding analysis.

2. Non-Overfished Species OFLs for Individually Managed Stocks

This section describes the OFLs for non-overfished species managed with individual species-specific harvest specifications in 2015–2016.

English Sole (Parophrys vetulus)

A new data-moderate coastwide stock assessment was prepared for English sole in 2013. For a discussion of data-moderate assessments see the ''Stock Complex OFL'' section below. The English sole OFLs of 10,792 mt in 2015 and 7,890 mt in 2016 are based on the F_{MSY} harvest rate proxy of $F_{30\%}$ applied to the estimated exploitable biomass from the 2013 data-moderate stock assessment.

Longspine Thornyhead (Sebastolobus Altivelis)

A new coastwide full stock assessment was prepared for longspine thornyhead. The longspine thornyhead OFLs of 5,007 mt in 2015 and 4,763 mt in 2016 are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2013 stock assessment.

Shortspine Thornyhead (Sebastolobus Alascanus)

A new coastwide full stock assessment was prepared for shortspine thornyhead. The shortspine thornyhead OFLs of 3,203 mt in 2015 and 3,169 mt in 2016 are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2013 stock assessment.

Spiny Dogfish (Squalus Acanthias)

For 2015–2016, spiny dogfish is proposed to be removed from the Other Fish complex and managed with species-specific harvest specifications. A coastwide stock assessment was prepared for spiny dogfish in 2011. In 2013–2014 the spiny dogfish OFLs were based on the F_{MSY} harvest rate proxy of $F_{45\%}$ applied to the estimated exploitable biomass from the 2011 stock assessment and contributed to the Other Fish complex OFLs. The SSC has endorsed a new F_{MSY} harvest rate proxy for elasmobranchs of $F_{50\%}$ to better represent the life-history characteristics and reproductive biology of elasmobranchs. In 2015–2016 the spiny dogfish OFLs of 2,523 mt in 2015 and 2,503 mt in 2016 are derived from the 2011 assessment using an F_{MSY} harvest rate proxy of $F_{50\%}$.

Yellowtail Rockfish (Sebastes Flavidus) N. of 40°10′ N. lat.

A full assessment of northern yellowtail rockfish was conducted in 2004. In 2013, a new data moderate stock assessment was prepared for the portion of the yellowtail rockfish population north of 40°10′ N. lat. Yellowtail is managed as a single species with a stock-specific OFL north and within the Minor Slope Complex south of 40°10′ N. lat. The yellowtail rockfish north OFLs are 7,218 mt in 2015 and 6,949 mt in 2016. These estimates are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2013 data-moderate stock assessment. Additional information on data-moderate assessments and the OFL contribution of yellowtail rockfish to the Minor Slope Rockfish complex south of 40°10′ N. lat. can be found below in the discussion of ''Stock Complex OFLs.''

For individually managed species that did not have new stock assessments or updates prepared, the Council recommended OFLs derived from applying the F_{MSY} harvest rate proxy to the estimated exploitable biomass from the most recent stock assessment or update, the results of rudimentary stock assessments, or the historical landings data approved by the Council for use in setting harvest specifications. These stocks include: Arrowtooth flounder, black rockfish south, black rockfish north, cabezon (off California), cabezon (off Oregon), California scorpionfish, chilipepper, Dover sole, lingcod north and south of 42° N. lat., longnose skate (using the revised F_{MSY} harvest rate proxy for elasmobranchs), Pacific cod, sablefish north and south of 36° N. lat., shortbelly rockfish, spiny dogfish (as described above), splitnose rockfish, starry flounder, and widow rockfish. Proposed OFLs for these species can be found in Tables 1a and 2a to Subpart C.

3. Stock Complex OFLs

There are currently eight stock complexes used to manage groundfish stocks pursuant to the PCGFMP. These stock complexes are: (1) Minor Nearshore Rockfish north; (2) Minor

Nearshore Rockfish south; (3) Minor Shelf Rockfish north; (4) Minor Shelf Rockfish south (5) Minor Slope rockfish north; (6) Minor Slope Rockfish south; (7) Other Flatfish; and (8) Other Fish. Stock complexes are used to manage the harvest of many of the unassessed groundfish stocks.

The proposed OFLs for stock complexes are the sum of the OFL contributions for the component stocks, when known. For the 2015–2016 biennial specification process, similar to 2011–2012 and 2013–2014, Depletion-Corrected Average Catch (DCAC), Depletion-Based Stock Reduction Analysis (DB–SRA), or other SSC-endorsed methodologies were used to determine the OFL contributions made by category three species (data limited species). In general, OFL contribution estimates should not vary from year to year for the category three stocks; the OFL contributions for unassessed component stocks that remain in the eight stock complexes are the same in 2015–2016 as in 2013–2014.

The proposed OFLs for each complex can also be found in tables 1a and 2a of this proposed rule. In addition to OFL contributions derived by DCAC, DB–SRA, or other SSC approved estimates, OFL contributions for the following stocks were determined by applying the F_{MSY} harvest rate proxy to the estimated exploitable biomass from the most recent stock assessments: Brown rockfish, China rockfish, copper rockfish, aurora rockfish, rougheye/blackspotted rockfish, sharpchin rockfish, and rex sole. Pacific sanddab was assessed in 2013, but the OFL contribution will continue to be derived by DB–SRA in 2015–2016 because the SSC determined the assessment results were too uncertain for determining harvest specifications. As summarized below, nine of the stocks with OFL contributions to stock complexes had new or updated assessments that resulted in their OFL contributions being determined by applying the F_{MSY} harvest rate proxy to the estimated exploitable biomass.

The following section discusses the OFL contributions from the data moderate assessments for brown rockfish, China rockfish, copper rockfish, rex sole, shapchin rockfish, stripetail rockfish, yellowtail rockfish, and the full assessments for aurora rockfish and blackspotted/rougheye rockfish. Two data-moderate assessment methods, XDB–SRA (Extended Depletion-Based Stock Reduction Analysis) and exSSS (Extended Simple Stock Synthesis), were endorsed by the STAR panel for use in the assessment cycle that is informing the 2015–2016 harvest specifications. Results from data-moderate assessments are an improvement over data-poor approaches because they incorporate abundance indices. Due to a lack of time, the STAR panel was unable to review the draft assessments of vermillion rockfish and yellowtail rockfish south of Cape Mendocino, and was unable to make recommendations regarding their use for Council decision-making. However, the STAR panel was able to conclude that the base model was adequate for management of yellowtail rockfish north of Cape Mendocino. Overall, the SSC viewed the data-moderate assessment methods as being useful tools for assisting the Council's groundfish management process and a substantial improvement over the Council's data-poor methods. The SSC concluded that: (1) The assessments represent the best available science; (2) they should be accepted as valid data-moderate stock assessments, and; (3) they should be used as the basis for management decisions in 2015–2016. Stocks managed within stock complexes that had new data-moderate assessments or new full assessments for use in 2015–2016 are discussed below.

Nearshore Complexes North and South of 40°10′ N. lat.

Minor Nearshore Rockfish (North of 40°10′ N. lat.)

The proposed OFL for the Minor Nearshore Rockfish north complex is 88 mt in 2015 and in 2016, which is a 20 percent reduction from the 2014 OFL of 94 mt. The decrease is due to new data-moderate assessments for brown, China, and copper rockfish conducted in 2013. In 2015–2016, stocks composing the Minor Nearshore Rockfish north complex will remain the same as in 2013–2014. The Minor Nearshore Rockfish north complex is comprised of: Black rockfish (*Sebastes melanops*), Black and yellow rockfish (*S. chrysomelas*), blue rockfish (*S. mystinus*), brown rockfish (*S. auriculatus*), calico rockfish (*S. dalli*), China rockfish (*S. nebulosus*), copper rockfish (*S. caurinus*), gopher rockfish (*S. carnatus*), grass rockfish (*S. rastrelliger*), kelp rockfish (*S. atrovirens*), olive rockfish (*S. serranoides*), quillback rockfish (*S. maliger*), and treefish (*S. serriceps*). These stocks are all unassessed with the exception of blue rockfish in California, brown rockfish, China rockfish, copper rockfish, and gopher rockfish in California.

Minor Nearshore Rockfish (South of 40°10′ N. lat.)

The proposed OFL for the Minor Nearshore Rockfish south complex is 1,313 mt in 2015, and is 1,291 mt in 2016 which in 2015 is a 31 percent increase, and in 2016 is a 29 percent increase from the 2014 complex OFL of 1,001 mt. The increase is due to new data-moderate assessments for brown, China, and copper rockfish conducted in 2013. In 2015–2016, stocks composing the Minor Nearshore Rockfish south complex will remain the same as in 2013–2014. The Minor Nearshore south complex is comprised of black and yellow rockfish (*S. chrysomelas*), China rockfish (*S. nebulosus*), gopher rockfish, (*S. carnatus*), grass rockfish (*S. rastrelliger*), kelp rockfish (*S. atrovirens*), black rockfish (*S. melanops*), blue rockfish (*S. mystinus*), brown rockfish (*S. auriculatus*), calico rockfish (*S. dalli*), copper rockfish (*S. caurinus*), olive rockfish (*S. serranoides*), quillback rockfish (*S. maliger*), and treefish (*S. serriceps*).

Minor Nearshore Rockfish Complex Stocks Assessed in 2013

New coastwide data-moderate assessments were performed for brown, China, and copper rockfish in 2013.

Brown Rockfish

A coastwide data-moderate stock assessment utilizing a XDB–SRA model run was prepared for brown rockfish in 2013. The coastwide brown rockfish stock was estimated to be at 42 percent of unfished spawning biomass. The estimated brown rockfish OFL contribution to the Minor Nearshore Rockfish complex north is 1.9 mt in 2015 and 2016, which is a 65.5 percent decrease from the 2014 contribution OFL of 5.5 mt. The estimated brown rockfish OFL contribution to the Minor Nearshore Rockfish complex south is 163.8 mt in 2015 and 160.2 mt in 2016, which is a 20 percent decrease in 2015, and is a 22 percent decrease in 2016 from the 2014 contribution OFL of 204.6 mt. These estimates are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ applied to the exploitable biomass from the 2013 stock assessment.

China Rockfish

An area-specific, data-moderate stock assessment was prepared for China rockfish in 2013. The STAR Panel focused on the XDB–SRA model for China rockfish. The model estimated China rockfish north of 40°10′ N. lat. to be at 37 percent of unfished spawning biomass, which is below the management target, but above the

MSST. The China rockfish estimate south of 40°10′ N. lat. was estimated to be at 66 percent depletion of unfished spawning biomass, which is above management target. The estimated China rockfish OFL contribution to the Minor Nearshore Rockfish north complex is 7.2 mt in 2015 and 7.4 mt in 2016, which is a decrease of 26.5 percent in 2015 and 24.5 percent in 2016 from the 2014 OFL contribution of 9.8 mt. The estimated China rockfish OFL contribution to the Minor Nearshore Rockfish south complex is 55.2 mt in 2015 and 52.7 mt in 2016, which is a 232.5 percent increase in 2015 and a 217.5 percent increase in 2016 from the 2014 OFL contribution of 16.6 mt. These estimates are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ applied to the exploitable biomass from the 2013 stock assessment.

Copper Rockfish

An area-specific, data-moderate stock assessment was prepared for copper rockfish in 2013. The STAR Panel focused on the XDB–SRA model for copper rockfish. The model estimated copper rockfish north of 34°27′ N. lat. to be at 48 percent of unfished spawning biomass, which is above management target. The copper rockfish estimate south of 34°27′ N. lat. was estimated to be 76 percent depletion of unfished spawning biomass, which is above management target. The estimated copper rockfish contribution OFL to the Minor Nearshore Rockfish north complex is 10.6 mt in 2015 and 10.3 mt in 2016, which is a 59 percent decrease in 2015 and a 60 percent decrease in 2016 from the 2014 contribution OFL of 26 mt. The estimated OFL contribution to the south complex is 301.1 mt in 2015 and 284.3 mt in 2016, which is a 112.7 percent increase in 2015 and a 100.9 percent increase in 2016 from the 2014 OFL contribution of 141.5 mt. These estimates are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ applied to the exploitable biomass from the 2013 stock assessment.

Shelf Complexes North and South of 40°10′ N. lat.

Minor Shelf Rockfish (North of 40°10′ N. lat.)

The proposed OFL for the Minor Shelf Rockfish north complex is 2,209 mt in 2015, and is 2,218 mt in 2016 which is a negligible increase in both years from the 2014 complex OFL of 2,195 mt. In 2015–2016, stocks composing the Minor Shelf Rockfish north complex will remain the same as in 2013–2014. The Minor Shelf Rockfish north complex is comprised of: Bronzespotted rockfish (*S. gilli*), bocaccio (*S. paucispinis*), chameleon rockfish (*S. phillipsi*), chilipepper (*S. goodie*), cowcod (*S. levis*), dusky rockfish (*S. ciliates*), dwarf-red (*S. rufianus*), flag rockfish (*S. rubrivinctus*), freckled rockfish (*S. lentiginosus*), greenblotched rockfish (*S. rosenblatti*), greenspotted rockfish (*S. chlorostictus*), greenstriped rockfish (*S. elongates*), halfbanded rockfish (*S. semicinctus*), harlequin rockfish (*S. variegatus*), honeycomb rockfish (*S. umbrosus*), Mexican rockfish (*S. macdonaldi*), pink rockfish (*S. eos*), pinkrose rockfish (*S. simulator*), pygmy rockfish (*S. wilsoni*), redstripe rockfish (*S. proriger*), rosethorn rockfish (*S. helvomaculatus*), rosy rockfish (*S. rosaceus*), silvergray rockfish (*S. brevispinis*), speckled rockfish (*S. ovalis*), squarespot rockfish (*S. hopkinsi*), starry rockfish (*S. constellatus*), stripetail rockfish (*S. saxicola*), swordspine rockfish (*S. ensifer*), tiger rockfish (*S. nigrocinctus*), and vermilion rockfish (*S. miniatus*).

Minor Shelf Rockfish (South of 40°10′ N. lat.)

The proposed OFL for the Minor Shelf Rockfish south complex is 1,917.9 mt in 2015, and is 1,918.9 mt in 2016, which is a negligible increase in both years from the 2014 complex OFL of 1,912.9 mt. In 2015–2016, stocks composing the Minor Shelf Rockfish south complex will remain the same as in 2013–2014. The Minor Shelf Rockfish south complex is comprised of: Bronzespotted rockfish (*S. gilli*), chameleon rockfish (*S. phillipsi*), dusky rockfish (*S. ciliates*), dwarf-red rockfish (*S. rufianus*), flag rockfish (*S. rubrivinctus*), freckled (*S. lentiginosus*), greenblotched rockfish (*S. rosenblatti*), greenspotted rockfish (*S. chlorostictus*), greenstriped rockfish (*S. elongates*), halfbanded rockfish (*S. semicinctus*), harlequin rockfish (*S. variegatus*), honeycomb rockfish (*S. umbrosus*), Mexican rockfish (*S. macdonaldi*), pink rockfish (*S. eos*), pinkrose rockfish (*S. simulator*), pygmy rockfish (*S. wilsoni*), redstripe rockfish (*S. proriger*), rosethorn rockfish (*S. helvomaculatus*), rosy rockfish (*S. rosaceus*), silvergray rockfish (*S. brevispinis*), speckled rockfish (*S. ovalis*), squarespot rockfish (*S. hopkinsi*), starry rockfish (*S. constellatus*), stripetail rockfish (*S. saxicola*), swordspine rockfish (*S. ensifer*), tiger rockfish (*S. nigrocinctus*), vermilion rockfish (*S. miniatus*), and yellowtail rockfish (*S. flavidus*).

Minor Shelf Rockfish Complex Stocks Assessed in 2013

A new coastwide data-moderate assessment was performed for stripetail rockfish in 2013.

Stripetail Rockfish

Stripetail rockfish was assessed as a coastwide stock. Catches of stripetail rockfish have been negligible since 2000, and the stock has not been previously assessed. The XDB–SRA model was used in a sensitivity analysis to evaluate probable levels of stock status for stripetail rockfish. The STAR Panel noted that stripetail rockfish is rarely caught and appears to be in an essentially unfished state, as indicated by the trawl survey abundance estimates. There is little information in the trawl survey data to estimate catchability, so abundance estimates are extremely uncertain. However, over a broad range of plausible values for trawl survey catchability, stock depletion estimates were relatively consistent, ranging from 75 percent to 95 percent. The STAR Panel recommended that status of stripetail rockfish can be estimated, but that the extreme uncertainty in abundance estimates precludes using assessment results for setting the OFL. With these model limitations considered, stripetail rockfish (coastwide) was estimated to be at 77.5 percent of unfished spawning biomass, which is well above management target. The OFL contribution of stripetail rockfish to the Minor Shelf Rockfish complex OFLSs (north and south of 40°10′ N. lat.) was not able to be estimated using data moderate methods. Therefore, utilizing data-poor DB–SRA methods, the stripetail contribution OFL to the Minor Shelf Rockfish complex north is the same as the 2014 contribution OFL estimates: 40.1 mt in 2015 and 2016. The stripetail contribution OFL to the Minor Shelf Rockfish complex south is the same as the 2014 contribution OFL estimates: 23.6 mt in 2015 and 2016.

Minor Slope Complexes North and South of 40°10′ N. lat.

Minor Slope Rockfish (North of 40°10′ N. lat.)

The proposed OFL for the Minor Slope Rockfish north complex is 1,831 mt in 2015, and is 1,844 mt in 2016, which is roughly a 17 percent increase in 2015 and a 18 percent increase in 2016 from the 2014 northern complex OFL of 1,553 mt. The increase is due to new full assessments for aurora and rougheye/blackspotted rockfish and a data-moderate assessment for sharpchin rockfish conducted in 2013. The Minor

Slope Rockfish north complex is comprised of: Aurora rockfish (*Sebastes aurora*), bank rockfish (*S. rufus*), blackgill rockfish (*S. melanostomus*), blackspotted rockfish (*S. melanostictus*), redbanded rockfish (*S. babcocki*), rougheye rockfish (*S. aleutianus*), sharpchin rockfish (*S. zacentrus*), shortraker rockfish (*S. borealis*), splitnose rockfish (*S. diploproa*), sunset rockfish (*S. crocotulus*) which is a species proposed to be added to the PCGFMP, and yellowmouth rockfish (*S. reedi*).

Minor Slope Rockfish (South of 40°10′ N. lat.)

The proposed OFL for the Minor Slope Rockfish south complex is 813 mt in 2015, and is 814 mt in 2016, which is roughly an 18 percent increase in 2015 and 2016 from the 2014 southern complex OFL of 685 mt. The increase is due to new full assessments for aurora and rougheye/blackspotted rockfish and a data-moderate assessment for sharpchin rockfish conducted in 2013. The Minor Slope Rockfish south complex is comprised of: Aurora rockfish (*Sebastes aurora*), bank rockfish (*S. rufus*), blackgill rockfish (*S. melanostomus*), blackspotted rockfish (*S. melanostictus*), Pacific ocean perch (*S. alutus*), redbanded rockfish (*S. babcocki*), rougheye rockfish (*S. aleutianus*), sharpchin rockfish (*S. zacentrus*), shortraker rockfish (*S. borealis*), sunset rockfish (*S. crocotulus*) which is a species proposed to be added to the PCGFMP, and yellowmouth rockfish (*S. reedi*).

Minor Slope Rockfish Complex Stocks Assessed in 2013

As mentioned above, a new coastwide data-moderate assessment was performed for sharpchin rockfish, and new full coastwide stock assessments for aurora and rougheye/blackspotted rockfish were performed in 2013.

Sharpchin Rockfish

Sharpchin rockfish was assessed as a data-moderate coastwide stock utilizing exSSS in 2013. The coastwide sharpchin rockfish stock was estimated to be 89 percent of unfished spawning biomass, which is well above management target. The proposed sharpchin rockfish OFL contribution to the Minor Slope Rockfish complex north is 332.8 mt in 2015 and 323.2 mt in 2016, which is a 55 percent increase in 2015 and a 50 percent increase in 2016 from the 2014 contribution OFL of 214.5 mt. The proposed sharpchin rockfish OFL contribution to the Minor Slope Rockfish south complex OFL is 83.2 mt in 2015 and 80.8 mt in 2016, which is a roughly 8 percent increase in 2015 and a 5 percent increase in 2016 from the 2014 contribution OFL of 76.4 mt. These estimates are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ applied to the exploitable biomass from the 2013 stock assessment.

Aurora Rockfish

A full coastwide stock assessment was prepared in 2013 for aurora rockfish. The coastwide OFL contributions were apportioned north and south of 40°10′ N. lat. based on the average swept area biomass estimates from the triennial survey. The assessment estimated that the spawning stock biomass at the start of 2013 was 1,673 mt, which is 64 percent of its unfished biomass. The proposed OFL contribution to the Minor Slope Rockfish north complex is 17.4 mt for 2015 and 17.5 mt for 2016, which is a 13 percent increase in 2015, and a 13.6 percent increase in 2016 from the 2014 northern contribution OFL of 15.4 mt. The proposed OFL contribution to the Minor Slope Rockfish south complex is 74.3 mt for 2015 and 2016, which is a 184.6 percent increase from the 2014 contribution OFL of 26.1 mt. These OFL contributions are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2013 stock assessment.

Rougheye/Blackspotted Rockfish

A full coastwide stock assessment was prepared in 2013 for rougheye/blackspotted rockfish off Washington, Oregon, and California. The assessment estimated that the spawning stock biomass at the start of 2013 was 2,552 mt and 47 percent of its unfished biomass. The proposed OFL contribution to the Minor Slope Rockfish north complex is 201.9 mt in 2015 and 206.8 in 2016, which is an increase of 184 percent in 2015 and an increase of 191 percent in 2016 from the 2014 contribution OFL of 71.1 mt. The proposed OFL contribution to the Minor Slope Rockfish south complex is 4.1 mt in 2015 and 4.2 in 2016, which is an increase of 925 percent in 2015, and an increase of 950 percent in 2016 from the 2014 contribution OFL of 0.4 mt. These estimates are based on the F_{MSY} harvest rate proxy of $F_{50\%}$ as applied to the estimated exploitable biomass from the 2013 stock assessment.

Other Flatfish Complex

The Other Flatfish complex contains most of the flatfish species managed in the PCGFMP (with the exception of arrowtooth flounder, Dover sole, English sole, petrale sole, and starry founder). These species include butter sole (*Isopsetta isolepis*), curlfin sole (*Pleuronichthys decurrens*), flathead sole (*Hippoglossoides elassodon*), Pacific sanddab (*Citharichthys sordidus*), rex sole (*Glyptocephalus zachirus*), rock sole (*Lepidopsetta bilineata*), and sand sole (*Psettichthys melanostictus*). The proposed OFL for the Other Flatfish complex is 11,453 mt in 2015 and is 9,645 mt in 2016, an increase of 13 percent in 2015 and a decrease of 4 percent in 2016 from the 2014 OFL of 10,060 mt.

Other Flatfish Complex Stocks Assessed in 2013

A new coastwide data-moderate assessment was performed for rex sole, and a full coastwide stock assessment for Pacific sanddab was performed in 2013.

Rex Sole

Rex sole was assessed as a coastwide resource in 2013. The data-moderate exSSS model was selected for the rex sole stock assessment. The STAR Panel concluded that the base model provides an adequate basis for management, but noted that the inability to fit the NWFSC survey index (as one time series) implies some model mis-specification. There is considerably more confidence in stock status estimates than in the biomass scale. With these model limitations considered, rex sole (coastwide) was estimated to be at 79 percent of unfished spawning biomass, which is well above management target. The proposed OFL contribution to the other flatfish complex of 5,764 mt in 2015 and 3,956 mt in 2016 is a 31 percent increase in 2015 and is a 9.5 percent decrease in 2016 from the 2014 OFL contribution of 4,371.5 mt.

Pacific Sanddab

A full coastwide assessment for Pacific sanddab was conducted in 2013, although it did not result in an estimate of depletion as a measure of stock status. Therefore, utilizing data-poor DB–SRA methods, the Pacific sanddab OFL contribution to the Other Flatfish complex is 4,801 mt in 2015 and 2016, which is from the same as the 2014 OFL contribution.

Other Fish Complex

The Other Fish complex contains other species managed in the PCGFMP and changes to this complex are proposed for the 2015–2016 biennium. The Other Fish complex species are proposed to include cabezon (*Scorpaenichthys marmoratus*) off Washington, kelp greenling (*Hexagrammos decagrammus*) off Washington, Oregon, and California (as three state-specific stocks), and leopard

shark (*Triakis semifasciata*). Of these five stocks, only kelp greenling off California, cabezon off Washington, and leopard shark have OFL contributions to the Other Fish complex. Spiny dogfish, which were managed within the Other Fish complex in 2013–2014, are proposed for management with species-specific specifications in 2015–2016. The other species managed in the Other Fish complex in 2013–2014 are proposed for designation as EC species. No full or data-moderate stock assessments were performed for any of these stocks in 2013. Only Kelp greenling in California, cabezon in Washington, and leopard shark contribute to the Other Fish complex harvest specifications, while kelp greenling in Oregon and Washington do not, though they are still part of the Other Fish complex. The proposed OFL for the Other Fish complex is 286 mt, which is a 4,104 percent reduction from the 2014 OFL of 6,802 mt due to the proposed reorganization of the complex. The kelp greenling OFL contribution (off California) to the Other Fish complex is proposed to be 118.0 mt, which is the same as in 2014. The leopard shark OFL contribution to the Other Fish complex is proposed to be 167.1 mt, which is the same as in 2014. For more information on the designation of ecosystem component species see the ''Amendment 24 to the Pacific Coast Groundfish Fishery Management Plan'' section below.

B. Proposed ABCs for 2015 and 2016

The ABC is the stock or stock complex's OFL reduced by an amount associated with scientific uncertainty. The SSC-recommended P star-Sigma approach determines the amount by which the OFL is reduced to establish the ABC. Under this approach, the SSC recommends a sigma (σ) value. The σ value is generally based on the scientific uncertainty in the biomass estimates generated from stock assessments. After the SSC determines the appropriate σ value the Council chooses a P star (P*) based on its chosen level of risk aversion considering the scientific uncertainties. As the P* value is reduced, the probability of the ABC being greater than the ''true'' OFL becomes lower. In combination, the P* and σ values determine the amount by which the OFL will be reduced to establish the SSC-endorsed ABC.

Since 2011, the SSC has quantified major sources of scientific uncertainty in the estimate of OFL and recommended a σ value of 0.36 for category one stocks, a σ value of 0.72 for category two stocks, and a σ value of 1.44 for category three stocks. For category two and three stocks there is typically greater scientific uncertainty in the estimate of OFL because the stock assessments have less data to inform them. Therefore, the scientific uncertainty buffer is generally greater than that recommended for stocks with quantitative stock assessments. Assuming the same P* is applied, a larger σ value results in a larger reduction from the OFL. For 2015–2016, the Council continued the general policy of using the SSC-recommended σ values for each species category. However, an exception to the general σ values assigned to each category was made for aurora rockfish and widow rockfish, as described below.

The PCGFMP specifies that the upper limit of P* will be 0.45. A P* of 0.5 equates to no additional reduction for scientific uncertainty beyond the sigma value reduction. A lower P* is more risk averse than a higher value, meaning that the probability of the ABC being greater than the ''true'' OFL is lower. For 2015–2016, the Council largely maintained the P* policies it established for the 2011–2012 and 2013–2014 bienniums. The Council recommended using P* values of 0.45 for all category one species, except sablefish, as described below. Combining the category one σ value of 0.36 the P* value of 0.45 results in a reduction of 4.4 percent from the OFL when deriving the ABC. For individually managed category two and three stocks, the Council's general policy was to use a P* of 0.4, although the Council recommended a P* of 0.45 for all of the stocks managed in complexes (except stocks in the Other Flatfish complex). When combined with the σ values of 0.72 and 1.44 for category two and three stocks, a P* value of 0.40 corresponds to 16.7 percent and 30.6 percent reductions, respectively. Specifically, the Council recommended using P* values of 0.40 for all individually managed category two and three species, except cowcod, English sole, lingcod between 42° and 40°10′ N. lat., and yellowtail rockfish 40°10′ N. lat., as described below.

Additional information about the σ values used for different species categories as well as the P* − σ approach can be found in the proposed and final rules from the 2011–2012 biennium (75 FR 67810, November 3, 2010; 76 FR 27508, May 11, 2011) and the 2013–2014 biennium (77 FR 67974, November 14, 2012; 78 FR 580, January 3, 2013). A discussion of the P* values used in combination with the σ values follows. Tables 1a and 2a of this proposed rule present the harvest specifications for each stock and stock complex, including the proposed ABCs, while the footnotes to these tables describe how the proposed specifications where derived. Details can also be found in Chapter 2.1.2 of the DEIS (see Supplementary Information section above).

1. Overfished Species ABCs

Cowcod

The Council recommended revising the P* values in 2015–2016 for cowcod south of 40°10′ N. lat. from those that have been used since 2011. Cowcod is a category 2 stock in the Conception Area and a category 3 stock in the Monterey Area and has had a P* value lower than or equal to 0.40 since 2011 (0.35 in Conception an 0.40 in Monterey for 2011–2012 and 0.40 in both areas in 2013–2014). A new stock assessment was conducted for cowcod in 2013, however the SSC recommended that cowcod remain a category 2 stock in the Conception Area and a category 3 stock in the Monterey Area. Cowcod ACLs are not based on the ABC, but rather on the rebuilding plan; therefore, the change in P* to 0.45 for cowcod will not impact the ACL or rebuilding but will reduce the reduction from the OFL for scientific uncertainty (from an 16.7 percent reduction to an 8.7 percent reduction in the Conception Area and from a 30.6 percent reduction to a 16.6 percent reduction in the Monterey Area). The proposed cowcod ABCs are 59.9 mt and 61.5 mt in 2015 and 2016, respectively.

2. Non-Overfished Species ABCs for Individually Managed Stocks

Several species changed categories in 2015–2016 as a result of updated stock assessments or due to a new assessment or being assessed for the first time. The σ value and P* for these species was updated accordingly when determining the proposed ABCs for 2015–2016, as described below.

English Sole

The species category for English sole was revised for 2015–2016 from a category one to a category two stock. The previous full assessment for English sole (2007) was a category 1 assessment. The SSC recommended the 2013 data-moderate assessments for English sole for use in management as the best available science, and recommended that it be considered a category two stock based on the data-moderate assessment; therefore, the σ value of 0.72 was used. The Council recommended using the same P* value in 2015–2016 for English sole as was used since 2011. Though the stock was downgraded from category one to category two for 2015–2016, the Council recommended a P* of 0.45 because the

stock is healthy (88 percent of its unfished biomass in 2013) and is underutilized (maximum annual catch of English sole from 2009–2012 has been less than 10 percent of the proposed 2015–2016 ABCs). A P* of 0.45 for English sole results in an 8.7 percent reduction from the OFL. The proposed 2015 and 2016 ABCs for English sole are 9,853 mt and 7,204 mt, respectively.

Lingcod

The Council recommended revising the P* values in 2015–2016 for lingcod between 42° and 40°10′ N. lat. from those that have been used since 2011. Lingcod was assessed in 2009 and the SSC recommended that lingcod north of 42° N. lat. be considered a category one stock (σ=0.36) and that lingcod south of 42° N. lat. be considered a category two stock (σ=0.72). Since 2011, the Council recommended P* values corresponding to the category for these two areas: 0.45 north of 42° N. lat. and 0.40 south of 42° N. lat. Since the 2009 assessment, the management line for lingcod shifted from 42° to 40°10′ N. lat. and the harvest specifications were re-apportioned to match the new management line. For 2015–2016, the Council's recommended ABC for lingcod north of 40°10′ N. lat. was calculated using a P* of 0.45 and the ABC south of 40°10′ N. lat. was calculated using a P* of 0.40. Increasing the P* from 0.40 to 0.45 between 42° to 40°10′ N. lat. means a smaller reduction from the OFL for scientific uncertainty. The proposed 2015 and 2016 ABCs for lingcod north of 40°10′ N. lat. are 2,830 mt and 2,719 mt, respectively. The proposed 2015 and 2016 ABCs for lingcod south of 40°10′ N. lat. are 1,004 mt and 946 mt, respectively.

Longspine Thornyhead

The species category for longspine thornyhead was revised for 2015–2016 from a category one to a category two stock. The longspine thornyhead assessment lacks age data and cannot discern year class strength, therefore the SSC recommended longspine thornyhead be considered a category two stock, and the σ value of 0.72 was used. The Council recommended a P* of 0.40 for longspine thornyhead, which results in a 16.7 percent reduction from the OFL for this category two stock. The proposed 2015 and 2016 ABCs for longspine thornyhead are 4,171 mt and 3,968 mt, respectively.

Shortspine Thornyhead

The species category for shortspine thornyhead was revised for 2015–2016 from a category one to a category two stock. The shortspine thornyhead assessment lacks age data and cannot discern year class strength, therefore the SSC recommended shortspine thornyhead be considered a category two stock, and the σ value of 0.72 was used. The Council recommended a P* of 0.40 for shortspine thornyhead, which results in a 16.7 percent reduction from the OFL for this category two stock. The proposed 2015 and 2016 ABCs for shortspine thornyhead are 2,668 mt and 2,640 mt, respectively.

Sablefish

The SSC recommended that sablefish be considered a category 1 stock and recommended the corresponding σ of 0.36. The Council recommended using P* values of 0.45 for all category one species, except sablefish, where the Council recommended continuing use of a more precautionary P* value of 0.40 due to uncertainty in the 2011 assessment. A P* of 0.40 and σ of 0.36 results in an 8.7 percent reduction from the OFL for this category one stock. The proposed 2015 and 2016 ABCs for sablefish, coastwide, are 7,173 mt and 7,784 mt, respectively.

Spiny Dogfish

Spiny dogfish are proposed to be managed with species-specific harvest specifications for the first time in 2015–2016. The Council recommended revising the P* value in 2015–2016 for spiny dogfish from 0.30 to 0.40. For 2013–2014 the Council recommended a precautionary reduction in the P* value greater than for other category 2 stocks because of uncertain catch history of the stock, which are largely discarded in west coast fisheries, and due to the indication in the stock assessment that the F_{MSY} harvest rate proxy of $F_{45\%}$ may be too aggressive; the more conservative P* value of 0.30 was used to calculate the ABC contribution of spiny dogfish to the other fish complex ABC (77 FR 67974, November 14, 2012). There has been no new assessment or assessment update for 2015–2016 and spiny dogfish remains a healthy category two stock. However, since the 2011 assessment and decisions on the 2013–2014 harvest specifications, the SSC has completed a meta-analysis of elasmobranch F_{MSY} harvest rates. Given this work, the Council recommended a P* of 0.40 to reflect the improvements in understanding of F_{MSY}, but did not recommend a P* of 0.45 as the stock is considered a category two stock. The P* of 0.40 and σ of 0.72 results in a 16.7 percent reduction from the OFL. The 2015 and 2016 ABCs for spiny dogfish are 2,101 mt and 2,085 mt, respectively.

Widow Rockfish

As in 2013 and 2014 for widow rockfish, the SSC recommended a larger σ value of 0.41 rather than the 0.36 that would typically be used for category one stocks to better represent uncertainty in stock-recruit steepness, which is considered the major source of uncertainty in the widow rockfish assessment. The Council recommended a P* of 0.45, resulting in a 5 percent reduction from the OFL for this category one stock. The 2015 and 2016 ABCs for widow rockfish are 3,929 mt and 3,790 mt, respectively.

Yellowtail Rockfish North of 40°10′ N. Lat.

The species category for yellowtail rockfish north of 40°10′ N. lat. was revised for 2015–2016 from a category one to a category two stock. The previous full assessment for yellowtail rockfish (2004) was a category 1 assessment. The SSC recommended use of the 2013 data-moderate assessments for yellowtail rockfish north of 40°10′ N. lat. for use in management as the best available science, and recommended that it be considered a category two stock based on the data-moderate assessments; therefore, the σ value of 0.72 was used. The Council recommended using the same P* value in 2015–2016 for yellowtail rockfish north of 40°10′ N. lat. as was used since 2011. Though the stock was downgraded from category one to category two for 2015–2016, the Council recommended a P* of 0.45 because the stock is healthy (69 percent of its unfished biomass in 2013) and is underutilized (maximum annual catch of yellowtail rockfish from 2009–2012 has been less than 20 percent of the proposed 2015–2016 ABC). A P* of 0.45 for yellowtail rockfish north of 40°10′ N. lat. results in an 8.7 percent reduction from the OFL. The proposed 2015 and 2016 ABCs for yellowtail rockfish north of 40°10′ N. lat. are 6,590 mt and 6,344 mt, respectively.

3. Stock Complex ABCs

Similar to the past two biennial cycles, the Council applied the two-step σ and P* approach for stocks managed in stock complexes. For each of the stock complexes, the component species ABC contributions were calculated and summed to derive the complex ABC. The Council's SSC categorized and applied the appropriate σ value for individual stocks managed in stock complexes. For all stocks managed in complexes, except aurora rockfish, the SSC-recommended sigma values are assigned to species category. The

Council recommended a P* of 0.45 for all of the stocks managed in complexes, except stocks in the Other Flatfish complex, as described below.

Minor Rockfish Complexes

For the six minor rockfish complexes, which are comprised of a mix of all three categories of stocks, the Council recommended a P* of 0.45. ABCs for the six minor rockfish complexes can be found in Table 1a and 2a to Subpart C.

Minor Nearshore Rockfish Complexes North and South of 40°10′ N. Lat.

For all stocks managed in the Minor Nearshore Rockfish complex the SSC-recommended sigma values by species category. Because of new stock assessments the species categories for brown rockfish, China rockfish, and copper rockfish were revised for 2015–2016 from category three stocks to category two stocks. Accordingly, the σ values of 0.72 were used for those species.

For the Minor Nearshore Rockfish complex north of 40°10′ N. lat., a complex ABC of 77 mt is proposed for each year in 2015 and 2016. The proposed ABC for the Minor Nearshore Rockfish south of 40°10′ N. lat. in 2015, is 1,169 mt, while in 2016 the ABC is proposed to be 1,148 mt. The 2015 and 2016 complex ABCs are the summed contributions of the component stocks' ABCs.

Minor Shelf Rockfish Complexes North and South of 40°10′ N. Lat.

For all stocks managed in the Minor Shelf Rockfish complex the SSC-recommended sigma values by species category.

For Minor Shelf Rockfish north of 40°10′ N. lat., the proposed 2015 ABC is 1,944 mt, and the proposed 2016 ABC is 1,953 mt. For Minor Shelf Rockfish south of 40°10′ N. lat., the proposed ABC is 1,625 mt, and the proposed 2016 ABC is 1,626 mt. As with the other stock complexes the 2015 and 2016 ABCs are the summed contributions of the component stocks' ABCs.

Minor Slope Complexes North and South of 40°10′ N. Lat.

For all stocks managed in the Minor Slope Rockfish complex, except aurora rockfish, the SSC-recommended sigma values are assigned by species category. As a result of a new stock assessment the species category for aurora rockfish was revised for 2015–2016 from category three to category one. For aurora rockfish, the SSC recommended a larger σ value of 0.39, rather than the 0.36 that would typically be used for category one stocks, to better represent uncertainty in the estimated spawning biomass caused by sensitivity to the natural mortality rates, which are considered the major source of uncertainty in the aurora rockfish assessment. As a result of new stock assessments, the species categories for rougheye/blackspotted rockfish and sharpchin rockfish were revised for 2015–2016 from category three stocks to category two stocks. Accordingly, the σ values of 0.72 were used.

For Minor slope rockfish north of 40°10′ N. lat., the proposed 2015 ABC is 1,693 mt and the proposed 2016 ABC is 1,706 mt. For Minor slope rockfish south of 40°10′ N. lat., the proposed 2015 ABC is 705 mt and the proposed 2016 ABC is 705 mt.

Other Flatfish Complex

For the Other Flatfish complex, which is comprised mostly of category three stocks (rex sole is category two), a more precautionary P* of 0.40 was recommended. A σ of 0.72 was used for rex sole and a σ of 1.44 was used for all other stocks. The 2015 and 2016 ABCs for the Other Flatfish complex are 8,749 mt and 7,243 mt, respectively.

Other Fish Complex

For the newly reconfigured Other Fish complex (as described in ''Stock Complex OFLs'' for the ''Other Fish Complex'' above and in ''Stock Complexes'' below), which is composed entirely of category three stocks, a P* value of 0.45 was recommended. With the proposed reconfiguration, the species that would remain in the Other Fish complex have more similar life history characteristics, depth distributions, and vulnerabilities to potential overfishing than the Other Fish complex as it was configured in 2014. This reduces the risk of overfishing for species that remain in the Other Fish complex, as some of the stocks that were removed would have inflated the complex-level harvest specifications. While a higher P* was chosen than is usual for category three stocks, the ABC for the newly reconfigured complex was further reduced by the Council's recommendation to only include the contributing OFL/ABC for some of the species for calculating the harvest specifications for the Other Fish complex. Kelp greenling in California, cabezon in Washington, and leopard shark contribute to the complex harvest specifications, while kelp greenling in Oregon and Washington do not, though they are still part of the Other Fish complex. A P* of 0.45 for these category three stocks results in a 16.7 percent reduction from the OFL. The 2015 and 2016 ABCs for the Other Fish complex are 242 mt and 243 mt, respectively.

C. Proposed ACLs for 2015 and 2016

ACLs are specified for each stock and stock complex that is ''in the fishery''. An ACL is a harvest specification set equal to or below the ABC to address conservation objectives, socioeconomic concerns, management uncertainty, or other factors necessary to meet management objectives. All sources of fishing related mortality (tribal, commercial groundfish and non groundfish, recreational, and exempted fishing permits (EFPs)), including retained and discard mortality, plus research catch are counted against an ACL. The ACL serves as the basis for invoking accountability measures (AMs). If ACLs are exceeded more than one time in four years, then improvements to or additional AMs, for example catch monitoring and inseason adjustments to fisheries, may need to be implemented.

Under the PCGFMP harvest policies, when a stock's depletion level falls below B_{MSY} or the proxy for B_{MSY}, which is the biomass level that produces MSY ($B_{25\%}$ for assessed flatfish, $B_{40\%}$ for all other groundfish stocks), but is above the overfished level (MSST- $B_{12.5\%}$ for assessed flatfish, $B_{25\%}$ for all other groundfish stocks), the stock is said to be in the ''precautionary zone'' or below the precautionary threshold. In general, when recommending ACLs, the Council follows a risk-averse policy by recommending an ACL that is below the ABC when there is a perception the stock is below its B_{MSY}, or to accommodate management uncertainty, socioeconomic concerns, or other considerations. When a stock is below the precautionary threshold the harvest policies reduce the fishing mortality rate. The further the stock biomass is below the precautionary threshold, the greater the reduction in ACL relative to the ABC, until at $B_{10\%}$ for a stock with a B_{MSY} proxy of $B_{40\%}$ or $B_{5\%}$ for a stock with a B_{MSY} proxy of $B_{25\%}$, the ACL would be set at zero. These policies, known as the 40–10 and 25–5 harvest control rules, respectively, are designed to prevent stocks from becoming overfished and serve as an interim rebuilding policy for stocks that are below the overfished threshold. For stock complexes, the ACL is set for the complex in its entirety and is less than or equal to the sum of the individual component ABCs. The ACL may be adjusted below the sum of component ABCs to address the factors described above. Under the PCGFMP, the Council may recommend setting the ACL at a

different level than what the these harvest control rules specify as long as the ACL does not exceed the ABC and complies with the requirements of the MSA. For many of the species or stock complexes ''in the fishery'', there is no new information to inform changes to harvest policies, or the Council did not identify a need for a change in policy from updated information. Therefore, for those species or stock complexes the Council chose to maintain the ACL policies from the previous biennial cycle. A summary table of the proposed ACL policies for 2015–2016 is presented below. The following sections discuss proposed ACLs for overfished species, healthy and precautionary zone species, and stock complexes.

1. Overfished Species ACLs

When a stock has been declared overfished a rebuilding plan must be developed and the ACLs for these stocks are therefore set according to the rebuilding plans. The following seven overfished groundfish stocks would be managed under rebuilding plans in 2015–2016: bocaccio south of 40°10′ N. lat.; canary rockfish; cowcod south of 40°10′ N. lat.; darkblotched rockfish, Pacific Ocean Perch (POP), petrale sole, and yelloweye rockfish. The proposed rules for the 2011–2012 (75 FR 67810), 2013–2014 (77 FR 67974) harvest specifications, and management measures contain extensive discussions on the management approach used for overfished species, which are not repeated here. Further, the SAFE document posted on the Council's Web site at *http://www.pcouncil.org/groundfish/safe-documents/* contains a detailed description of each overfished species, its status and management as well how rebuilding analyses are conducted. Finally, appendix F to the FMP contains the most recent rebuilding plan parameters as well as a history of each overfished species and can be found at *http://www.pcouncil.org/groundfish/fishery-management-plan/*.

The proposed SPR or harvest control rule for each stock managed under a rebuilding plan, the resulting ACLs, and summarized information about rebuilding progress are presented below. Detailed information is also available in the relevant stock assessments, stock assessment updates, rebuilding analyses, and the draft EIS for this action, which are all available from NMFS and the Pacific Fishery Management Council (See **SUPPLEMENTARY INFORMATION**).

Bocaccio

The 2011 rebuilding analysis indicated that bocaccio is showing steady progress towards a rebuilt status under the current rebuilding plan described in 50 CFR 660.40(a). This progress was confirmed by the 2011 update to the rebuilding analysis and the 2013 update. The updated assessment predicted the stock would be rebuilt in 2015. However, the SSC recommended maintaining the rebuilding plan for the 2015–2016 biennium until a full stock assessment can confirm that the stock is rebuilt.

When an SPR harvest rate of 77.7 percent from the current rebuilding plan is applied to the biomass estimate from the 2013 assessment update, it results in the proposed ACLs of 349 mt in 2015 and 362 mt in 2016. Because rebuilding progress is considered adequate, and the 2011 assessment update supports our fundamental understanding of the stock, the Council's recommendation was to maintain the rebuilding plan currently in the FMP and 50 CFR 660.40(a) (*i.e.,* no modifications to T_{TARGET} or SPR harvest rate).

Canary Rockfish

Due to progress on rebuilding and no changes in our understanding of the biology of the stock, the SSC did not recommended preparing a new canary rockfish rebuilding analysis in 2013. A catch report was drafted for canary that showed the 2010–2012 total catches were below the canary rockfish ACL. The Council recommended maintaining the canary rockfish rebuilding plan.

The Council's recommended ACLs are 122 mt in 2015 and 125 mt in 2016, which maintains the current SPR harvest rate of 88.7. The preferred ACLs are intended to provide a level of harvest that rebuilds quickly, yet takes into account the needs of fishing communities. Also, the proposed management measures and catch allocations are projected to result in canary rockfish total catch mortality less than the annual ACLs. Managing the fishery to a level that is less than the annual ACLs is intended to ensure total mortality stays below the ACL, to allow the stock to rebuild faster, and to reduce the likelihood that inseason management changes will be needed to ensure that ACLs are not exceeded. Because the rebuilding progress was considered adequate, no changes to the rebuilding plan are proposed.

Cowcod

Modifications are necessary to the cowcod rebuilding plan because the 2013 rebuilding analysis showed that the estimated T_{MAX} is nine years earlier than the current T_{TARGET}. The Council's recommendation was to maintain the current harvest rate but modify the T_{TARGET} as well as implement an Annual Catch Target (ACT) below the ACL. A full assessment and rebuilding analysis was conducted for cowcod. Because the model used in the assessment (XDB–SRA) is incompatible with spawning potential ratios, harvest control rules were translated into exploitation rates. The 10 mt ACLs proposed for 2015 and 2016 are based on an exploitation rate (catch over age 11+ biomass of 0.007) translated into an equivalent SPR harvest rate of 82.7 percent which results in a median time to rebuild and proposed new T_{TARGET} of 2020. No other rebuilding plan parameter changes were recommended. The 4 mt ACTs proposed for 2015 and 2016 were recommended to accommodate extra mortality in research, which is a large source of uncertainty for cowcod because of the lack of data from the core habitat areas. The ACL contribution for the area north of Point Conception was calculated by using the fishing mortality rate from south of Point Conception applied to the biomass estimate for north of Point Conception from DB–SRA. The SSC recommended this method over the previous method of simply doubling the ACL from south of Pt Conception to calculate the ACL for the entire area because it is more scientifically justified.

Darkblotched Rockfish

The 2013 assessment indicates that darkblotched rockfish is showing steady progress towards rebuilding under the current rebuilding plan (50 CFR 660.40(d)) and is estimated to be rebuilt by the start of 2015. The SSC recommended maintaining the rebuilding plan for the 2015–2016 biennium until a full assessment can be done in 2015 to confirm this result. Because the stock is estimated to be rebuilt in 2015 no new rebuilding analysis was conducted. The proposed ACLs of 338 mt in 2015 and 346 mt in 2016 result from application of the SPR harvest rate of 64.9 percent to information from the 2013 stock assessment, and have a median time to rebuild of 2017, which is one year longer than $T_{F=0}$. Because the rebuilding progress indicated in the 2011 assessment and rebuilding analysis was considered adequate, and supports our fundamental understanding of the stock, the Council recommendation was to maintain the rebuilding plan currently in the FMP and regulation (*i.e.,* no

modifications to T_{TARGET} or SPR harvest rate).

Petrale Sole

The 2013 stock assessment and rebuilding analysis projected the petrale sole biomass to be at 22 percent of its unfished biomass and showing strong progress towards rebuilt status. The stock is predicted to be rebuilt by the start of 2014. The ACLs, derived by applying the 25–5 harvest control rule, proposed in this rule are 2,816 mt and 2,910 mt in 2015 and 2016, respectively. The ACLs derived from the 25–5 harvest control rule are projected to rebuild the stock by 2014, the same year as $T_{F=0}$. Because the rebuilding progress was considered adequate, and the 2013 assessment supports our fundamental understanding of the stock, the Council recommendation was to maintain the rebuilding plan currently in the PCGFMP and at § 660.40(f) (*i.e.,* no modifications to T_{TARGET} or harvest control rule).

POP

No new rebuilding analysis was conducted for POP. A catch reported was provided in 2013 that indicated 2010–2012 catches were below the ACL.

The Council has recommended maintaining the rebuilding strategy in the current rebuilding plan, with an SPR harvest rate of 86.4 percent, resulting in ACLs of 158 mt in 2015 and 164 mt in 2015. The proposed management measures and catch allocations for 2015–2016 are projected to result in POP total catch mortality less than the annual ACLs. Managing the fishery to a level that is less than the annual ACLs is intended to help ensure total mortality stays below the ACL, to allow the stock to rebuild faster, and to reduce the likelihood that inseason management changes will be needed to keep mortality within the ACL. The ACL for POP has the greatest effect on the northern trawl fishery (both the at-sea Pacific whiting sectors and the Shorebased IFQ Program).

Yelloweye Rockfish

No new rebuilding analysis was conducted for yelloweye rockfish. The 2011 rebuilding analysis was used to inform the rebuilding projections for the 2015–2016 biennium. The 2011 rebuilding analysis indicated that yelloweye rockfish is showing steady progress towards rebuilt status under the current rebuilding plan. The rebuilding analysis estimates that yelloweye rockfish will rebuild to B_{MSY} seven years earlier than the T_{TARGET} of 2074 specified in the current rebuilding plan if the existing harvest control rule (SPR=76.0 percent) remains in place. The proposed ACLs of 18 mt in 2015 and 19 mt in 2016 results from applying an SPR harvest rate of 76.0 percent to current biomass. Because rebuilding progress was considered adequate, and the 2011 assessment supports our fundamental understanding of the stock, the Council recommended maintaining the rebuilding plan currently in the PCGFMP and specified at § 660.40 (*i.e.,* no modifications to T_{TARGET} or SPR harvest rate).

2. Non-Overfished Species ACLs for Individually Managed Stocks

For the following individually managed species the Council maintained the ACL policy from the last biennium to establish the 2015–2016 ACLs: arrowtooth flounder, black rockfish (WA, and OR-CA), cabezon (OR, CA), California scorpionfish, chilipepper south of 40°10′ N. lat., lingcod south of 40°10′ N. lat., longnose skate, Pacific cod, sablefish, splitnose south of 40°10′ N. lat., and starry flounder.

The Council considered new policies or information relative to the ACLs for the following healthy and precautionary zone species: Dover sole, English sole, lingcod south of 40°10′ N. lat. (specifically between 42° N. lat. and 40°10′ N. lat.), longspine thornyhead, shortbelly, shortspine thornyhead, spiny dogfish, widow rockfish, and yellowtail rockfish north of 40°10′ N. lat.

Dover Sole

A Dover sole assessment was done in 2011, which indicated the stock was healthy with a 2011 spawning stock biomass depletion of 83.7 percent of unfished biomass. Rather than set the ACLs equal to the ABCs of 63,929 mt in 2015 and 56,615 mt in 2016, the proposed 2015 and 2016 ACLs maintain a strategy of setting a constant catch level below the ABC. Two ACL alternatives were considered for 2015–2016: 25,000 mt and 50,000 mt. The Council recommended ACLs of 50,000 mt for 2015 and 2016. The stock is projected to remain healthy while accommodating the current level of catch. Higher sablefish ACLs are proposed for 2015 and 2016 and, given that the trawl sablefish allocation can dictate the amount of Dover sole that can be accessed in the IFQ fishery, the Council recommended higher Dover sole ACLs. Additionally, the Council noted that most of the Dover sole catch is from the IFQ fishery, where stringent monitoring is in place to prevent exceeding the ACL.

English Sole

A new data-moderate English sole assessment was done in 2013, which indicated the stock was healthy with a 2013 spawning stock at 88 percent of its unfished biomass. The Council recommended the ACL be set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. The proposed 2015 and 2016 ACLs are 9,853 mt and 7,204 mt, respectively. Since the ACL is set equal to the ABC, proposed changes to how the English sole ABC is calculated, affect a change to the ACL policy. Proposed ABC calculations for English sole are describe above in ''Non-overfished species ABCs for individually managed stocks''.

Lingcod

Lingcod are distributed coastwide with harvest specifications based on two area stock assessments that were conducted in 2009 for the areas north and south of the California-Oregon border at 42° N. lat. The stock assessments indicate west coast lingcod stocks are healthy with the stock depletion estimated for lingcod off Washington and Oregon to be at 62 percent of its unfished biomass, and lingcod off California estimated to be at 74 percent of its unfished biomass at the start of 2009. As in 2013–2014, the lingcod ACLs for 2015–2016 are being proposed for the areas north and south of the current 40°10′ N. lat. management line rather than north and south of the California-Oregon border (42° N. lat.), which is where the stock assessment splits the stocks. The adjusted specifications for lingcod were based on the NMFS Northwest Fisheries Science Center trawl survey. The swept area biomass estimates calculated annually (2003–2010) in the NMFS Northwest Fisheries Science Center trawl survey indicated that 48 percent of the lingcod biomass for the stock south of 42° N. lat. occurred between 40°10′ N. lat. and 42° N. lat., and the specifications were adjusted accordingly. Because the stock in both areas is above its target biomass of $B_{40\%}$ the proposed 2015 and 2016 lingcod ACLs are set equal to the ABCs of 2,830 mt in 2015 and 2,719 mt in 2016 for the stock north of 40°10′ N. lat. and 1,004 mt in 2015 and 946 mt in 2016 for the stock south of 40°10′ N. lat. Since the ACLs are set equal to the ABCs, proposed changes to how the lingcod ABCs are calculated affect a change to the ACL policy. Proposed ABC calculations for lingcod are describe above in ''Non-overfished species ABCs for individually managed stocks''.

Longspine Thornyhead

A new, full longspine thornyhead assessment was done in 2013 that indicated the stock was healthy with a 2013 spawning stock at 75 percent of its unfished biomass. The Council revised its ACL policy for longspine thornyhead and recommended the ACL be set equal to the ABC, but is recommending maintaining the Conception area management line at 34°27′ N. lat. because the stock is above its target biomass of $B_{40\%}$ and because ten more years of survey data were used to inform the new 2013 assessment.

Until 2013, the most recent stock assessment for longspine thornyhead was conducted in 2005. The ACL policy for longspine thornyhead in the last cycle took an additional precautionary adjustment (25 percent reduction north of 34°27′ N. lat. and 50 percent reduction south of 34°27′ N. lat.) to reduce the ACLs from the OFLs. This reduction was intended to address concerns that there was a limited amount of fishery independent data used to inform the 2005 assessment, particularly in the Conception area. For the 2005 assessment, the NWFSC combination shelf-slope survey had just begun in its current configuration, so the data from 2003–2004 were used. The NWFSC combination shelf-slope survey now has ten years of observations (2003–2012) incorporated into the 2013 assessments for longspine thornyhead.

As in previous cycles, the Council recommended apportioning the coastwide longspine thornyhead ACLs north and south of 34°27′ N. lat. based on the portion of the biomass estimated to occur north of Point Conception. Apportionment was based on the relative swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. The Council recommended longspine thornyhead ACLs of 3,170 mt north of 34°27′ N. lat. and 1,001 mt south of 34°27′ N. lat. for 2015 and 3,015 mt north of 34°27′ N. lat. and 952 mt south of 34°27′ N. lat. for 2016. These ACLs are set equal to the ABC and then apportioned north and south of south of 34°27′ N. lat.; 76 percent to the north and 24 percent to the south.

Shortspine Thornyhead

A new, full shortspine thornyhead assessment was done in 2013 that indicated the stock was healthy with a 2013 spawning stock at 74 percent of its unfished biomass. The Council revised its ACL policy for shortspine thornyhead and recommended the ACL be set equal to the ABC, but is recommending maintaining the Conception area management line at 34°27′ N. lat. because the stock is above its target biomass of $B_{40\%}$ and because ten more years of survey data were used to inform the new 2013 assessment (see longspine thornyhead discussion above).

Until 2013, the most recent stock assessment for these two stocks was conducted in 2005. The ACL policy for shortspine thornyhead in the last cycle took an additional precautionary adjustment (50 percent reduction south of 34°27′ N. lat.) to reduce the ACL from the OFL to address concerns that there was a limited amount of fishery independent data used to inform the 2005 assessment, particularly in the Conception area.

As in previous cycles, the Council recommended apportioning the coastwide ACL north and south of 34°27′ N. lat. based on the portion of the biomass estimated to occur north of Point Conception. Apportionment was based on the relative swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. The Council recommended shortspine thornyhead ACLs of 1,745 mt north of 34°27′ N. lat. and 923 mt south of 34°27′ N. lat. for 2015 and 1,726 mt north of 34°27′ N. lat. and 913 mt south of 34°27′ N. lat. for 2016. These ACLs are set equal to the ABC and then apportioned north and south of south of 34°27′ N. lat.; 65 percent to the north and 35 percent to the south.

Shortbelly

A non-quantitative assessment was done in 2007 for shortbelly. Although the assessment does not fully satisfy the Council's terms of reference for groundfish stock assessments, the SSC endorsed the assessment for management purposes. A full discussion of the 2007 assessment and its results is available in the proposed rule for the 2009–2010 biennium (73 FR 80516, December 31, 2008). Beginning in 2009 and continuing in 2015–2016, the Council recommended a constant catch strategy for shortbelly rockfish where the ACL is set well below the ABC since the stock is unexploited and to protect the stock's importance as a forage species in the California current ecosystem. The Council considered two alternative ACLs for 2015–2016: The first alternative maintains the 2014 ACL of 50 mt; and the second increases the ACL to 500 mt. The shortbelly rockfish stock would be expected to increase in abundance under both alternative ACLs. Due to ACL increases for widow rockfish and yellowtail rockfish north of 40°10′ N. lat., the Council recommended a shortbelly ACL of 500 mt to accommodate incidental catch when fishing for these co-occurring healthy stocks, while maintaining the large precautionary reduction in the ACL from the ABC for shortbelly.

Spiny Dogfish

Spiny dogfish was assessed for the first time in 2011. The 2011 assessment indicated that the spiny dogfish stock was healthy with an estimated spawning biomass at 63 percent of its unfished biomass. In 2013–2014 spiny dogfish was managed within the Other Fish complex and did not have species-specific harvest specifications; the 2011 assessment was used to calculate the contribution of spiny dogfish biomass to the Other Fish complex and the sum of the contributing ABCs for stocks in the complex was equal to the ACL for the Other Fish complex. Beginning in 2015, the Council recommended revising the species composition of the Other Fish complex and recommended removing spiny dogfish from the complex to manage it with species-specific harvest specifications. The Council recommended setting the ACL equal to the ABC, as the stock is above its target biomass of $B_{40\%}$. The proposed spiny dogfish ACLs are 2,101 mt in 2015 and 2,085 mt in 2016.

Widow Rockfish

Widow rockfish was assessed in 2011 and indicated the spawning stock biomass was at 51 percent of its unfished biomass at the start of 2011. As the stock status was above the rebuilding threshold, beginning in 2013 and 2014, widow rockfish was managed as a healthy stock. Although the base model is considered to be the best available science, there was considerable uncertainty regarding the new stock assessment's findings. As in 2013–2014, the Council took this into consideration when making the ACL recommendations for 2015–2016. Three ACL alternatives were considered for widow rockfish, all of which maintained a constant catch strategy where the ACL is set below the ABC: 1,500 mt, 2,000 mt, 3,000 mt. For 2015–2016, the Council recommended ACLs of 2,000 mt to accommodate increased opportunity in the Shorebased IFQ Program and the at-sea Pacific whiting fisheries while keeping the spawning stock biomass above the target $B_{40\%}$ level for the next 10 years according to the base model. The ACL of 2,000 mt maintains the strategy for more precautionary ACLs for widow rockfish, compared to the general policy of setting the ACL equal to the ABC for healthy stocks (ABC of 3,929 mt in 2015 and 3,790 mt in 2016). The Council

recommended a precautionary ACL given the uncertainty in the stock's estimated biomass, relative productivity, and other aspects of the stock's dynamics.

Yellowtail Rockfish North of 40°10′ N. Lat.

A new data-moderate yellowtail rockfish assessment was done in 2013 for the portion of the stock north of 40°10′ N. lat. The new assessment indicated the stock was healthy with a 2013 spawning stock at 69 percent of its unfished biomass. The Council recommended the ACL be set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. The proposed 2015 and 2016 ACLs are 6,590 mt and 6,344 mt, respectively. Since the ACL is set equal to the ABC, proposed changes to how the yellowtail rockfish north of 40°10′ N. lat. ABC is calculated, affect a change to the ACL policy. Proposed ABC calculations for yellowtail rockfish north of 40°10′ N. lat. are described above in ''Non-Overfished Species ABCs for Individually Managed Stocks''.

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Table 1. Summary of ACL Policies for Overfished Species and Non-Overfished Species that are Individually Managed.

	2014 ACL (mt)	2014 Policy	2015 ACL (mt)	2016 ACL (mt)	2015-2016 Policy	Summary of Policy Change
BOCACCIO S. of 40°10' N. lat.	337	SPR = 77.7%	349	362	SPR = 77.7%	New 2013 assessment. No change in policy.
CANARY ROCKFISH	119	SPR = 88.7%	122	125	SPR = 88.7%	No change.
COWCOD S. of 40°10' N. lat.	3	SPR = 82.7%	10	10	SPR = 82.7% (F = 0.007); ACT = 4 mt	Same SPR harvest rate (translated into an exploitation rate) and new Ttarget in the new rebuilding plan; ACT of 4 mt
DARKBLOTCHED ROCKFISH	330	SPR = 64.9%	338	346	SPR = 64.9%	New 2013 assessment. No change in policy.
PACIFIC OCEAN PERCH	153	SPR = 86.4%	158	164	SPR = 86.4%	No change.
PETRALE SOLE	2,652	ACL = ABC (P* = 0.45)	2,816	2,910	25-5 rule applied to the ABC (P* = 0.45)	New 2013 assessment. Method for calculating the ACL changed but does not represent a change in policy: harvest policy is associated with the stock status (e.g. stock falls below 25% BMSY and so the flatfish 25-5 rule is applied and the ACL is no longer equal to the ABC)
YELLOWEYE ROCKFISH	18	SPR = 76.0%	18	19	SPR = 76.0%	No change.
Arrowtooth flounder	5,758	ACL = ABC (P* = 0.40)	5,497	5,328	ACL = ABC (P* = 0.40)	No change.
Black rockfish (OR-CA)	1,000	Constant catch strategy	1,000	1,000	Constant catch strategy	No change.
Black rockfish (WA)	409	ACL = ABC (P* = 0.45)	402	404	ACL = ABC (P* = 0.45)	No change.
Cabezon (CA)	158	ACL = ABC (P* = 0.45)	154	151	ACL = ABC (P* = 0.45)	No change.
Cabezon (OR)	47	ACL = ABC (P* = 0.45)	47	47	ACL = ABC (P* = 0.45)	No change.
California scorpionfish	117	ACL = ABC (P* = 0.45)	114	111	ACL = ABC (P* = 0.45)	No change.
Chilipepper S. of 40°10' N. lat.	1,647	ACL = ABC (P* = 0.45)	1,628	1,619	ACL = ABC (P* = 0.45)	No change.
Dover sole	25,000	Constant catch strategy; ACL = 25,000 mt	50,000	50,000	Constant catch strategy; ACL = 50,000 mt	Same strategy of setting a constant catch level below the ABC; increased the ACL
English sole	5,646	ACL = ABC (P* = 0.45)	9,853 [a/]	7,204 [a/]	ACL = ABC (P* = 0.45)	New 2013 assessment downgraded to Cat 2 species, so keeping the P* of 0.45 is a change in policy.
Lingcod N. of 40°10' N. lat.	2,878	ACL = ABC (P* = 0.45 N. of 42°; P* = 0.40 between 42° N. lat. and 40°10' N. lat.)	2,830	2,719	ACL = ABC (P* = 0.45)	Chose a less conservative P* between 42° N. lat. and 40°10' N. lat.
Lingcod S. of 40°10' N. lat.	1,063	ACL = ABC (P* = 0.4)	1,004	946	ACL = ABC (P* = 0.4)	No change.
Longnose skate	2,000	Constant catch strategy	2,000	2,000	Constant catch strategy	No change.
Longspine thornyhead N. of 34°27' N. lat.	1,958	ACL = 79% of coastwide OFL, then reduced by 25%	3,170	3,015	ACL = 76% of coastwide ABC (P* = 0.40)	New 2013 assessment. Change to set ACL = ABC; maintained same P* = 0.40 based on category 2 stock
Longspine thornyhead S. of 34°27' N. lat.	347	ACL = 21% of coastwide OFL, then reduced by 50%	1,001	952	ACL = 24% of coastwide ABC (P* = 0.40)	New 2013 assessment. Change to set ACL = ABC; maintained same P* = 0.40 based on category 2 stock
Pacific Cod	1,600	ACL = 50% of OFL	1,600	1,600	ACL = 50% of OFL	No change.

a/ 2015-2016 harvest specifications for this species, including ACLs, were corrected at the November 2014 meeting of the PFMC and are reflected in the ACLs shown here.

Table 1. Summary of ACL Policies for Overfished Species and Non-Overfished Species that are Individually Managed. (cont'd)

	2014 ACL (mt)	2014 Policy	2015 ACL (mt)	2016 ACL (mt)	2015-2016 Policy	Summary of Policy Change
Sablefish N. of 36° N. lat.	4,349	40-10 rule applied to 73.6% of coastwide ABC (P* = 0.40)	4,793	5,241	40-10 rule applied to 73.6% of coastwide ABC (P* = 0.40)	No change.
Sablefish S. of 36° N. lat.	1,560	40-10 rule applied to 26.4% of coastwide ABC (P* = 0.40)	1,719	1,880	40-10 rule applied to 26.4% of coastwide ABC (P* = 0.40)	No change.
Shortbelly	50	Constant catch strategy; ACL = 50 mt	500	500	Constant catch strategy; ACL = 500 mt	Same strategy of setting a constant catch level below the ABC; increased the ACL but is still below the ABC.
Shortspine thornyhead N. of 34°27' N. lat.	1,525	ACL = 66% of coastwide OFL	1,745	1,726	ACL = 65.4% of coastwide ABC (P* = 0.40)	New 2013 assessment. Change to set ACL = ABC. P* based on the category of the stock and the ACL is apportioned based on stock assessment.
Shortspine thornyhead S. of 34°27' N. lat.	397	ACL = 34% of coastwide OFL, then reduced by 50%	923	913	ACL = 34.6% of coastwide ABC (P* = 0.40)	New 2013 assessment. Method for calculating the ACL changed: P* based on the category of the stock and the ACL is apportioned based on stock assessment.
Spiny dogfish	NA	See "Other Fish" complex (ACL = ABC, P* = 0.30)	2,101	2,085	ACL = ABC (P* = 0.40)	First time with a species-specific ACL; ACL = ABC but a higher P* was chosen.
Splitnose S. of 40°10' N. lat.	1,670	ACL = ABC (P* = 0.45)	1,715	1,746	ACL = ABC (P* = 0.45)	No change.
Starry flounder	1,528	ACL = ABC (P* = 0.40)	1,534	1,539	ACL = ABC (P* = 0.40)	No change.
Widow rockfish	1,500	Constant catch strategy; ACL = 1,500 mt	2,000	2,000	Constant catch strategy; ACL = 2,000 mt	Same strategy of setting a constant catch level below the ABC; increased the ACL but is still below the ABC.
Yellowtail N. of 40°10' N. lat.	4,382	ACL = ABC (P* = 0.45)	6,590 [a/]	6,344 [a/]	ACL = ABC (P* = 0.45)	New 2013 assessment downgraded to Cat 2 species, so keeping the P* of 0.45 is a change in policy.

a/ 2015-2016 harvest specifications for this species, including ACLs, were corrected at the November 2014 meeting of the PFMC and are reflected in the ACLs shown here.

3. Stock Complex ACLs

Stocks may be grouped into complexes for various reasons including where stocks in a multispecies fishery cannot be targeted independent of one another and MSY cannot be defined on a stock-by-stock basis, where there is insufficient data to measure their stock status, or when it is not feasible for fishermen to distinguish individual stocks among their catch. Most groundfish species managed in a stock complex are data-poor stocks without full stock assessments.

All of the ACLs for stock complexes are less than or equal to the summed ABC contributions of each component stock in each complex as described in the following paragraphs.

Minor Nearshore Rockfish North and South of 40°10′ N. Lat.

Minor Nearshore Rockfish are caught predominantly in the non-trawl fisheries (both commercial and recreational). Nearshore rockfish are primarily managed by each state. Annual state harvest guidelines (HGs) for Minor Nearshore Rockfish north of 40°10′ N. lat. are proposed for 2015 and 2016 and discussed in ''Management Measures'' below. Under the proposed action the Minor Nearshore Rockfish North ACL is a 22 percent reduction from the OFL.

For Minor nearshore rockfish north of 40°10′ N. lat., the preferred 2015 and 2016 complex ACLs of 69 mt are set below the 77 mt ABCs each year. The ACLs are lower than the ABCs because the 40–10 adjustment was applied to the ABC contributions for blue rockfish in California and China rockfish. Then the ACLs were set equal to the 40–10 adjusted ABCs. The 2015 and 2016 complex ABC is the summed contribution of the component stocks' ABCs. For Minor nearshore rockfish south of 40°10′ N. lat., the preferred 2015 and 2016 complex ACLs are less than the ABCs for the complex. In 2015 the Minor nearshore rockfish complex ABC is 1,169 mt, with an ACL of 1,114 mt, while in 2016 the ABC is 1,148 mt and the ACL is 1,006 mt. The ACLs are lower than the ABCs because the 40–10 adjustment was applied to the ABC contributions for blue rockfish north of 34°27′ N. lat. Then the ACLs were set equal to the 40–10 adjusted ABCs.

Minor Shelf Rockfish North and South of 40°10′ N. Lat.

For Minor shelf rockfish north of 40°10′ N. lat., the proposed 2015 ACL of 1,944 mt is same as the ABC, while the 2016 ACL of 1,952 is lower than the ABC of 1,953. The ACL is set equal to the ABC after the 40–10 adjustment was applied to the ABC contributions for greenspotted rockfish in California (the 2015 ACL is slightly less than the 2015 ABC but rounds to the ABC value). For Minor shelf rockfish south of 40°10′ N. lat., the proposed 2015 ACL of 1,624 mt is less than the ABC of 1,625 mt and the 2016 complex ACL of 1,625 mt is less than the ABC of 1,626 mt. The ACLs are lower than the ABCs because the 40–10 adjustment was applied to the ABC contributions for greenspotted rockfish. Then the ACLs were set equal to the 40–10 adjusted ABCs.

Minor Slope Rockfish North and South of 40°10′ N. Lat.

For Minor Slope Rockfish north of 40°10′ N. lat., the proposed 2015 ACL of 1,693 mt is set equal to the ABC and the 2016 proposed ACL of 1,706 mt is set equal to the ABC, as none of the component stocks are in the precautionary zone. For Minor Slope Rockfish south of 40°10′ N. lat., the proposed 2015 ACL of 693 mt is lower than the ABC of 705 mt and the 2016 ACL of 695 mt is lower than the ABC of 705 mt. The ACLs are lower than the ABCs because the 40–10 adjustment was

applied to the ABC contributions for blackgill rockfish. Then the ACLs were set equal to the 40–10 adjusted ABCs.

Other Flatfish

The proposed 2015 and 2016 ACLs of 8,749 mt and 7,243 mt, respectively, are equal to the 2015 and 2016 ABCs since all of the assessed stocks (*i.e.,* Pacific sanddabs and rex sole) were above their target biomass of $B_{25\%}$.

Other Fish Complex

The Other Fish complex historically contained non-target species that occurred as bycatch (not retained, landed, sold, or kept for personal use) while targeting other species. For 2015–2016 the Council recommended reorganizing this complex, removing several species and designating them as EC species, and removing spiny dogfish and managing it with species-specific harvest specifications. For a discussion of EC species see ''Amendment 24 to the Pacific Coast Groundfish Fishery Management Plan'' section.

The Other Fish complex is restructured to include the Washington, Oregon, and California kelp greenling stocks; the Washington cabezon stock; and leopard sharks. The proposed 2015 and 2016 ACLs of 242 mt and 243 mt are set equal to the complex ABCs.

Table 2. Summary of ACL Policies for Species Managed in Stock Complexes

	2014 ACL (mt)	2014 Policy	2015 ACL (mt)	2016 ACL (mt)	2015-2016 Policy	Summary of Policy Change
Minor Nearshore Rockfish N. of 40°10' N. lat.	94	ACL = ABC (P* = 0.45)	69	69	ACL = ABC (P* = 0.45); 40-10 adj. ACL contrib. for blue RF in CA and China RF	Method for calculating the ACL changed but does not represent a change in policy: maintains P* = 0.45 regardless of stock category; 40-10 adjustment applied to stocks in the precautionary zone.
Minor Shelf Rockfish N. of 40°10' N. lat.	968	Constant catch strategy (ACL = 2012 ACL)	1,944	1,952	ACL = ABC (P* = 0.45); 40-10 adj. ACL contrib. for greenspotted RF in CA	Maintains P* = 0.45 regardless of stock category; however, reduction in the ACL from the ABC is smaller and comes from applying the 40-10 adjustment to stocks in the precautionary zone.
Minor Slope Rockfish N. of 40°10' N. lat.	1,160	Constant catch strategy (ACL = 2012 ACL)	1,693 [b/]	1,706 [b/]	ACL = ABC (P* = 0.45)	Maintains P* = 0.45 regardless of stock category; no longer incorporating a reduction in the ACL from the ABC.
Minor Nearshore Rockfish S. of 40°10' N. lat.	990	Constant catch strategy (ACL = 2012 ACL)	1,114	1,006	ACL = ABC (P* = 0.45); 40-10 adj. ACL contrib. for blue RF N of 34°27' N lat.	Maintains P* = 0.45 regardless of stock category; however, reduction in the ACL from the ABC is smaller and comes from applying the 40-10 adjustment to stocks in the precautionary zone.
Minor Shelf Rockfish S. of 40°10' N. lat.	714	Constant catch strategy (ACL = 2012 ACL)	1,624	1,625	ACL = ABC (P* = 0.45); 40-10 adj. ACL contrib. for greenspotted RF in CA	Maintains P* = 0.45 regardless of stock category; however, reduction in the ACL from the ABC is smaller and comes from applying the 40-10 adjustment to stocks in the precautionary zone.
Minor Slope Rockfish S. of 40°10' N. lat.	622	ACL = ABC (P* = 0.45); fishery harvest guidline for blackgill RF equal to the 40-10 ad. ACL contrib.	693 [a/]	695 [a/]	ACL = ABC (P* = 0.45); 40-10 adj. ACL contrib. for blackgill RF	Method for calculating the ACL changed: maintains P* = 0.45 regardless of stock category; for 2015-2016 the 40-10 adjustment was applied to stocks in the precautionary zone.
Other Flatfish	4,884	Constant catch strategy (ACL = 2012 ACL)	8,749 [b/]	7,243 [b/]	ACL = ABC (P* = 0.4)	Using same P* to calculate the ABC as in 2014; no longer incorporating a reduction in the ACL from the ABC.
Other Fish	4,697	ACL = ABC (spiny dogfish P* = 0.30; all other species P* = 0.40)	242	243	ACLs = ABCs (ABC contribution from only selected stocks in the complex; for all those species P* = 0.45)	Changes: species composition; not all stocks in the complex contribute to the OFL/ABC/ACL; and revised P*.

a/ 2015-2016 harvest specification contributions for sharpchin rockfish, a species in this complex, were corrected at the November 2014 meeting of the PFMC and those changes are reflected in the ACLs shown here.

b/ 2015-2016 harvest specification contributions for rex sole, a species in this complex, were corrected at the November 2014 meeting of the PFMC and those changes are reflected in the ACLs shown here.

D. Stock Complexes

In preparation for the 2015–2016 biennium, the Council's Groundfish Management Team, with guidance from the Council's SSC, performed an analysis to assess whether any stocks were potentially at risk of experiencing catch in excess of their contribution OFLs within the current stock complexes. Informed by the work of its advisory bodies, staff, and the public, the Council considered whether to recommend any changes to the current stock complex configurations. Ultimately, as discussed further below, the Council recommended reorganizing the Other Fish complex because it contained species of dissimilar life history characteristics and varying vulnerabilities to the fishery. For rougheye/blackspotted and shortraker rockfish, which are managed within the Minor Slope Rockfish complexes, the Council recommended implementing a sorting requirement to improve data collection rather than restructuring the complexes at this time.

1. Minor Nearshore Rockfish Complex North and South of 40°10′ N. lat.

China rockfish are included in the Minor Nearshore Rockfish complexes and are an important species in the nearshore recreational and nearshore commercial fisheries. China rockfish (south of 40°10′ N. lat.) is a healthy stock. In 2015 and 2016, when calculating the Minor Nearshore Rockfish north complex harvest specifications, the 40–10 precautionary adjustment is applied to the China rockfish ABC contribution to determine the China rockfish contribution to the stock complex ACL. Based on the results of the data moderate assessment and concerns about the potential for catch to exceed China rockfish's OFL contribution to the Minor Nearshore Rockfish north OFL, the Council initially considered an analysis of state-specific or regional HGs of China rockfish north of 40°10′ N. lat. However, given the constraints posed on the fisheries from management at the species level and the availability of data to allow a full stock assessment to confirm trends identified in the data-moderate assessment, the Council recommended keeping China rockfish within the Minor Nearshore Rockfish complex until a better understanding of the status of the stock can be determined through a full stock assessment (scheduled to occur in 2015). The reduction in the 2105–2016 Minor Nearshore Rockfish ACLs could result in a corresponding reduction to China rockfish mortality if measures taken to reduce catch of the complex level result in reduced targeting of China rockfish.

2. Minor Shelf Rockfish Complex North and South of 40°10′ N. lat.

No changes to the Minor Shelf Rockfish complexes (north and south of 40°10′ N. lat.) are proposed in 2015–2016. The Council considered reorganization of the Minor Shelf Rockfish complexes, and found no compelling reason to reorganize these complexes, as the species within the complex are similar in life history and distribution, and none are currently at a risk of exceeding contribution OFLs (when combining north and south contributions for a given stock, per SSC guidance).

3. Minor Slope Rockfish Complexes North and South of 40°10′ N. lat.

The Council considered restructuring the Minor Slope Rockfish complexes by removing rougheye/blackspotted and shortraker rockfish and managing these stocks as a new rougheye/blackspotted/shortraker coastwide complex. Doing so might help to reduce any potential risk of exceeding contribution OFLs in the future, but extensive concern was expressed by industry and the Council that restructuring the Minor Slope Rockfish could disrupt limited entry trawl and fixed gear fisheries. Realizing the need to reduce rougheye/blackspotted catch, the Catcher/Processor sector of the Pacific whiting fishery began to pay heightened attention to rougheye/blackspotted catches by their fleet and move away from areas where higher rougheye/blackspotted bycatch was occurring in 2013. Total catch of rougheye/blackspotted in 2013 by the Catcher/Processor sector was 11.2 mt, down significantly from the high 2011 catch of 74.4 mt. Vessels targeting Pacific whiting with midwater trawl gear in the Mothership sector and the Shorebased IFQ Program may be able to enact similar strategies to reduce their impacts. Shortraker rockfish have exceeded their contribution OFLs in recent years, although the stock is on the southern outskirts of its predominant range. However, bottom trawl surveys have not produced sufficient samples of shortraker rockfish for a data moderate assessment, let alone a full stock assessment. Furthermore, NWFSC stock assessment staff are currently working to improve assessment methods for situations where the assessed area covers only a small portion of the stocks' predominant range (*i.e.,* shortraker rockfish).

Industry has also conducted extensive outreach among the various sectors (including bottom trawl and fixed gear sectors) to inform them of the need to reduce rougheye/blackspotted, and shortraker rockfish catch within their sectors. Industry representatives provided a report detailing ongoing voluntary measures to reduce catch of these species at the June 2014 Council meeting.

For 2015–2016 the Council recommended a sorting requirement for rougheye/blackspotted and shortraker for all commercial fisheries. The STAR panel recommended that the 2013 rougheye assessment treat rougheye/blackspotted as one stock due to limitations in available data sets, despite the fact that they are actually two different species. Therefore, fish of these stocks found off the U.S. west coast are assessed as a single ''rougheye'' unit. In 2015–2016, a sorting requirement is proposed to be implemented for rougheye/blackspotted rockfish (treated as a single unit) and for shortraker rockfish (treated as a separate unit). NMFS anticipates that the sorting requirements for rougheye/blackspotted, and shortraker rockfish will: Reduce ambiguity and species-specific assumptions of catch; aid in annual mortality tracking; aid in inseason catch monitoring; and, improve data available for future stock assessments.

Blackgill rockfish is managed within the Minor slope rockfish complexes. The 2011 assessment for the stock south of 40°10′ N. lat. indicated the stock was in the precautionary zone with spawning biomass depletion estimated to be 30 percent of its unfished biomass at the start of 2011. NMFS established 2013 and 2014 HGs equal to the ACLs calculated for the southern blackgill rockfish stock after the 40–10 adjustment was made. Species specific trip limits were implemented for commercial non-trawl fisheries, and current indications are that this action appears to have had the intended effect of reducing catch of blackgill rockfish. However, there is a limited ability in the current management structure to reduce targeting of blackgill rockfish in the IFQ fishery. The Council has begun considering removing blackgill rockfish from the Minor Slope Rockfish complex and re-evaluating the allocation structure for this species.

Prior to the 2013 full assessment for aurora rockfish, previous biomass estimates were lower than the current, improved understanding of the stock. Under the previous biomass estimates, aurora rockfish harvests were in excess of the OFL contribution estimates. The full aurora rockfish assessment in 2013 found the stock to be in a healthy state outside of the precautionary zone, with recent mortality below the aurora rockfish OFL contribution to the complex.

4. Other Flatfish Complex

The Council considered reorganization of the Other Flatfish complex, and found no compelling reason to reorganize this complex, as species within the complex are similar in life history, and none are currently at a risk of overfishing.

5. Other Fish Complex

The Other Fish complex historically contained non-target species that occurred as bycatch (not retained, landed, sold, or kept for personal use) while targeting other species. Spiny dogfish were managed within the Other Fish complex in 2013 and 2014. For 2015 and 2016, spiny dogfish is proposed to be removed from the Other Fish complex and managed as a single coastwide management unit. Skates (Aleutian skate, Bering/sandpaper skate, roughtail/black skate, and all other

skates), Grenadiers (Pacific grenadier, giant grenadier, all other grenadiers), soupfin shark, spotted ratfish, and finescale codling, formerly managed within the Other Fish complex, are proposed for designation as Ecosystem Component (EC) species in 2015–2016. As proposed, the Other Fish complex is restructured to include the Washington, Oregon and California kelp greenling stocks; the Washington Cabezon stock; and leopard sharks. For further discussion regarding rationale for new EC designations of stocks previously managed within the Other Fish complex, see the ''Amendment 24 to the Pacific Coast Groundfish Fishery Management Plan'' section below. Not all the stocks in the proposed complex contribute to the OFL calculations (See ''Other Fish Complex'' in the ''Proposed OFLs for 2015 and 2016'' section for more discussion on the OFL calculation). NMFS acknowledges that keeping leopard sharks in the Other Fish complex keeps a stock in the proposed complex with different life history characteristics than the other stocks. However, leopard shark is consistently at a low risk of overfishing, and catch is consistently below their contribution OFL to the Other Fish complex. NMFS notes that the proposed definition of ''Other Fish'' at § 660.11 removes Sebastes species not explicitly listed in the PCGFMP from the Other Fish complex and those species would not count towards the landings limits, when specified, for the Other Fish complex.

E. Amendment 24 to the Pacific Coast Groundfish Fishery Management Plan

Amendment 24 consists of three components: (1) Default harvest control rules; (2) a suite of minor changes, including clarification of routine management measures and adjustments to those measures, clarification to the harvest specifications decision making schedule, changes to the description of the biennial management cycle process, updates to make the FMP consistent with SSC guidance on the F_{MSY} proxy for elasmobranchs, and clarifications to definitions; and (3) addition of two rockfish species to the PCGFMP and the designation of EC species.

1. Default Harvest Control Rules, Clarifications, and Adding Species

Over the past three years, the Council has been examining the harvest specifications and management measures decision-making process, and related analytical requirements in an effort to simplify these processes. Several biennial harvest specifications cycles have not met their intended January 1st start date and it was thought that efficiencies could be gained by adjusting Council decision making and the analysis undertaken each biennial cycle. Therefore, the Council undertook Amendment 24 to examine ways to streamline the Council decision-making in each biennium to implement the harvest specifications and management measures. This resulted in several changes being proposed to how the Council will address harvest specifications beginning in the 2017–2018 biennium.

The use of default harvest control rules and their addition to the FMP is intended to simplify the Council's harvest specifications process and acknowledge that the Council generally maintains the policy choices from the previous biennium to annual catch limits for the next biennium. Under Amendment 24, the harvest control rules used to determine the previous biennium's harvest specifications (*i.e.,* OFLs, ABCs, and ACLs), would automatically be applied to the best scientific information available to determine the future biennium's harvest specifications. NMFS would implement harvest specifications based on the default harvest control rules unless the Council makes a different recommendation. Proposed regulations implementing the provisions related to the use of default harvest specifications at § 660.60(b) would not apply to ecosystem component species because they do not have OFLs, ABCs, or ACLs specified, or Pacific whiting because the harvest specifications for Pacific whiting are established annually through a bilateral treaty process with Canada. In addition to the use of defaults to simplify the harvest specifications process, Amendment 24 makes changes to the description of the type of management measures that may be addressed through the biennial process. Clarifying that the management measures should be (1) management measures to be classified as routine the first time these measures are used; (2) adjustments to current management measures that are classified as routine; and (3) new management measures, not previously analyzed. This clarifies the focus of management measures and is intended to simplify the management measures proposed through each biennial cycle.

The PCGFMP includes all species in the genera *Sebastes,* and specifically lists many of those species individually. Amendment 24 adds two *Sebastes* species to the list of PCGFMP species. The two species proposed to be added are sunset rockfish (*S. crocotulus*) and blackspotted rockfish (*S. melanostictus*). Sunset rockfish is added because best available scientific information indicates that vermillion rockfish (a species currently listed in the PCGFMP) is a stock actually made up of two species: Vermillion rockfish and sunset rockfish. Since these stocks are almost indistinguishable without very detailed examination, the 2013 draft vermillion rockfish stock assessment recommended treating them as a single stock, consisting of two distinct species. Adding sunset rockfish to the PCGFMP recognizes this new information. Blackspotted rockfish are being added to the PCGFMP because a sorting requirement is proposed for blackspotted/rougheye rockfish (See ''Minor Slope Rockfish'' under the section ''Stock Complexes'' for more discussion of blackspotted/rougheye rockfish).

2. Designation of Ecosystem Component Species

Finally, Amendment 24 designates several species and species groups as Ecosystem Component (EC) species. The concept of EC species was added to the PCGFMP under Amendment 23, which revised the PCGFMP to comply with the revised MSA National Standard 1 Guidelines. However, no species were designated as EC species at that time. The EC species designation is described in National Standard 1 Guidelines at 50 CFR 600.310(d)(5). Generally, EC species should be a non-target stock, not be subject to overfishing or determined to be overfished, or approaching an overfished condition and not likely to become so in the absence of management measures; and not generally retained for sale or personal use. Amendment 24 proposes to designate the following species, which were already in the PCGFMP, as EC species: big skate, California skate, Pacific grenadier, soupfin shark, spotted ratfish, and finescale codling. Additionally, the following species or species groups are proposed to be added to the PCGFMP as EC species: Aleutian skate, Bering/sandpaper skate, roughtail/black skate, all other skates, giant grenadier, and all other grenadiers. EC species are not considered ''in the fishery'', and do not require harvest specifications (*e.g.* OFLs, ABCs and ACLs).

During development of the 2015–2016 harvest specifications and management measures, the Council considered reorganizing the eight groundfish stock complexes (see ''Stock Complex ACL'' section). The SSC recommended that the Council prioritize the Other Fish complex for reorganization and an analysis was completed to look at

potential ways of restructuring that complex, including consideration of designating some of its species as EC species. That analysis concluded that many of the species that were in the Other Fish complex were good candidates for designation as EC species because they have an extremely low risk of catch exceeding contribution OFLs. The revised Other Fish complex would be composed of shallow-water species often caught within three miles of shore, in state waters. Removing the other species within the Other Fish complex and classifying them as an EC species reduces the risks to the species left in the complex (Cabezon off Washington, kelp greenling and leopard shark). The risk of overfishing is reduced for the remaining stocks because some of the recommended EC species were effectively inflator stocks to the Other Fish complex, with relatively larger OFL contributions. Removing inflator stocks reduces the risk of mortality exceeding contribution OFLs for the stocks managed in the reorganized Other Fish complex.

Species proposed for EC species designation are at a low risk of overfishing for various reasons, including: Best estimates of harvest are relatively low; best estimates of catch do not have an increasing trend; and geographic distribution of some of the species has only a small overlap with the geographic areas of the Pacific coast groundfish fisheries. The goal of designating EC species is to more appropriately categorize them based on their lack of fishing pressure, while acknowledging the limited interaction of these species with the groundfish fisheries and their role in the ecosystem. Catch of EC species will be monitored for increasing trends in landings, primarily through state landings in market categories. This monitoring may aid in identifying emerging fisheries that require evaluation for possible management or may identify potential conservation concerns.

NMFS acknowledges that reclassification of Pacific grenadier from a stock ''in the fishery'' to an EC species is arguably inconsistent with the NS 1 Guidelines, which state that EC species should not be a target stock and should generally not be retained. Recent Pacific grenadier landings average about 130 mt per year, and Pacific grenadier is landed, marketed, and possibly targeted in some regions, mainly in central California. However, despite relatively high amounts of catch when compared to catch of other proposed EC species, only about 10 percent of the estimated OFL contribution for Pacific grenadier was caught annually between 2009–2011. In addition, because the stocks that are currently in the PCGFMP and are proposed to be reclassified as EC species were previously managed as part of the Other Fish complex rather than as individual species, the EC classification results in very limited changes from existing management practices (*e.g.,* there are no trip limits that appear to affect catches of Pacific grenadier currently). Therefore, it is reasonable to conclude that Pacific grenadier, and the other stocks proposed for EC classification, are not stocks in need of conservation and management. Rather than removing them from the PCGFMP entirely, designation as EC species ensures continued monitoring and evaluation of the stocks' classifications.

For a discussion of how existing fishery management measures do or do not apply to EC species see the ''Management Measures'' section below. The Notice of Availability for the FMP was published on November 26, 2014 (79 FR 70497).

F. Management Measures

New management measures being proposed for the 2015–2016 biennial cycle would work in combination with current management measures to control fishing. This management structure should ensure that the catch of overfished groundfish species does not exceed the rebuilding ACLs while allowing harvest of healthier groundfish stocks to occur to the extent possible. Routine management measures are used to modify fishing behavior during the fishing year. Routine management measures for the commercial fisheries include trip and cumulative landing limits, time/area closures, size limits, and gear restrictions. Routine management measures for the recreational fisheries include bag limits, size limits, gear restrictions, fish dressing requirements, and time/area closures. The groundfish fishery is managed with a variety of other regulatory requirements that are not routinely adjusted, many of which are not changed through this rulemaking, and are found at 50 CFR 660, subparts C through G. The regulations at 50 CFR 660, subparts C through G, include, but are not limited to, long-term harvest allocations, recordkeeping and reporting requirements, monitoring requirements, license limitation programs, and essential fish habitat (EFH) protection measures. The routine management measures, specified at 50 CFR 660.60 (c), in combination with the entire collection of groundfish regulations, are used to manage the Pacific Coast groundfish fishery during the biennium to achieve harvest guidelines, quotas, or allocations, that result from the harvest specifications identified in this proposed rule, while protecting overfished and depleted stocks.

In addition to changes to routine management measures, this section describes biennial fishery allocations and set-asides, and new management measures proposed for 2015–2016 including: Changes to latitude and longitude coordinates that define the boundaries of the Rockfish Conservation Areas (RCAs); new sorting requirements; and changes to canary sub bag limits in the Oregon recreational fisheries, among others.

The management measures being proposed reflect the Council's recommendations from its June 2014 meeting, as transmitted to NMFS. At its November 2014 meeting, the Council recommended three changes that may be included in the final rule for this action and therefore NMFS is specifically seeking public comment on these items.

First, the Council took final action on the Pacific halibut Catch Sharing Plan (CSP) for the 2015 halibut fisheries. Included in the recommendations was a modification to the CSP that would allow retention of flatfish species (other than halibut) in certain recreational fisheries when halibut are onboard. This change was recommended for the sport fishery in the Columbia River subarea and the Oregon Central Coast subarea. Because this change effects groundfish retention, regulations would be modified to add flatfish, in addition to sablefish and Pacific cod, to the list of species at 660.360(c)(2)(iii)(D) for Washington and at 660.360(c)(1)(i)(D)(3) for Oregon.

Additionally, the Council received reports from the California Department of Fish and Wildlife regarding higher than expected catches of black rockfish and California scorpionfish and recommended two changes to the 2015 California recreational regulations. First, the Council recommended adding a five fish black rockfish sub-bag limit within the ten fish rockfish, cabezon and greenling limit, which would modify regulations at 660.360(c)(3)(v)(A). Second, the Council recommended prohibiting the retention of California scorpionfish in the California recreational fishery from September through December 2015, which would modify regulations at 660.360(c)(3)(ii)(B). NMFS is considering the Council's recommendations and welcomes public comment on the potential changes that may be incorporated in the final rule.

1. Management Measures and Ecosystem Component Species

As described above at ''Amendment 24 to the Pacific Coast Groundfish Fishery Management Plan'', the Council recommended and NMFS is proposing to designate EC species in the PCGFMP. Proposed regulations at § 660.11 define the species and species groups that are being designated as EC species as ''Groundfish''. By defining EC species as ''Groundfish'', Federal regulations that apply to groundfish in general would apply to EC species. In this section, we discuss in more detail how the existing fishery management structure may, or may not, apply to these species and species groups that are not considered to be ''in the fishery'' but are still defined as a ''groundfish'' species.

Many regulations at 50 CFR 660, subparts C through G, including, but not limited to, time/area closures, recordkeeping and reporting requirements, monitoring requirements, license limitation programs, and essential fish habitat (EFH) protection measures would apply to vessels taking and retaining any EC species or species groups, even if that is the only groundfish species on board. This is because they are proposed to be defined as a group of species within the more general definition of ''groundfish''. Since most of the species proposed to be designated as EC species are largely discarded (*i.e.* low levels of retention and landing) and are currently in the PCGFMP (*i.e.* already subject to groundfish regulations as part of the Other Fish complex), retaining the application of most management measures to EC species is not anticipated to impose many, if any, new restrictions to vessels fishing in groundfish fisheries. The following are some specific examples of general fishery regulations that apply to groundfish, and would, therefore, also apply to species and species groups proposed to be designated as EC species: Fishing must occur with legal gear types and in areas where fishing for groundfish with that gear type is not prohibited; fishing for EC species that occurs when the vessel is registered to a permit, including limited entry permits and exempted fishing permits, must be done in compliance with the regulations that apply to that vessel's fishing activities because it is registered to a Federal permit; Federal regulations applying to groundfish, including EC species, would not supersede more restrictive state regulations; vessel must provide departure or cease fishing reports, when required to do so; vessel must carry an observer, when required to do so.

The only instance in which regulations would become applicable to additional fishing vessels is if those vessels are taking and retaining species or species groups that are being brought more explicitly into the PCGFMP for the first time with their designation as EC species (*e.g.* all grenadiers besides Pacific grenadier, and all skates besides longnose skate, big skate and California skate), and those vessels that are not otherwise fishing groundfish species currently in the PCGFMP. For example, if a vessel wants to retain giant grenadier in Federal waters, it is required to have an active vessel monitoring system mobile transceiver until (VMS MTU) on board the vessel prior to departing on a fishing trip where groundfish would be retained. The requirement for a VMS MTU when retaining giant grenadier in Federal waters would not have applied to this vessel in 2013–2014 unless they were retaining other groundfish species.

No new management measures are proposed specifically for EC species because these species are not at risk of overfishing. Some groundfish regulations apply to specific sectors, gear types, species, or species groups. In those cases where regulations do not generally apply to 'groundfish' but apply to specific species, gear types, species groups, or fisheries, it is not anticipated that taking and retaining EC species, alone, would trigger those types of regulations. For example, EC species are not required to be sorted because they do not meet any of the requirements described at § 660.12(a)(8), EC species do not count toward any cumulative or trip limit because no cumulative or trip limits are being established for EC species or species groups at this time. If ever a cumulative limit were established for EC species or species groups, the requirement for sorting of that species or species group would be triggered.

At the start of the Shorebased IFQ Program and during development of the 2011–2012 harvest specifications and management measures, NMFS added the ability to implement trip limits, sub-limits, or aggregate limits for species in the Other Fish complex, some of which are now proposed to be designated as EC species, as a routine measure for the Shorebased IFQ Program. The proposed EC species designations are not intended to change the ability to routinely implement trip limits, sub-limits, or aggregate limits to these EC species for the Shorebased IFQ Program, as described at § 660.60(c)(1)(i). The proposed EC species designations are not intended to require those species be discarded by fishing vessels participating in otherwise legal groundfish fisheries.

As described in the ''Amendment 24 to the Pacific Coast Groundfish Fishery Management Plan'' section, no harvest specifications or management reference points are required for EC species; however, there is a monitoring requirement to determine changes in their status or their vulnerability to the fishery. If new information shows that an EC species' vulnerability to overfishing has increased, the stock should be reclassified as ''in the fishery'' through an FMP amendment. As described above, catch of EC species would be subject to the same monitoring requirements as are generally applicable to all groundfish species or species groups. Those monitoring requirements include but are not limited to: Landing receipts and documentation of discards by observers in maximized retention fisheries, among other state requirements.

2. Deductions From the ACLs

Before allocations are made to groundfish fisheries, deductions are made from ACLs to set fish aside fish for certain types of activities. The deductions from the ACL are associated with four distinct sources of groundfish mortality: Harvest in Pacific Coast treaty Indian tribal fisheries; harvest in scientific research activities; harvest in non-groundfish fisheries; and harvest that occurs under exempted fishing permits (EFPs). These deductions from the ACL are described at § 660.55(b) and specified in the footnotes to Tables 1a and 2a to subpart C.

The Council's recommended ACL for cowcod in 2015–2016 is discussed above in ''Overfished Species ACLs'' section. The Council decided to set an ACT for cowcod in 2015–2016. An Annual Catch Target (ACT) is an accountability measure that is set below the annual catch limit in cases where there is uncertainty in inseason catch monitoring. The goal of using an ACT is to ensure against exceeding an annual catch limit. Since the annual catch target is a target and not a limit it can be used in lieu of harvest guidelines or strategically to accomplish other management objectives. Sector-specific annual catch targets can also be specified to accomplish management objectives.

The Council acknowledged a need for scientific research to inform future stock assessments and management strategies for cowcod and recommended that groundfish fisheries be subject to a lower harvest target set well-below the

ACL. To accomplish this management objective, the Council recommended that the deductions for harvest in Pacific Coast treaty Indian tribal fisheries, non-groundfish fisheries, harvest that occurs under EFPs, and mortality from scientific research activities, be deducted from the 10 mt cowcod ACL. The Council then set an ACT of 4 mt for 2015–5016 to use it in a similar way as the fishery harvest guideline; the ACT would be the amount that would be allocated across the groundfish fisheries. If additional harvest of cowcod occurs in scientific research activities, NMFS and the Council have the flexibility to account for that mortality with little risk of exceeding the ACL, because the ACT is set below the ACL. This accounting scheme also mitigates adverse impacts to groundfish fisheries if higher than expected cowcod catch occurs in 2015–2016 scientific research activities.

3. Biennial Fishery Allocations

Two-year trawl and nontrawl allocations are decided during the biennial process for those species without long-term allocations or species where the long-term allocation is suspended because the species was declared overfished. For all species, except sablefish north of 36° N. lat., allocations for the trawl and nontrawl sectors are calculated from the fishery harvest guideline. The fishery harvest guideline is the tonnage that remains after subtracting from the ACL harvest in Tribal fisheries, scientific research activities, non-groundfish fisheries and some activities conducted under exempted fishing permits. The two-year allocations and recreational harvest guidelines are designed to accommodate anticipated mortality in each sector as well as to accommodate variability and uncertainty in those estimates of mortality. Allocations described below are specified in the harvest specification tables appended to part 660, subpart C.

Bocaccio

The following are the Council's recommended allocations for bocaccio in 2015: Limited entry trawl, 81.9 mt; limited entry and open access non-nearshore fixed gears, 79.1 mt; limited entry and open access nearshore fixed gear, 1.0 mt; and California recreational 178.8 mt. The following are the Council's recommended allocations for bocaccio in 2016: Limited entry trawl, 85.0 mt; limited entry and open access non-nearshore fixed gears, 82.1 mt; limited entry and open access nearshore fixed gear, 1.0 mt; California recreational 185.6 mt. These allocations are anticipated to accommodate estimates of mortality of bocaccio, by sector, in 2015–2016 and maintain a similar allocation scheme as in 2014.

Canary Rockfish

The following are the Council's recommended allocations for canary rockfish in 2015: Shorebased IFQ Program, 43.3 mt; at-sea sectors of the Pacific whiting fishery, 13.7 mt (catcher/processor 8.0 mt and mothership 5.7 mt); limited entry and open access non-nearshore fixed gears, 3.8 mt; limited entry and open access nearshore fixed gear, 6.7 mt; Washington recreational, 3.4 mt; Oregon recreational 11.7 mt; and California recreational 24.3 mt. The following are the Council's recommended allocations for canary rockfish in 2016: Shorebased IFQ Program, 44.5 mt; at-sea sectors of the Pacific whiting fishery, 14.0 mt (catcher/processor 8.2 mt and mothership 5.8 mt); limited entry and open access non-nearshore fixed gears, 3.9 mt; limited entry and open access nearshore fixed gear, 6.9 mt; Washington recreational, 3.5 mt; Oregon recreational 12.0 mt; and California recreational 25.0 mt. These allocations are anticipated to accommodate estimates of mortality of canary rockfish, by sector, in 2015–2016 and maintain a similar allocation scheme as in 2014.

Cowcod

For 2015–2016, the Council recommended setting a cowcod ACT at 4 mt and having it function in a similar way as the fishery harvest guideline; it is the amount that would be allocated across groundfish fisheries. The cowcod allocation is proposed to be 34 percent (1.4 mt) trawl and 66 percent (2.6 mt) non-trawl for 2015–2016. NMFS anticipates the proposed allocation structure will keep catch below the 2015–2016 cowcod ACTs without having to make changes to fishery management measures and maintains the same allocation scheme as in 2014.

Petrale Sole

For petrale sole, 35 mt is allocated to the nontrawl fishery and the remainder of the fishery HG is allocated to the trawl fishery. This maintains the same allocation scheme that was in place for petrale sole since 2011.

Yelloweye Rockfish

The following are the Council's recommended allocations for yelloweye rockfish in 2015: Limited entry trawl, 1 mt; limited entry and open access non-nearshore fixed gears, 0.6; limited entry and open access nearshore fixed gear, 1.7; Washington recreational, 2.9; Oregon recreational 2.6 mt; and California recreational 3.4 mt. The following are the Council's recommended allocations for yelloweye rockfish in 2015: Limited entry trawl, 1.1 mt; limited entry and open access non-nearshore fixed gears, 0.7; limited entry and open access nearshore fixed gear, 1.8; Washington recreational, 3.1; Oregon recreational 2.8 mt; and California recreational 3.7 mt. These allocations are anticipated to accommodate estimates of mortality of yelloweye by sector in 2015–2016 and maintain the same allocation scheme that was in place for yelloweye rockfish in 2014.

Black Rockfish off Oregon and California

Oregon and California will continue to have state-specific HGs for black rockfish in 2015–2016. Oregon has a harvest guideline equal to 58 percent of the fishery harvest guideline (579 mt) and California has a harvest guideline equal to 42 percent of the fishery harvest guideline (420 mt), and is apportioned based on black rockfish landings in each state for years leading up to the 2003 black rockfish assessment. This is the same allocation scheme that was in place for black rockfish in Oregon and California since 2004.

Longnose Skate

The Council recommended a two-year trawl and nontrawl HG for longnose skate of 90 percent to the trawl fishery and 10 percent to the nontrawl fishery. The allocation percentages reflect historical catch of longnose skate between the two sectors. This maintains the same allocation scheme that was in place for longnose skate in 2014.

Minor Nearshore Rockfish

California will continue to have a state-specific harvest guideline for blue rockfish. The blue rockfish harvest guideline for the area south of 42° N. lat. is equivalent to: (1) The ABC contribution for the portion of the stock north of 34°27′ N. lat., reduced by the 40–10 adjustment because the stock is in the precautionary zone, plus (2) the ABC contribution for the unassessed portion of the stock south of 34°27′ N. lat.

Beginning in 2015, the states will be monitoring and managing catches of Minor Nearshore Rockfish north of 40°10′ N. lat. according to newly established HGs. Harvest specifications for Minor Nearshore Rockfish north of 40°10′ N. lat. are approximately 27 percent lower in 2015–2016 (69 mt) than in 2014 (94 mt). The states intend

to manage catch using state-specific harvest guidelines: 10.5 mt for Washington; 48.4 mt for Oregon, and 23.7 mt for California north of 40°10′ N. lat. However, instead of implementing state specific harvest guidelines in Federal regulations, the state Council representatives from Oregon and Washington committed to heightened inseason communication regarding catches of species managed in the complex relative to the harvest guidelines. Upon attainment of 75 percent of their respective harvest guidelines, the states of Washington and Oregon would consult and decide whether inseason action was needed. In the event inseason action is needed, the states of Washington and Oregon would take action through state regulation. The states of Washington and Oregon can take inseason expeditiously, regardless of whether the harvest guideline is specified in Federal regulations. California will have a Federal harvest guideline for this complex from 42° N. lat. to 40°10′ N. lat. to facilitate inseason action if needed, and has committed to increased catch reporting at Council meetings. In California, the HG of 23.7 mt would be specified in Federal regulation and apply only in the area between 40°10′ N. lat. and 42° N. lat. California, through the Council, could propose changes through Federal regulations. Under state management, landed component species within the Minor Nearshore Rockfish complex must be sorted to species. Because the states may also take inseason action independent of NMFS, the proposed action is not anticipated to result in exceeding the complex ACL in 2015–2016.

Although the Minor Nearshore Rockfish North ACL attainment has been high in recent years, reaching 100 percent in 2011, management measures have prevented the ACL from being exceeded. State nearshore management plans and policies mitigate the risk of overfishing. State HGs and a federal HG for Minor Nearshore Rockfish in the area between 40°10′ and 42° N. lat. under the proposed action will reduce the risk of exceeding the complex ACL.

Minor Shelf Rockfish

Allocations for Minor Shelf Rockfish are recommended by the Council each biennial cycle. For Minor Shelf Rockfish north of 40°10′ N. lat., 1,127 mt (60.2 percent of the fishery harvest guideline) is allocated to the trawl fishery and 745 mt (39.8 percent of the fishery harvest guideline) is allocated to the nontrawl fishery for 2015. For Minor Shelf Rockfish south of 40°10′ N. lat., 192 mt (12.2 percent of the fishery harvest guideline) is allocated to the trawl fishery and 1,383 mt (87.8 percent of the fishery harvest guideline) is allocated to the nontrawl fishery for 2015. For 2016, the same percentages are applied resulting in allocations of 1,132 mt to the trawl fishery and 748 mt to the nontrawl fishery north of 40°10′ N. lat. and 192 mt to the trawl fishery and 1,384 mt to the nontrawl fishery south of 40°10′ N. lat. This maintains the same allocation percentages as were in place for the Minor Shelf Rockfish complexes since 2011.

Minor Slope Rockfish

Minor Slope Rockfish were allocated between the trawl and nontrawl fisheries in PCGFMP Amendment 21. This action applies those Amendment 21 allocation percentages to the updated 2015–2016 fishery harvest guidelines. Blackgill rockfish in California was assessed in 2011 and has continued to be managed within the Minor Slope Rockfish complex, but with a species-specific HG south of 40°10′ N. lat. beginning in 2013. For 2015–2016 the Council recommended a blackgill rockfish harvest guideline equal to the ABC contribution for the portion of the stock south of 40°10′ N. lat., reduced by the 40–10 adjustment because the stock is in the precautionary zone. South of 40°10′ N. lat., the blackgill rockfish harvest guideline is 114 mt in 2015 and 117 mt in 2016.

4. Modifications to the Boundaries Defining RCAs

RCAs are large area closures intended to reduce the catch of a species or species complex by restricting fishing activity at specific depths. The boundaries for RCAs are defined by straight lines connecting a series of latitude and longitude coordinates that approximate depth contours. A set of coordinates define lines that approximate various depth contours. These sets of coordinates, or lines, in and of themselves, are not gear or fishery specific, but are used in combination to define an area. That area may then be described with fishing restrictions implemented for a specific gear and/or fishery.

For the 2015–2016 cycle, changes to refine selected coordinates are being proposed for: The 200 fm line, modified with areas to allow fishing for petrale sole, off Oregon; the 60 fm line off San Diego California, and the 50 fm line in the Northern Channel Islands. Changes to the 200 fm line, modified with areas to allow fishing for petrale sole, are intended to bring the coordinates for this line in the area off Heceta and Stonewall Bank into alignment with the un-modified 200 fm line in the same area.

Changes to the 50 fm line in the Northern Channel Islands were requested by industry and further refined during development of the 2015–2016 harvest specifications and management measures. The Council-recommended changes to the 50 fm line in the Northern Channel Islands are intended to open a small amount of additional fishing area when this line is used as the seaward boundary of the recreational RCA (*e.g.* no recreational fishing for groundfish deeper than the 50 fm line when fishing around the Northern Channel Islands) and to more closely approximate the 50-fm isobath surrounding the Northern Channel Islands. Changes to the 60 fm line west of San Diego, California were requested by industry to allow better access to the tip of a reef that lies shallower than the 60 fm isobath. The Council-recommended changes to the 60 fm line west of San Diego are intended to open additional fishing area when this line is used as the shoreward boundary of the non-trawl RCA (*e.g.* no fishing for groundfish with non-trawl gear deeper than the 60 fm line) and to more closely approximate the 60 fm isobath in that area. While the proposed changes to the 50 fm line and the 60 fm line would open additional fishing area, the proposed changes would maintain a boundary line that approximates the 50-fm and 60 fm isobath, respectively. These changes would not allow an extension of fishing effort into deeper habitat where overfished groundfish species encounters might be higher. Opening additional fishing areas where there is little information to inform area-specific bycatch rates poses a risk of increased bycatch of overfished species, however, it is unlikely that catch would be much higher because the proposed changes to the latitude/longitude coordinates that define the 50 fm line in the Northern Channel Islands or the 60 fm line west of San Diego are not opening large areas and are not opening depths deeper than the 50-fm isobath or the 60 fm isobath, respectively. The proposed changes to latitude/longitude coordinates that define these three boundary lines approximating depth contours makes no regulatory changes to how, or for which fisheries, those lines may be used.

5. Sorting Requirements

In the non-whiting groundfish fishery, catch is sorted to species or species group in order to account for catch against the various harvest specifications and management measures that are specific to those

species or species groups. Except for vessels participating in the Pacific whiting fishery (see § 660.130(d)(2)(ii) and (d)(3)), groundfish regulations require that species or species groups with a trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACT, or ACL, be sorted (see § 660.12(a)(8)). Except for a new scientific sorting requirement for shortraker rockfish and rougheye/blackspotted rockfish (described in ''Stock Complexes'' above), the sorting requirements applicable to the groundfish fisheries are unchanged from 2014.

6. Limited Entry Trawl

Limited Entry Trawl Fishery Management Measures

Since the start of 2011, the limited entry trawl fishery has been divided into three distinct sectors (shoreside, mothership, and catcher/processor). An individual fishing quota (IFQ) program was created for the shoreside sector and cooperatives were created for the catcher/processor and mothership sectors. The Council recommended several changes to trawl management measures for the 2015–2016 biennium. In 2013–2014 spiny dogfish did not have species-specific harvest specifications and was managed within the Other Fish complex; at that time, the at-sea set-aside for Other Fish was specified to control catch of spiny dogfish in the at-sea fishery in the absence of species-specific harvest specifications. The Other Fish complex is proposed to be reorganized through this action and no longer includes spiny dogfish. The proposed Other Fish complex for 2015–2016 is comprised of nearshore species that are not caught by the at-sea sector, and so no longer requires a set-aside. Given the low risk of exceeding the spiny dogfish ACL, the Council did not recommend spiny dogfish set-asides nor did they recommend spiny dogfish GCAs for the at-sea sectors. Species being managed under trip limits and without trawl and non-trawl allocations are: Shortbelly rockfish, longspine thornyhead south of 34°27′ N. lat., black rockfish (Washington-Oregon), California scorpionfish, cabezon (California only), spiny dogfish, and the Other Fish complex.

Incidental Trip Limits for IFQ Vessels

For vessels fishing IFQ, with either groundfish trawl gear or non-trawl gears, the following incidentally caught species are managed with trip limits: Minor nearshore rockfish north and south, black rockfish, cabezon (46°16′ to 40°10′ N. lat. and south of 40°10′ N. lat.), spiny dogfish, shortbelly rockfish, Pacific whiting, and the Other Fish complex. No changes to trip limits in the IFQ fishery are proposed for the start of the 2015–2016 biennium; however, changes to trip limits are considered a routine measure under § 660.60(c) and may be implemented or adjusted, if determined necessary, through inseason action.

RCA Configurations for Vessels Using Groundfish Trawl Gear

Based on analysis of West Coast Groundfish Observer Data and vessel logbook data, the boundaries of the RCAs were developed to prohibit groundfish fishing within a range of depths where encounters with overfished species were most likely to occur. The lines that approximate depth contours are defined by latitude and longitude coordinates and may be used to define any of the depth-based area closures, primarily RCAs. The choice of which depth-based line(s) to use to define the RCA boundaries varies by season, latitude, and gear group. Boundaries for limited entry trawl vessels are different from those for the limited entry fixed-gear and open access gears. The trawl RCAs apply to vessels fishing with groundfish trawl gear. The non-trawl RCAs apply to the limited entry fixed-gear and open access gears other than non-groundfish trawl. The non-groundfish trawl RCAs are fishery-specific.

Under Amendment 20 to the PCGFMP, quota pounds associated with a limited entry trawl permit may be harvested with either trawl gear or legal fixed gear. Groundfish regulations specify both trawl and non-trawl RCAs. The type of gear employed determines the applicable gear-specific RCA. As such, vessels that harvest IFQ species with groundfish trawl gear would continue to be regulated by the trawl RCA requirements while vessels that harvest IFQ species with fixed gear would continue to be regulated by the non-trawl RCA requirements.

For 2015–2016 the Council recommended the trawl RCA boundaries that were in place in May 2014 be continued through the biennium except for a modification to the seaward boundary of the trawl RCA between 40°10′ N. lat. and 45°46′ N. lat. from 200 fathoms to the 200 ''modified (with petrale cutouts)'' year-round. Currently, these areas are intermittently open throughout the year. The goal of this change is to allow greater access to petrale. Because this area is currently open to the trawl fishery intermittently, impacts to benthic habitat associated with allowing year round access are anticipated to be minimal. As the IFQ fishery proceeds and if catch data supports reconsideration of the RCAs, the Council could revise the RCA boundaries through inseason measures.

7. Limited Entry Fixed Gear and Open Access Non-Trawl Fishery Management Measures

Management measures for the limited entry fixed gear (LEFG) and open access (OA) non-trawl fisheries tend to be similar because the majority of participants in both fisheries use hook-and-line gear. Management measures, including area restrictions and trip limits in these non-trawl fisheries, are generally designed to allow harvest of target species while keeping catch of overfished species low. For 2015–2016, changes to management measures include increased sablefish trip limits due to the higher sablefish ACL for the area north of 36° N. lat., opening of lingcod retention in the winter months which have previously been closed, increases in lingcod trip limits, increases in Minor Shelf and bocaccio trip limits in the area south of 34°27′ N. lat., and a change to the shoreward boundary of the non-trawl RCA. The Council also considered the tradeoffs in area restrictions compared to trip limit restrictions for the non-trawl fishery that is prosecuted shoreward of the non-trawl RCA.

Non-Trawl RCAs

The non-trawl RCA applies to vessels that take, retain, possess, or land groundfish using non-trawl gears, unless they are incidental fisheries that are exempt from the non-trawl RCA (*e.g.* the pink shrimp non-groundfish trawl fishery). The seaward and shoreward boundaries of the non-trawl RCAs vary along the coast, and are divided at various commonly used geographic coordinates, defined in § 660.11, subpart C. In 2009, the shoreward boundary of the non-trawl RCA was established based on fishery information indicating that fishing in some areas in the non-trawl fishery have higher yelloweye rockfish bycatch than in others, and the RCA boundaries were adjusted to reduce mortality of yelloweye rockfish in these areas.

The non-trawl RCA boundaries proposed for 2015–2016 are the same as those in place for the non-trawl fisheries in 2013–2014, except for the shoreward boundary of the non-trawl RCA off northern California. The shoreward boundary of the non-trawl RCA, between 42° N. lat. (Oregon/California border) and 40°10′ N. lat. (North/South Management line), is proposed to be

shifted seaward from 20 fm to 30 fm, to open some additional areas to fishing close to shore and make the shoreward boundary of the non-trawl RCA consistent along Oregon and through California to 40°10′ N. lat. These changes allow for some additional fishing opportunity while keeping the mortality of canary and yelloweye rockfish within their nearshore fishery contributions. Opening this area may also increase catch of Minor Nearshore Rockfish north complex which has a decreasing ACL from 2014 to 2015. However, the projected catch of the complex with the increased fishing area is projected to be less than the complex ACL. Therefore, the Council recommended and NMFS is proposing to shift the shoreward boundary of the non-trawl RCA, between 42° N. lat. and 40°10 N. lat., from the line approximating the 20 fm (37 m) depth contour to the line approximating the 30 fm (55 m) depth contour. These boundary lines are defined by latitude and longitude coordinates found at § 660.71, subpart C. The change to the non-trawl RCA boundary in this area opens areas that have been closed since 2009, and may increase fishing efficiency and reduce gear conflicts by spreading the nearshore fleet over a larger fishing area. Opening this area is anticipated to increase overall landings of both target and bycatch species, but mortality is anticipated to be below the allocations or harvest limits for all species.

Non-Trawl Fishery Trip Limits

Trip limits proposed for the non-trawl fisheries in 2015–2016 are similar to those that applied to these fisheries in since 2011. To help achieve but not exceed the allocations of sablefish in the limited entry fixed gear and open access fisheries, proposed trip limits for sablefish in these fisheries are different between 2015 and 2016, with slightly higher limits in 2016 because of the higher sablefish ACL. Changes are also proposed in the limited entry and open access fixed gear fisheries for lingcod, Minor Shelf Rockfish south of 34°27′ N. lat., and bocaccio south of 34°27′ N. lat. Proposed 2015–2016 trip limits for these changes are specified in Table 2 (North), Table 2 (South) to subpart E and in Table 3 (North) and Table 3 (South) to subpart F.

Primary Sablefish Fishery Tier Limits

Some limited entry fixed gear permits are endorsed to receive annual sablefish quota, or ''tier limits,'' and vessels registered with one, two, or up to three of these permits may participate in the primary sablefish fishery, described at § 660.231. Tier limits proposed for the limited entry fixed gear primary sablefish fleet are higher than in 2013–2014, reflecting the higher sablefish harvest specifications for 2015–2016. The proposed tier limits are as follows: In 2015, Tier 1 at 41,175lb (18,676 kg), Tier 2 at 18,716 lb (8,489 kg), and Tier 3 at 10,695 lb (4,851 kg). For 2016, Tier 1 at 45,053 lb (20,435 kg), Tier 2 at 20,479 lb (9,289 kg), and Tier 3 at 11,702 lb (5,307 kg). These tier limits are found in groundfish regulations at § 660.231.

Lingcod Trip Limits and Retention in Periods 1, 2, and 6

This rule proposes to allow lingcod retention in the limited entry and open access fixed gear fisheries during the previously closed months from December to April (cumulative limit Periods 1, 2, and 6). The original intent of the closure was to minimize impacts on lingcod when it was overfished because lingcod spawn from December to April. Lingcod has been declared rebuilt and removing the closure will allow greater access to the stock.

For the limited entry fishery in the area north of 40°10′ N. lat. this rule proposes several changes. First, periods 1 and 2 (January–April) and the month of December are proposed to be opened; periods 1 and 2 are proposed with a 200 lb per 2 month limit; December is proposed to have a 200 lb per month limit. Second, the trip limit in periods 3, 4 and 5 (May–October), is proposed to be increased from 800 lb per 2 months to 1,200 lb per 2 months. Finally this rule proposes to increase the November trip limit from 400 lb a month of 600 lb a month. For the limited entry fishery in the area south of 40°10′ N. lat., period 1 (January–February) and the month of December are proposed to be opened; period 1 is proposed to have a 200 lb per 2 month limit; and December is proposed with a 200 lb per month limit. For the open access fishery in the area north of 40°10′ N. lat., periods 1 and 2 (January–April) and the month of December are proposed to be open with a 100 lb per month limit. The trip limit in period 3, 4, and 5 (May–October) and the month of November are proposed to be increased from 400 lb per month to 600 lb per month. For the open access fishery south of 40°10′ N. lat. period 1 and the month of December are proposed to be open with 100 lb per month limits. Trip limit increases in combination with newly open periods are anticipated to more fully utilize the lingcod ACL, which has not been fully utilized in recent years. Total mortality of lingcod in the area north of 42° N. lat. was 25 percent of the 2011 ACL, 34 percent of the 2012 ACL, and 28 percent of the 2013 ACL. In the area south of 42° N. lat. total mortality was 13 percent of the 2011 ACL, 16 percent of the 2012 ACL, and 39 percent of the 2013 ACL. While the lingcod ACL is decreasing from 2014 to 2015, the increase in catch is projected to remain under the proposed ACL. The new trip limits are proposed to minimize impacts to co-occurring overfished species and are designed to reduce discarding but not result in targeting.

Minor Shelf Rockfish South of 34°27′ N. lat.

Specifications for the complex are established for the area south of 40°10′ N. lat. however the changes proposed in this rule are only for the area south of 34°27′ N. lat. This increase is intended to provide greater access to a small number of commercial vessels in this area. This rule proposes increases to trip limits in both the limited entry and open access fixed gear fisheries as a result of an increase in the non-trawl allocation from 587 mt in 2014 to 1,383 mt in 2015.

Bocaccio South of 34°27′ N. lat.

This rule proposes increases to the bocaccio trip limits in both the limited entry and open access fixed gear fisheries resulting from an increase in the non-trawl harvest guideline from 249.6 mt in 2014 to 258.8 mt in 2015. Most bocaccio landings in this area are from sablefish targeted trips. While increasing trip limits may increase impacts to bocaccio the impacts are not expected to delay rebuilding under the current rebuilding plan or come close to the harvest guideline. As this stock rebuilds encounters are likely to increase and increasing the trip limits may help to turn discards into retained fish, increasing landings. While the non-trawl allocation is for the area south of 40′10° N. lat., trip limit increases are only for the area south of 34°27′ N. lat. because bocaccio is managed within the trip limits for the Minor Shelf Rockfish complex in the area from 40°10′ N. lat.–34°27′ N. lat.

8. Recreational Fisheries Management Measures

This section describes the recreational fisheries management measures proposed for 2015–2016. Most of the changes to recreational management measures are modification to existing measures. Changes to recreational management measures are discussed below for each state and include: (1) Modifications of recreational season structures in all states; (2) new 1 canary

rockfish sub-bag limit in Oregon; (3) removal of the cabezon seasonal sub-bag limit in Oregon, (4) modification of a lingcod closure area in Washington; (5) elimination of the lingcod retention prohibition in Washington; (6) allowance of retention of bottom fish during all depth recreational halibut seasons in Washington and Oregon; (7) changes in the California Southern Management Area seaward boundary line; and, (8) changes to the lingcod bag limit in California.

Recreational fisheries management measures are designed to limit catch of overfished species and provide fishing opportunity for anglers targeting nearshore groundfish species. Overfished species that are taken in recreational fisheries include bocaccio, cowcod, canary, and yelloweye rockfish. Because sport fisheries are more concentrated in nearshore waters, the 2015–2016 recreational fishery management measures are intended to constrain catch of nearshore species such as Minor Nearshore Rockfish, black rockfish, blue rockfish, and cabezon. These protections are particularly important for fisheries off California, where the majority of West Coast recreational fishing occurs. Depth restrictions and GCAs are the primary tools used to keep overfished species impacts under the prescribed harvest levels for the California recreational fishery.

Washington, Oregon, and California each proposed, and the Council recommended, different combinations of seasons, bag limits, area closures, and size limits, to best fit the requirements to rebuild overfished species found in their regions, and the needs and constraints of their particular recreational fisheries.

Recreational fisheries management measures for Washington, Oregon, and California in 2015–2016 are proposed to be similar to the recreational fishery management measures that were in place during 2013–2014. Recreational fisheries off Oregon, and Washington are limited by the need to reduce yelloweye rockfish impacts. Changes to recreational fishery management measures off Washington, Oregon, and California are in response to: Updated fishery and modeling information in a manner that allows increased harvest of underutilized healthy stocks while keeping impacts to overfished species within their rebuilding ACLs. The following sections describe the recreational management measures proposed in each state.

Washington

Off Washington, recreational fishing for groundfish and Pacific halibut, as proposed, will continue to be prohibited inside the North Coast Recreational YRCA, a C-shaped closed area off the northern Washington coast, the South Coast Recreational YRCA, and the Westport Offshore YRCA. Coordinates for YRCAs are defined at § 660.70. Similar to 2014, this proposed rule includes the Washington State lingcod recreational fishing closure area off Washington Marine Areas 1 and 2, a portion of which are closed to lingcod fishing, except on days that the Pacific halibut fishery is open. However, for 2015–2016, refinement of the southern boundary of this lingcod area closure is shifted three miles north (from 46°25′ N. lat. to 46°28′ N. lat.) to continue reduced encounters with co-occurring yelloweye rockfish and canary rockfish (compared to before the lingcod closure area was enacted in December 2011, 76 FR 79122). The aggregate groundfish bag limits off Washington will continue to be 12 fish. The rockfish and lingcod sub-limits will remain the same as in 2013–2014: 10 rockfish sub-limit with no retention of canary or yelloweye rockfish; two lingcod sub-limit, with the lingcod minimum size of 22 inches (56 cm); cabezon sub-limits and size limits. As in 2013–2014, the Washington recreational fishery for groundfish is open year-round with seasonal depth restrictions for specific groundfish species. The RCA for recreational fishing off Washington is proposed to be the same as in 2014 with the following exceptions: In Marine Areas 3 and 4, where overfished species interactions are prevalent, the dates of the seasonal depth closure (closed deeper than 20 fm) are slightly shorter to reduce overfished species impacts; in Marine Area 2, the seasonal depth restriction for lingcod retention is removed, allowing lingcod to be retained in all depths year-round, except within the lingcod area closure.

Changes to the restrictions on groundfish retention during the Pacific halibut season are proposed for 2015–2016, including modifications to the groundfish retention rules during the Pacific halibut openings, due to changes in the Council's 2014 Area 2A Pacific halibut Catch Sharing Plan. Proposed changes to allowance of retention of bottom fish during all depth recreational Pacific halibut seasons in Washington are as follows. Starting from Leadbetter point in Washington Marine Area 1, when the nearshore incidental halibut fishery is open, taking, retaining, possessing or landing incidental Pacific halibut on groundfish trips will be allowed only in the nearshore area on days not open to all-depth Pacific halibut fisheries in the area shoreward of the boundary line approximating the 30 fm (55 m) depth contour extending from Leadbetter Point, WA to the Washington-Oregon border and from there, connecting to the boundary line approximating the 40 fm (73 m) depth contour in Oregon. The nearshore incidental halibut fishery would be open Monday through Wednesday following the opening of the early season all-depth fishery, until the nearshore Pacific halibut allocation is taken.

Oregon

Oregon recreational fisheries would operate under the same season structures and GCAs as 2013–2014. Aggregate bag limits and size limits in Oregon recreational fisheries remain the same as in 2013–2014: Three lingcod per day, with a minimum size of 22 inches (56 cm); 25 flatfish per day, excluding Pacific halibut; and a marine fish aggregate bag limit of 10 fish per day, where cabezon have a minimum size of 16 inches (41 cm) and kelp greenling have a minimum size of 10 inches (25 cm). However, the marine fish bag limit is modified for 2015–2016 to add a one fish sub-bag limit for canary rockfish and remove the one fish sub-bag limit for cabezon. Also, similar to the changes described above for Washington recreational fisheries, changes to the restrictions on groundfish retention during the Pacific halibut season are proposed for 2015–2016. Details of these changes to canary and cabezon sub-bag limits and Pacific halibut retention regulations are described below.

Canary Rockfish Sub-Bag Limit

In recreational fisheries, due to its overfished status, canary rockfish retention has been prohibited to prevent non-trawl harvest guidelines from being exceeded. During development of the 2015–2016 harvest specifications and management measures, the Council considered allowing limited retention of canary rockfish in recreational fisheries to gather additional information on abundance in rocky reef habitats, gather additional biological information to inform population structure and recruitment events, improve species identification and catch estimates, and reduce regulatory discards of incidentally caught canary rockfish. Initially, the Council considered allowing limited retention of canary rockfish in recreational fisheries off Washington, Oregon, and California, but

ultimately recommended instituting a sub-bag limit for canary rockfish only in the Oregon recreational fishery to aid in the data used for future canary rockfish stock assessments.

The 2009 canary rockfish assessment indicated that additional information on the relationship between canary rockfish distribution and habitat features could provide more precise estimates of abundance from existing survey data. Recreational fishery catch rates could be used to provide an index of relative abundance (catch per unit effort; CPUE) of canary rockfish in rocky reef habitat. Additionally, since recreational fishery gears catch smaller and younger canary rockfish than trawls, biological data from the recreational fishery could be used to better detect recruitment events. Canary rockfish retention may reduce confusion of canary rockfish with other rockfish species that have a similar appearance, such as vermillion rockfish. More accurate discard information reported by recreational fishing participants may improve canary rockfish (and other commonly confused species) discard mortality estimates.

Allowing retention of canary rockfish is intended to turn canary rockfish that would otherwise be encountered and discarded into landed catch to help inform abundance and recruitment for canary rockfish. This will improve the accuracy of canary rockfish removal estimates because landed catch can be verified by dockside creel with a higher level of accuracy than angler reported discard information. This may reduce uncertainty in discard mortality estimates from angler reported data, potentially allowing for a recreational index of abundance to be incorporated into future canary rockfish assessments.

The Council considered the risk that allowing canary rockfish retention may increase total mortality of canary rockfish in the Oregon recreational fishery. Limiting the recreational canary rockfish sub-bag limit in Oregon to one per angler per day, is intended to provide minimal incentive for anglers to target them. Allowing retention of those canary rockfish that are incidentally encountered could also aid anglers in filling their bag limit for marine fish with less time on the water. Even if total mortality estimates of canary rockfish in the Oregon recreational fishery were to increase, it is extremely unlikely that the canary rockfish rebuilding ACL would be exceeded when harvest in the Oregon recreational fishery is combined with mortality of canary rockfish in other fisheries, because the Oregon recreational fishery currently only obtains a fraction of their harvest guideline (*e.g.,* 29 percent of the Oregon recreational harvest guideline in 2013). Therefore, the Council recommended and NMFS is proposing adding a one-fish sub-bag limit for canary rockfish within the 10 marine fish aggregate limit for 2015–2016.

Cabezon Sub-Bag Limit

The seasonal one fish sub-bag limit for cabezon which was in place in 2013–2014 is proposed to be removed during 2015–2016 to allow ODFW increased flexibility for initiating inseason changes. Cabezon mortality will be limited via state regulations, which may be more restrictive than Federal regulations.

Pacific Halibut Retention

As explained above (See ''Washington'' under ''Recreational Fisheries Management Measures''), changes to the restrictions on groundfish retention during the Pacific halibut season are proposed for 2015–2016, including modifications to the groundfish retention rules during the Pacific halibut openings, due to changes to the Councils 2014 Area 2A Pacific halibut Catch Sharing Plan. Taking, retaining, possessing or landing incidental halibut on groundfish trips will be allowed only in the Columbia River nearshore area on days not open to all-depth Pacific halibut fisheries in the area shoreward of the boundary line approximating the 30 fm (55 m) depth contour extending from Leadbetter Point, WA to the Washington-Oregon border and from there, connecting to the boundary line approximating the 40 fm (73 m) depth contour in Oregon. The nearshore incidental halibut fishery would be open Monday through Wednesday following the opening of the early season all-depth fishery, until the nearshore Pacific halibut allocation is taken.

California

For 2015–2016, recreational fisheries off California will continue to be managed as five separate areas, to reduce complexity while retaining flexibility in minimizing impacts on overfished stocks. Season and area closures differ between California regions to better prevent incidental catch of overfished species according to where those species occur and where fishing effort is greatest, while providing as much fishing opportunity as possible. California recreational fisheries would operate under the same GCAs as 2013–2014, with the following exceptions: due to lower yelloweye rockfish encounter rates in recent years, the dates of allowable fishing opportunities within the seasonal RCA closures described in § 660.350(c)(3)(i)(A) would be extended to a moderate extent in the Mendocino, San Francisco, and Central Management Areas to allow for increased recreational opportunity and to provide more stable season structures between biennial specification cycles. In addition, the RCA boundary in the Southern Management Area would be modified from the boundary line approximating the 50 fm (91 m) contour to the boundary line approximating the 60 fm (110 m) contour. The change in the depth restriction will allow greater recreational anglers access to deeper depths in the Southern Management area, and inseason action will continue to be available to the Council if overfished species impacts begin to track higher than anticipated. Although bocaccio and cowcod encounters have increased in recent years, making it more difficult to model projected mortality, the mortality of cowcod and bocaccio in the Southern Management Area are projected to be far below the respective harvest guidelines. Submersible surveys at the northern end of the Southern California Bight indicate that juvenile cowcod are most common from 49 fm (90 m) to 82 fm (150 m), and adults were most common at depths of 66 fm (121 m) to 115 fm (210 m). Therefore, although some increase in overfished species impacts may occur, these impacts are still projected to stay well within their respective harvest guidelines and ACLs. The boundaries and season lengths for the recreational RCA in the Northern Management Area are unchanged from 2013–2014 to keep catch of Minor Nearshore Rockfish complex species within the harvest guideline for this management area.

The bag limits and hook limits for the Rockfish-Cabezon-Greenling (RCG) Complex, the Other Flatfish complex, and California scorpionfish remain the same as in 2013–2014. For lingcod, the hook limits and size limits remain the same as in 2013–2014, but the lingcod bag limit is increased from two fish to three fish to more fully utilize the non-trawl lingcod allocation, which has been far below the non-trawl allocation south of 42° N. lat. When combined with projected mortality in other non-trawl fisheries, is not expected to exceed the lingcod non-trawl allocation or ACL south of 42° N. lat. If anglers spend more time on the water fishing for an additional lingcod, the number of encounters with overfished species may increase. While some increase in overfished species mortality can be expected, sufficient buffer is available to accommodate the increased impacts (if

realized) without exceeding the respective recreational HGs or the non-trawl allocation for cowcod or other overfished species.

Finally, a minor change is proposed to the California recreational regulations at § 660.350(c)(3)(v)(A)(*4*) to make references to the ''Southern Management Area'' consistent.

9. Tribal Fisheries Management Measures

Tribes implement management measures for tribal fisheries both separately and cooperatively with those management measures that are described in the Federal regulations. The tribes may adjust their tribal fishery management measures, inseason, to stay within the overall harvest targets and estimated impacts to overfished species. Trip limits are the primary management measure that the tribes specify in Federal regulations at § 660.50, subpart C.

Continued from previous cycles, the tribes proposed trip limit management in tribal fisheries during 2015–2016 for several species including: spiny dogfish; several rockfish species and species groups, including thornyheads; and flatfish species and species groups. For spiny dogfish, tribal fisheries in 2015–2016 will continue to be restricted to a cumulative limit of ''60,000 lbs (27,216 kg) per two month period;'' the same trip limit that is in place for vessels fishing in the Shorebased IFQ Program. For rockfish species, tribal regulations will continue to require the 2015–2016 tribal fisheries to fully retain all overfished rockfish species and marketable non-overfished rockfish species. No changes to trip and cumulative limits are proposed for the Tribal fisheries from those that were in place in 2014. The tribes will continue to develop management measures, including depth, area, and time restrictions, in the directed tribal Pacific halibut fishery in order to minimize incidental catch of yelloweye rockfish. Tribal fishing regulations, as recommended by the tribes and the Council, and adopted by NMFS, are in Federal regulations at § 660.50, subpart C.

10. Housekeeping Measures

Several non-substantive revisions are made to regulations to improve consistency, remove unnecessary redundancies, remove subpart references, group similar regulations, and to add clarifying cross-references.

At § 660.11, paragraph (2)(v) of the definition for ''North-South management area'' is revised to change the name of the 46°16′ N. lat. commonly used geographic coordinate from ''Washington/Oregon border'' to ''Columbia River.'' This revision resolves an inconsistency with Washington state regulations that define the Washington/Oregon border at 46°15′ N. lat. For consistency, this change was also made at § 660.360 (c)(1)(i)(D)(*3*). The revision does not change how or why the geographic coordinate of 46°16′ N. lat. is used, fishing locations, etc. In the same section, the definition of the ''Office of Law Enforcement'' and ''Regional Administrator'' are updated to reflect recent changes to the organizational structure of NMFS.

The term ''DTS complex'' is proposed to be removed in the three places that it occurs in Part 660, Subparts C through G. Before the groundfish bottom trawl fishery was rationalized in 2011, fishery managers sometimes referred to the group of species Dover sole, shortspine and longspine thornyheads and sablefish as the ''DTS complex'' because they were often caught together. In recent years the term has fallen out of use as a functional management unit, and became irrelevant once all four of these species transitioned to IFQ species in 2011. As described above, the Council and NMFS are making changes to stock complexes and this change removes antiquated regulations that are no longer relevant. Therefore, NMFS is proposing to remove the definition of ''DTS complex'' at § 660.11, and references to the DTS complex where they are used as non-substantive regulatory examples at § 660.130 (e)(4)(iv), and § 660.330 (d)(13)(iii). These non-substantive changes do not change how all other regulations in Part 660, Subparts C through G apply to Dover sole, shortspine thornyhead, longspine thornyhead, or sablefish.

Several housekeeping changes are proposed to Table 1 North, 2 North and South, and 3 North and South. A footnote is proposed to be added to Table 1, clarifying trip limits for the Pacific whiting fishery in the Eureka area. This regulation has been in place since 2011 at § 660.131(d), the proposed footnote allows the public to have one location in Table 1 for all of the trip limits that affect the Pacific whiting fishery. This non-substantive addition makes no changes to trip limits that currently apply to the Pacific whiting fishery, and is being made to improve consistency and transparency in the regulations.

The changes proposed for Tables 2 and 3 North and South are to clarify how the combined flatfish trip limits are applied for the limited entry and open access fisheries. The format for how the flatfish species listed is proposed to be revised to combine all the species listed (dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other flatfish). This change is necessary to more accurately reflect that this limit is for all the species combined, not for each species individually. Formatting showing each species in its own row even though they are subject to a combined trip limit has been in place since 2002. No changes are proposed to how the limit is applied; this change simply makes the limit clearer and makes the listing of species included under the combined trip limit consistent with other combined species trip limits in this table.

As described above in ''Modifications to the Boundaries Defining RCAs,'' several sections of the groundfish regulations are composed of long lists of latitude and longitude coordinates that are used to define RCAs. In addition to the modifications described above for § 660.72 and § 660.74, NMFS is proposing to revise one point on the boundary line approximating the 100 fm (183-m) contour at § 660.73(a)(123). NMFS has discovered that this point on the 100 fm line is farther westward than the modified 200 line. Therefore, the paragraph is re-designated so that the 100 fm line is eastward of the modified 200 fm line by a distance of approximately 420 meters. The new point is proposed to remove the cross-over and to give adequate width to the closed area between the 100 fm line and the modified 200 fm line for improved enforceability, given the level of error allowed in type-approved vessel monitoring systems. This will reduce confusion that may be caused and improve enforceability of the 100 fm line designation that is currently in the CFR for paragraph (a)(123).

III. Classification

At this time, NMFS has made a preliminary determination that the 2015–2016 groundfish harvest specifications and management measures in this proposed rule are consistent with PCGFMP, the MSA, and other applicable law. In making its final determination, NMFS will take into account the complete record, including the data, views, and comments received during the comment period.

A DEIS was prepared for the 2015–2016 groundfish harvest specifications and management measures. The DEIS includes socio-economic information that was used to prepare the RIR and IRFA. The Environmental Protection Agency published a notice of availability for the draft EIS on October 24, 2014 (79 FR 63622). A copy of the

DEIS is available online at *http://www.pcouncil.org/*.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603 *et seq.,* requires government agencies to assess the effects that regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those effects. When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities. After the public comment period, the agency prepares a Final Regulatory Flexibility Analysis (FRFA) that takes into consideration any new information or public comments. A summary of the IRFA is provided below. The reasons why action by the agency is being considered, the objectives and legal basis for this rule are described above.

As described above, this rule concerns the following major areas: *Amend the PCGFMP to Describe Default Harvest Control Rules and Management Measures Considered during the Biennial Decision Cycle (Amendment 24):* The major effects of using default harvest control rules is to make the process more efficient, possibly reduce administrative costs, and to aid business planning by minimizing potential disruption to the industry. *Reorganizing the Other Fish and Minor Slope Rockfish Complexes and Designating Ecosystem Component Species:* Changing the composition of the Minor Slope Rockfish and Other Fish complexes, creating a new stock complex for some component species of the Minor Slope Rockfish complexes, removing stocks from the Other Fish complex for single stock management or designation as EC species, and designating species not already in the PCGFMP as EC species. The major effects of the proposed alternative concern potential sorting requirements and the potential need for some vessels to carry VMS. The goal of reorganization of the complexes is to prevent overfishing. The slope rockfish complexes contain species with different relative vulnerabilities to overfishing, including two stocks with catches that have been in excess of OFL contributions—rougheye/blackspotted rockfish and shortraker rockfish. There are concerns about the data, particularly as it is very difficult to visually distinguish between the rougheye and blackspotted species in the field. A new sorting requirement to reduce the catch of shortraker and rougheye/blackspotted rockfish by all commercial sectors is proposed in this rule to prevent overfishing. Council deliberations focused on concerns with fishing mortality on rougheye/blackspotted rockfish; a new stock assessment (Hicks, et al. 2013) indicates that spawning biomass declined relatively steeply in the 1980s and 1990s while cumulative coastwide catch since 2008 has exceeded the rougheye/blackspotted OFL contribution to the Minor Slope Rockfish complexes. Concerns about associated costs of sorting were raised by the Council's Groundfish Advisory Panel and Groundfish Management Team. NMFS anticipates that these sorting requirements will reduce the ambiguity and species-specific assumptions of catch, aid in annual mortality tracking, aid in inseason catch monitoring, and improve data available for future stock assessments. However, it is not clear if these sorting requirements, when added to the numerous numbers of species already sorted by state port samplers, processors, and fishing vessel crew, will add significant costs to the state agencies and industry. NMFS believes that there will be minimal impacts to the states and industry because we are adding a small number of species to the requirements. Therefore, NMFS is specifically requesting comments on whether the conservation benefits of these sorting requirements outweigh the costs.

To analyze the effects of designating EC species, NMFS reviewed 2013 and available 2014 data through September 2014 to assess whether there would be vessels affected by the designation of EC species. These would be vessels that landed proposed EC species and did not at any point participate in a fishery that requires VMS. Data for 2014 is incomplete, fish ticket data is about 90 percent complete through June, and less so for the following months. It is noted that the landings amounts of these species are uncertain as they may be landed in unspecified market categories and estimates based on compositional sampling of these landings. The chief effect on these vessels would be the need to carry a VMS MTU. For the new EC species, there were no reported landings of Alaska skate, Aleutian skate, black/roughtail skate, or giant grenadier. Data on ''unspecified'' grenadiers, ''other'' skates, and ''unspecified'' skates were also reviewed. All of the unspecified grenadier landings were associated with vessels that at some time of the year, participated in the limited entry fishery, where VMS is required. These vessels did not harvest groundfish but harvested ''unspecified'' skates, or because their groundfish landings were so small and that these landings could be made up of mostly ''other'' skates. Within these vessels there are six California registered vessels. These vessels were not U.S. Coast Guard documented. These same vessels typically also have very low total ex vessel revenues. Being state registered, not having a federal limited entry permit, not being U.S. Coast Guard documented, and having low revenues are all characteristics of vessels that typically do not fish beyond three miles and thus would not need to carry VMS. As a check on this analysis, NMFS also reviewed 2011 and 2012 data and expanded the analysis to other species. Based on these analyses, NMFS estimates there are about 10–20 vessels that potentially could be affected, largely vessels that fish for Highly Migratory Species (HMS). To land EC groundfish species, these vessels will have to acquire VMS MTUs. Until June 30, 2015, they can be reimbursed for up to $3,100 for the purchase, installation, and activation of a NOAA type-approved VMS MTU. Should vessels wish to avoid carrying VMS, these vessels will need to discard and not land EC groundfish species. For affected HMS vessels, NMFS has published two proposed rules concerning vessel monitoring requirements in the HMS fisheries. These vessels may have to obtain VMS MTUs if they participate in the the Drift Gillnet Fishery (79 FR 54950) or they target any fish of the genus *Thunnus* or of the species *Euthynnus* (*Katsuwonus*) *pelamis* (skipjack tuna) (79 FR 7152).

Harvest Specifications and Management Measures for the 2015–2016 Biennial Period

Economic Effects

Chapter 4 of the DEIS assesses the biological and socio-economic impacts of the alternatives. Chapter 4 also discusses the effects of the alternatives upon Essential Fish Habitat, the California Coastal Current Ecosystem, and protected species. Socio-economic effects were assessed by fishery, including shorebased IFQ, non-nearshore fixed gear, Pacific whiting, nearshore fixed gear, recreational fisheries, tribal fisheries, buyers and processors, and fishing communities. Effects on non-market/non-use values, vessel safety, and community social welfare were briefly summarized.

This analysis draws upon the major economic indicators used in Chapter 4 of the DEIS to assess the impacts of the alternatives: Ex-vessel revenues, recreational trips, net accounting revenue (an indicator of profits), and personal income. Personal income impact captures earnings received by harvesters, processors, local input suppliers, and some retail businesses in the communities. Personal income impact results are also used to project the average change in employment and overall unemployment rates in each community under the alternatives.

Four major alternatives were evaluated. They differ in terms of P*, and the ACLs associated with Dover sole, widow rockfish, and shortbelly rockfish. Most of the proposed ABCs are calculated using the sigma-P* process. The primary difference between the ABC under each alternatives is the use of different P* values to derive the ABC. Alternative 1 ABCs are based on a P* value of 0.45, Alternative 2 ABCs are based on a P* value of 0.25. The preferred alternative ABCs are based on a P* value of 0.45 with the exception of arrowtooth flounder, lingcod, longspine thornyhead, sablefish, shortspine thornyhead, spiny dogfish, starry flounder and Other Flatfish, which were based on a P* of 0.40. This is in contrast to no action where ABCs were based on a P* of 0.45 with the exception of arrowtooth, longspine thornyhead, sablefish, starry flounder, Other Flatfish, and Other Fish which were based on a P* of 0.40, and spiny dogfish with a P* of 0.30. The ACLs for Dover sole change from 25,000 under no action to 50,000 mt under the preferred alternative; widow rockfish from 1,500 mt under the no action alternative to 2,000 mt under the preferred alternative, and shortbelly rockfish from 50 mt under the no action alternative to 500 mt under the preferred alternative.

No Action-P Varied Among Species, Dover Sole (25,000 mt), Widow Rockfish (1,500 mt), and Shortbelly Rockfish (50 mt)*

The no action harvest specifications are those that were in place in 2014. When setting harvest specifications the Council generally proposes the same harvest control rules applied during the previous biennial period. Harvest control rules are the various rules and definitions used by the Council to establish ABCs and ACLs. For example, the ABC harvest control rule most consistently used by the Council is the application of P* and sigma values to an estimate of the overfishing level for a stock; the ''40–10'' and ''25–5'' precautionary adjustments are considered ACL harvest control rules. Default harvest control rules are not currently described in the PCGFMP. Under no action, total shoreside ex-vessel revenues from groundfish landings of $82.3 million are projected in 2014. This total includes the following projections for the shoreside groundfish sectors: Whiting trawl $22.5 million; non-whiting trawl and non-trawl IFQ $28.9 million; limited entry fixed gear $11.8 million; nearshore open access $3.5 million; non-nearshore open access $4.9 million; tribal groundfish (including shoreside tribal whiting) $10.7 million; and incidental open access $0.1 million. In addition, $31.5 million ex-vessel revenue equivalent from at-sea non-tribal whiting (combined Motherships and Catcher Processors), and $9.1 million ex-vessel revenue equivalent from at-sea tribal whiting (Mothership) fisheries are projected under no action. These same amounts for the tribal and non-tribal at-sea whiting fisheries are also projected under all the action alternatives. There is no projected change from no action for groundfish landings by the incidental open access and at-sea whiting sectors under the action alternatives. Therefore, discussion of results for these sectors is omitted from the summary of impacts, below. Also, note that a small amount of revenue projected from groundfish landings by EFP and miscellaneous fisheries has been omitted from the tables and the relevant discussion of impacts.

Total shoreside directed groundfish net accounting revenues (''profits'') for participating groundfish sectors are estimated to be $19.7 million under no action. Sectors with greatest estimated net revenues under no action are whiting ($10 million), non-whiting trawl ($6.7 million), and limited entry fixed gear ($1.8 million). Projected angler effort levels under the no action alternative are derived from estimates developed independently by each state. No action for Washington's recreational fishery is based on total bottomfish plus Pacific halibut marine-area angler boat trips taken in 2012. For Oregon's fishery, the annual average of marine area bottomfish plus Pacific halibut angler boat trips recorded during 2010 to 2012 is used to quantify no action. California's angler effort level under no action is based on average annual bottomfish boat trips recorded during 2011–2012. Under no action, 835,500 groundfish and Pacific halibut trips are projected coastwide. 62 percent of these are charter boat trips with the remainder taken on private boats. The breakdown by state is: Washington 33,600 trips (18,100 charter + 15,500 private), Oregon 90,200 trips (38,500 charter + 51,600 private), and California 711,800 (465,100 charter + 246,600 private).

Preferred Alternative: P Value of 0.45 for Most Species. Dover Sole (50,000 mt), Widow Rockfish (2,000 mt), and Shortbelly Rockfish (500 mt)*

The ACLs for most species are determined based on the ACLs being set equal to the ABCs with a P* value of 0.45. The ACLs for arrowtooth, lingcod south of 40°10 N. lat., longspine thornyhead north and south of 34°27′ N. lat., sablefish north and south of 36° N. lat., shortspine thornyhead north and south of 34°27′ N. lat., spiny dogfish, and starry flounder would be determined based on the ACLs being set equal to the ABCs with a P* value of 0.40. As described above for Alternative 1, ACLs may be set below the ABC, in which case the P* value does not necessarily determine the ACL. The impacts of adjusting and implementing new management measures (described in Section 2.1.2 of the DEIS) in response to the harvest specifications under preferred alternative are presented by fishery in Section 4.2 of the DEIS.

The preferred alternative changes the ACLs for Dover sole, widow rockfish, and shortbelly rockfish; from the no action constant catch strategies of 25,000 mt, 1,500 mt, and 50 mt respectively for the three species to 50,000 mt, 2,000 mt, and 500 mt respectively. An additional ACL alternative of 3,000 mt for widow rockfish is analyzed in Chapter 4. The status quo Minor Slope Rockfish complexes north and south of 40°10′ N. lat. are preferred; however, unlike status quo, a new management measure in the form of a sorting requirement would be specified for rougheye and blackspotted rockfish. An alternative structure for the Minor Slope Rockfish complexes where rougheye/blackspotted and shortraker rockfish are removed from the current complexes and managed in a new coastwide complex is analyzed in this EIS within Chapter 4.1.5. The preferred alternative for the Other Fish complex also differs from No Action. Spiny dogfish is removed from the status quo Other Fish complex and managed with stock-specific harvest specifications. All the skates and Pacific grenadier currently managed under the Other Fish complex, along with all other endemic skates (other than longnose skate) and grenadiers are designated as EC species. Additionally, spotted ratfish, soupfin shark, and finescale codling are designated as EC species under the preferred alternative. The remaining stocks managed under the preferred

Other Fish complex are the California, Oregon, and Washington stocks of kelp greenling; the Washington stock of cabezon; and leopard shark.

The preferred alternative includes additional items resulting from actions taken at the June 2014 Council meeting including (1) increases in tribal set asides for English sole, Pacific cod, widow rockfish and yellowtail rockfish; (2) change in yelloweye rockfish allocations between non-nearshore and nearshore, addressed through RCA adjustments; (3) elimination of the winter spawning closure for lingcod north of 40°10′ N. lat. (reduction in length of closure time in California); (4) change in Minor Slope Rockfish trip limits for the non-nearshore sector; (5) the adopted harvest guideline (HG) and management scheme for Minor Nearshore Rockfish north of 40°10′ N. lat.; and (6) some adjustments and changes to RCA lines.

Total shoreside sectors' ex-vessel revenue under the preferred alternative is projected to be the highest among the action alternatives. Compared with no action, total shoreside ex-vessel revenue under the preferred alternative is projected to increase by $16 million (20 percent) in 2015. Projected revenues are higher than under no action for every shorebased groundfish sector. The greatest absolute and percentage increase in revenue is projected for the IFQ sector: $12.8 million (45 percent) in 2015. Total shoreside directed groundfish net accounting revenues (''profits'') for participating groundfish sectors are projected to be $8.8 million higher under the preferred alternative than under no action. The sector with greatest estimated absolute change in net revenues over no action is non-whiting trawl, which increases by $6.7 million (100 percent). The largest increase in percentage terms is open access nearshore, which increases by $0.5 million (132 percent).

Under the preferred alternative, an increase of 11,600 angler trips is projected from no action coastwide. All of the increase occurs in California. Trips increase by 1,600 (20 percent) in the Mendocino region, 5,600 (11 percent) in the San Francisco region and 4,400 (4 percent) in the Central region. No change from no action is projected for California's Northern and Southern management areas or for recreational fisheries in Washington and Oregon.

Alternative 1—Use a P Value of 0.45. Dover Sole (25,000 mt), Widow Rockfish (1,500 mt), and Shortbelly Rockfish (50 mt)*

Where applicable, ABCs are determined based on a P* value of 0.45, and the ACL is set equal to the ABC. The rightmost column in Table 2–4 shows the ACL Harvest Control Rule (HCR) for each stock under Alternative 1. For several stocks, the ACL is set below the ABC and so the P* value does not necessarily determine the ACL. Instances where the ACL is below the ACL include specification of a fixed or constant catch level, precautionary adjustments using the 40–10 and 25–5 rules, and the use of the harvest rate specified in a rebuilding plan. The impacts of adjusting and implementing new management measures (described in Section 2.1.2) in response to the harvest specifications under Alternative 1 are presented by fishery in Section 4.2. The no action ACLs of 25,000 mt and 1,500 mt for Dover sole and widow rockfish respectively are analyzed under Alternative 1. The Minor Slope Rockfish and Other Fish complexes under Alternative 1 are structured the same as under the preferred alternative. Under this alternative projected revenues are higher than no action for every shorebased groundfish sector. The greatest absolute increase in revenue is projected for the IFQ sector: $4.9 million (17 percent) in 2015. The greatest percentage increase in revenue is projected for the nearshore open access sector: $0.8 million (24 percent) in 2015. Total shoreside directed groundfish net accounting revenues (''profits'') for participating groundfish sectors are projected to be $4.1 million higher under the Alternative than under no action. The sector with greatest estimated absolute change in net revenues over no action is non-whiting trawl, which increases by $2 million (29 percent). The largest increase in percentage terms is open access nearshore, which increases by $0.5 million (132 percent).

Alternative 2—Use a P Value of 0.25. Dover Sole (25,000 mt), Widow Rockfish (1,500 mt), and Shortbelly Rockfish (50 mt)*

Where applicable, ACLs are determined based on the ACLs being set equal to the ABCs with a P* value of 0.25. As described above for alternative 1, ACLs may be set below the ABC, in which case the P* value does not necessarily determine the ACL. Instances where the ACL is below the ABC include specification of a fixed or constant catch level, precautionary adjustments using the 40–10 and 25–5 rules, and the use of the harvest rate specified in a rebuilding plan. The impacts of adjusting and implementing new management measures (described in Section 2.1.2) in response to the harvest specifications under alternative 2 are presented by fishery in Section 4.2. The no action ACLs of 25,000 mt and 1,500 mt for Dover sole and widow rockfish respectively are analyzed under Alternative 2. The Minor Slope Rockfish and Other Fish complexes under alternative 2 are structured the same as under the preferred alternative, but the ACLs are based on setting the contribution ABCs of component stocks. Total aggregated shoreside sectors' ex-vessel revenue under alternative 2 is projected to be the lowest among the action alternatives. Compared with no action, under alternative 2 total shoreside ex-vessel revenue is projected to decrease by $0.4 million (–1 percent) in 2015, and increase by $1.8 million (2 percent) in 2016. Projected revenue changes from no action under alternative 2 across groundfish sectors are mixed. The greatest absolute increase in revenue for 2015 is projected for the nearshore open access sector at $0.5 million (13 percent). In 2016, the largest increases are projected for the nearshore open access sector at $0.5 million (13 percent) and limited entry fixed gear sector at $0.5 million (4 percent). The greatest absolute decrease in revenue for 2015 is projected for the limited entry fixed gear sector at –$0.6 million (–5 percent) in 2015, and the non-whiting IFQ sector at -$0.1 million (–0.2 percent) in 2016. The largest percentage increase in both 2015 and 2016 is projected for the nearshore open access sector at 13 percent ($0.5 million). The largest percentage decreases are for the non-nearshore open access sector in 2015 at –5 percent (–$0.3 million), and the non-whiting IFQ sector at –0.2 percent (–$0.1 million) in 2016.

Total shoreside directed groundfish net accounting revenues (''profits'') for participating groundfish sectors are projected to be $0.1 million lower under the alternative in 2015 than under no action. The sector with greatest estimated absolute decline in net revenues over no action is non-whiting trawl, which decreases by $0.3 million (–4 percent). The sector with greatest estimated increase in net revenues over no action in both absolute and percentage terms is open access nearshore, which increases by $0.3 million (70 percent). The sector with the largest decrease in percentage terms is open access non-nearshore, which decreases by $0.1 million (–23 percent).

Under the preferred alternative coastwide non-whiting ex-vessel revenue is projected to increase by $16 million in 2015 compared to no action 2014 ACLs and management measures. This represents a $19.3 million increase from annual average inflation-adjusted

ex-vessel revenue from 2003–2012. Recreational angler trips are expected to increase between 167,000 and 3.9 million marine angler trips depending on the management option chosen under the preferred alternative. Coastwide combined commercial plus recreational fishery income impacts under the preferred alternative are projected to increase over no action by $27.3 million (11 percent) under California recreational option 1 and by $26.3 million (10 percent) under California recreational option 2, but decrease by $49.2 million (–19 percent) under California recreational option 3. The main differences between California options concern season lengths in the five recreational management areas (See Table 4–152 in the DEIS). Generally speaking, option 1 has greater season lengths than no action, extending all five areas to 10 month seasons. Option 2, slightly reduces these seasons, while option 3 reduces seasons to for all five areas to 3 month periods.

In summary, for commercial fisheries, alternatives were compared using ex-vessel revenues and net accounting revenues (''profits''). In comparison to the no action alternative, the preferred alternative increases ex-vessel revenues by $16 million and net accounting revenues by $9 million. Alternative 1 increases ex-vessels revenues by $5 million and net accounting revenues by $4 million. Alternative 2 leads to a negligible decrease in ex-vessel revenues and net accounting benefits.

For recreational fisheries, under the preferred alternative, a coastwide increase of 11,600 angler trips is projected compared to the no action alternative. All of the increase occurs in California. Trips increase by 1,600 (20 percent) in the Mendocino region, 5,600 (11 percent) in the San Francisco region and 4,400 (4 percent) in the Central region. No change from no action is projected for California's Northern and Southern management areas or for recreational fisheries in Washington and Oregon. For Alternatives 1 and 2, three California recreational sub-options were analyzed. Generally speaking, option 1 has greater season lengths. The season length for Mendocino, San Francisco, and Central regions are increased to 10 month seasons. Option 2, slightly reduces these seasons, while option 3 reduces seasons for all five areas to 3 month periods. Of these options, only alternative 1 combined with option 1 or option 2 led to higher levels of recreational trips than the preferred alternative. Under alternative 1, an increase of 25,800 angler trips is projected from no action coastwide. All of the increase occurs in California. Trips increase by 4,400 (22 percent) in the Northern region, 3,700 (47 percent) in the Mendocino region, 8,900 (18 percent) in the San Francisco region and 8,800 (8 percent) in the Central region. No change from no action is projected for California's Southern region or for recreational fisheries in Washington and Oregon. Alternative 1 when combined with option 2 leads to a projected an increase of 16,700 angler trips is projected in comparison to no action, all in California. Trips increase by 2,700 (13 percent) in the Northern region, 2,900 (37 percent) in the Mendocino region, 6,700 (13 percent) in the San Francisco region and 4,400 (4 percent) in the Central region. No change from no action is projected for California's Southern region or for recreational fisheries in Washington and Oregon. For both alternatives 1 and 2, option 3 led to a loss in about 400 trips compared to no action.

Although the general intent is to provide increased recreational opportunities where possible, there are concerns about ensuring that recreational catch of overfished species remain within appropriate limits. The preferred alternative reflects a season structure that prioritizes increasing season lengths when possible, but maintains a precautionary approach, while, in particular, recognizing the constraints imposed from preventing the overfishing of canary and minor nearshore rockfish. Compared to the 2014 season structure, the proposal for 2015–2016 season structure would provide a modest increase in season length in the Mendocino management area (2 months), the San Francisco management area (6 weeks) and the Central management area (one month), while the Southern management area would maintain its season length but allow for an increase in allowable fishing depth to 60 fathoms. The Northern area would remain at status-quo seasons and depths.

The economic impact (commercial and recreational income and jobs) of the preferred alternative is about 11 percent higher than that of the no action alternative. The preferred alternative leads to $286 million in coastal income and 5,700 jobs. Alternative 1 and option 1, leads to a 7 percent increase in economic impact compared to no action and alternative 2 and option 1 leads to no change in economic impact from no action. All community groups show an increase in income and jobs. Most communities, under the preferred alternative are projected to have a double-digit increase in income and jobs.

To determine the number of small entities potentially affected by this rule, NMFS reviewed analyses of fish ticket data and limited entry permit data, the DEIS associated with this rulemaking, which includes information on charterboat, tribal, and open access fleets, and available cost-earnings data developed by the NMFS Northwest Fisheries Science Center, responses associated with the permitting process for the trawl rationalization program where applicants were asked if they considered themselves a small business based on SBA definitions. This rule will regulate businesses that harvest groundfish.

NMFS makes the following conclusions based primarily on analyses associated with fish ticket data, limited entry permit data, previous analysis of the charterboat and tribal fleets, NMFS expertise, and the DEIS associated with this rule making. As part of the permitting process for Trawl rationalization program or to participate in non- trawl limited entry permit fisheries, applicants were asked if they considered themselves a small business. NMFS reviewed the ownership and affiliation relationships of quota share permit holders, vessel account holders, catcher processor permits, mothership processing, and first receiver/shore processor permits. Based on this review, there are an estimated 102 unique small businesses and 21 large businesses that participate in this Trawl Rationalization Program. In the non-trawl limited entry program, there are 222 small businesses. Open access vessels are not federally permitted so counts based on landings can provide an estimate of the affected. The DEIS analysis for the 2013–2014 Pacific Groundfish Specifications and Management Measures contained the following assessment which are deemed reasonable estimates for this rule, as these fisheries have not changed significantly in recent years. In 2011, 682 directed open access vessels fished while 284 incidental open access vessels fished for a total of 966 vessels. Over the 2005–2010 period, 1,583 different directed open access vessels fished and 837 different incidental open access vessels fished for a total of 2,420 different vessels. According to the DEIS, over the 2008–2010 period, 447 to 470 charterboats participated in the groundfish fishery. The four tribal fleets sum to a total of 54 longline vessels, 5 whiting trawlers, and 5 non-whiting trawlers, for a grand total of 64 vessels. Available information on average revenue per vessel suggests that all the entities in these groups can be considered small.

The above analysis suggests that there are approximately 1,400 small entities involved in the fishery. The economic impact (commercial and recreational income and jobs) of the preferred alternative is about 11 percent higher than that of the no action alternative. Therefore, NMFS believes this rule will have a positive impact on both small and large entities. Through the rulemaking process associated with this action, we are requesting comments on this conclusion.

There are no Federal reporting and recordkeeping requirements associated with this action. There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the PCGFMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the PCGFMP is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006 concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior ''no jeopardy'' conclusion. NMFS also reaffirmed its prior determination that implementation of the PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

NMFS has reinitiated section 7 consultation on the PCGFMP with respect to its effects on listed salmonids. In the event the consultation identifies either reasonable and prudent alternatives to address jeopardy concerns or reasonable and prudent measures to minimize incidental take, NMFS would exercise necessary authorities in coordination to the extent possible with the Council to put such additional alternatives or measures into place. After reviewing the available information, NMFS has concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, this action will not jeopardize any listed species, would not adversely modify any designated critical habitat, and will not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concludes that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The (FWS) also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat.

This proposed rule would not alter the effects on marine mammals over what has already been considered for the fishery. West Coast pot fisheries for sablefish are considered Category II fisheries under the MMPA's List of Fisheries, indicating occasional interactions. All other West Coast groundfish fisheries, including the trawl fishery, are considered Category III fisheries under the MMPA, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals. On February 27, 2012, NMFS published notice that the incidental taking of Steller sea lions in the West Coast groundfish fisheries is addressed in NMFS' December 29, 2010 Negligible Impact Determination (NID) and this fishery has been added to the list of fisheries authorized to take Steller sea lions (77 FR 11493, February 27, 2012). On September 4, 2013, based on its negligible impact determination dated August 28, 2013, NMFS issued a permit for a period of three years to authorize the incidental taking of humpback whales by the sablefish pot fishery (78 FR 54553, September 4, 2013).

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the PCGFMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the PCGFMP request new allocations or regulations specific to the tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. The regulations at 50 CFR 660.324(d) further state ''the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus''. The tribal management measures in this proposed rule have been developed following these procedures. The tribal representative on the Council made a motion to adopt the non-whiting tribal management measures, which was passed by the Council. Those management measures, which were developed and proposed by the tribes, are included in this proposed rule.

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

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: December 18, 2014.

Samuel D. Rauch III,

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

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

PART 660—FISHERIES OFF WEST COAST STATES

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

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

■ 2. In § 660.11 revise the definitions in alphabetical order for ''Groundfish'' paragraphs (1), (2), (5), introductory (7), introductory (7)(i), and paragraphs (7)(ii), (7)(iii), (9) and (10), ''North-South management area'' definition paragraph (2)(v), and the definitions for ''Office of Law Enforcement'', ''Regional Administrator'', and ''Sustainable Fisheries Division'' to read as follows:

§ 660.11 General definitions.

* * * * *

Groundfish means species in the PCGFMP, specifically:

(1) *Sharks:* Leopard shark, *Triakis semifasciata;* soupfin shark, *Galeorhinus zyopterus;* spiny dogfish, *Squalus suckleyi*.

(2) *Skates:* ''Skates'' in the PCGFMP include all genera and species in the family Arhynchobatidae that occur off Washington, Oregon, and California, including but not limited to Aleutian skate, *Bathyraja aleutica;* Bering/sandpaper skate, *B. interrupta;* big skate, *Raja binoculata;* California skate, *R. inornata;* longnose skate, *R. rhina;* roughtail/black skate, *B. trachura*.

* * * * *

(5) *Grenadiers:* ''Grenadiers'' in the PCGFMP include all genera and species in the family Macrouridae that occur off Washington, Oregon, and California, including but not limited to Giant grenadier, *Albatrossia pectoralis;* Pacific grenadier, *Coryphaenoides acrolepis*.

* * * * *

(7) *Rockfish:* ''Rockfish'' in the PCGFMP include all genera and species of the family Scorpaenidae that occur off Washington, Oregon, and California, even if not listed below, including longspine thornyhead, *Sebastolobus altivelis,* and shortspine thornyhead, *S. alascanus.* Where species below are listed both in a geographic category (nearshore, shelf, slope) and as an area-specific listing (north or south of 40°10′ N. lat.) those species are managed within a ''minor'' rockfish complex in that area-specific listing.

(i) *Nearshore rockfish* includes black rockfish, *Sebastes melanops* and the following nearshore rockfish species managed in ''minor rockfish'' complexes:

* * * * *

(ii) *Shelf rockfish* includes bocaccio, *Sebastes paucispinis;* canary rockfish, *S. pinniger;* chilipepper, *S. goodei;* cowcod, *S. levis;* shortbelly rockfish, *S. jordani;* widow rockfish, *S. entomelas;* yelloweye rockfish, *S. ruberrimus;* yellowtail rockfish, *S. flavidus* and the following shelf rockfish species managed in ''minor rockfish'' complexes:

(A) *Shelf Rockfish North of 40°10′ N. lat.:* Bronzespotted rockfish, *S. gilli;* bocaccio, *S. paucispinis;* chameleon rockfish, *S. phillipsi;* chilipepper, *S. goodei;* cowcod, *S. levis;* dusky rockfish, *S. ciliatus;* dwarf-red rockfish, *S. rufianus;* flag rockfish, *S. rubrivinctus;* freckled rockfish, *S. lentiginosus;* greenblotched rockfish, *S. rosenblatti;* greenspotted rockfish, *S. chlorostictus;* greenstriped rockfish, *S. elongatus;* halfbanded rockfish, *S. semicinctus;* harlequin rockfish, *S. variegatus;* honeycomb rockfish, *S. umbrosus;* Mexican rockfish, *S. macdonaldi;* pink rockfish, *S. eos;* pinkrose rockfish, *S. simulator;* pygmy rockfish, *S. wilsoni;* redstripe rockfish, *S. proriger;* rosethorn rockfish, *S. helvomaculatus;* rosy rockfish, *S. rosaceus;* silvergray rockfish, *S. brevispinis;* speckled rockfish, *S. ovalis;* squarespot rockfish, *S. hopkinsi;* starry rockfish, *S. constellatus;* stripetail rockfish, *S. saxicola;* sunset rockfish, *S. crocotulus;* swordspine rockfish, *S. ensifer;* tiger rockfish, *S. nigrocinctus;* vermilion rockfish, *S. miniatus*.

(B) *Shelf Rockfish South of 40°10′ N. lat.:* Bronzespotted rockfish, *S. gilli;* chameleon rockfish, *S. phillipsi;* dusky rockfish, *S. ciliatus;* dwarf-red rockfish, *S. rufianus;* flag rockfish, *S. rubrivinctus;* freckled rockfish, *S. lentiginosus;* greenblotched rockfish, *S. rosenblatti;* greenspotted rockfish, *S. chlorostictus;* greenstriped rockfish, *S. elongatus;* halfbanded rockfish, *S. semicinctus;* harlequin rockfish, *S. variegatus;* honeycomb rockfish, *S. umbrosus;* Mexican rockfish, *S. macdonaldi;* pink rockfish, *S. eos;* pinkrose rockfish, *S. simulator;* pygmy rockfish, *S. wilsoni;* redstripe rockfish, *S. proriger;* rosethorn rockfish, *S. helvomaculatus;* rosy rockfish, *S. rosaceus;* silvergray rockfish, *S. brevispinis;* speckled rockfish, *S. ovalis;* squarespot rockfish, *S. hopkinsi;* starry rockfish, *S. constellatus;* stripetail rockfish, *S. saxicola;* sunset rockfish, *S. crocotulus;* swordspine rockfish, *S. ensifer;* tiger rockfish, *S. nigrocinctus;* vermilion rockfish, *S. miniatus;* yellowtail rockfish, *S. flavidus*.

(iii) *Slope rockfish* includes darkblotched rockfish, *S. crameri;* Pacific ocean perch, *S. alutus;* splitnose rockfish, *S. diploproa;* and the following slope rockfish species managed in ''minor rockfish'' complexes:

(A) *Slope Rockfish North of 40°10′ N. lat.:* Aurora rockfish, *Sebastes aurora;* bank rockfish, *S. rufus;* blackgill rockfish, *S. melanostomus;* blackspotted rockfish, *S. melanostictus;* redbanded rockfish, *S. babcocki;* rougheye rockfish, *S. aleutianus;* sharpchin rockfish, *S. zacentrus;* shortraker rockfish, *S. borealis;* splitnose rockfish, *S. diploproa;* yellowmouth rockfish, *S. reedi*.

(B) *Slope Rockfish South of 40°10′ N. lat.:* Aurora rockfish, *Sebastes aurora;* bank rockfish, *S. rufus;* blackgill rockfish, *S. melanostomus;* blackspotted rockfish, *S. melanostictus;* Pacific ocean perch, *S. alutus;* redbanded rockfish, *S. babcocki;* rougheye rockfish, *S. aleutianus;* sharpchin rockfish, *S. zacentrus;* shortraker rockfish, *S. borealis;* yellowmouth rockfish, *S. reedi*.

* * * * *

(9) *''Other fish'':* kelp greenling *(Hexagrammos decagrammus),* leopard shark *(Trakis semifasciata),* and cabezon *(Scorpaenichthys marmoratus)* in waters off Washington.

(10) ''Ecosystem component species'' means species that are included in the PCGFMP but are not ''in the fishery'' and therefore not actively managed and do not require harvest specifications. Ecosystem component species are not targeted in any fishery, not generally retained for sale or personal use, and are not determined to be subject to overfishing, approaching an overfished condition, or overfished, nor are they likely to become subject to overfishing or overfished in the absence of conservation and management measures. Ecosystem component species include: All skates listed here in paragraph (2), except longnose skate; all grenadiers listed here in paragraph (5); soupfin shark; ratfish; and finescale codling.

* * * * *

North-South management area

(2) * * *

(v) Columbia River—46°16.00′ N. lat.

* * * * *

Office of Law Enforcement or OLE refers to the National Marine Fisheries Service, Office of Law Enforcement, Western Division.

* * * * *

Regional Administrator means the Administrator, West Coast Region, NMFS.

* * * * *

Sustainable Fisheries Division or SFD means the Assistant Regional Administrator, Sustainable Fisheries Division, West Coast Regional Office, NMFS, or a designee.

* * * * *

■ 3. In § 660.40, paragraph (c) is revised to read as follows:

§ 660.40 Overfished species rebuilding plans.

* * * * *

(c) *Cowcod.* Cowcod was declared overfished in 2000. The target year for rebuilding the cowcod stock south of 40°10′ N. lat. to B_{MSY} is 2020. The harvest control rule to be used to rebuild the cowcod stock is an annual SPR harvest rate of 82.7 percent.

* * * * *

■ 4. In § 660.50, revise paragraphs (f)(2)(ii), (f)(5), and (7) and add paragraph (f)(8) to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(2) * * *

(ii) The Tribal allocation is 479 mt in 2015 and 524 mt in 2016 per year. This allocation is, for each year, 10 percent of the Monterey through Vancouver area (North of 36° N. lat.) ACL. The Tribal allocation is reduced by 1.6 percent for estimated discard mortality.

* * * * *

(5) *Pacific cod.* There is a tribal harvest guideline of 500 mt of Pacific cod per year. The tribes will manage their fisheries to stay within this harvest guideline.

* * * * *

(7) *Yellowtail rockfish.* Yellowtail rockfish taken in the directed tribal mid-water trawl fisheries are subject to a catch limit of 1,000 mt for the entire fleet, per year.

(8) *Spiny dogfish.* Spiny dogfish taken in the treaty fisheries are subject to an overall expected total spiny dogfish catch of 275 mt per year.

* * * * *

■ 5. In § 660.60, add paragraphs (b)(i) and (ii) and revise paragraph (c)(1)(i) to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(b) * * *

(i) Except for Pacific whiting, every biennium, NMFS will implement OFLs, ABCs, and ACLs, if applicable, for each species or species group based on the harvest controls used in the previous biennium (referred to as default harvest control rules) applied to the best available scientific information. The default harvest control rules for each species or species group are listed in Appendix F to the PCGFMP and the biennial SAFE document. NMFS may implement OFLs, ABCs, and ACLs, if applicable, that vary from the default harvest control rules based on a Council recommendation.

(ii) [Reserved]

* * * * *

(c) * * *

(1) * * *

(i) *Trip landing and frequency limits, size limits, all gear.* Trip landing and frequency limits have been designated as routine for the following species or species groups: widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, black rockfish, blue rockfish, splitnose rockfish, blackgill rockfish in the area south of 40°10′ N. lat., chilipepper, bocaccio, cowcod, minor nearshore rockfish or shallow and deeper minor nearshore rockfish, shelf or minor shelf rockfish, and minor slope rockfish; Dover sole, sablefish, shortspine thornyheads, and longspine thornyheads; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the other flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.11; Pacific whiting; lingcod; Pacific cod; spiny dogfish; longnose skate; cabezon in Oregon and California and ''other fish'' as a complex described at § 660.11. In addition to the species and species groups listed above, sub-limits or aggregate limits may be specified, specific to the Shorebased IFQ Program, for the following species: big skate, California skate, California scorpionfish, leopard shark, soupfin shark, finescale codling, Pacific rattail (grenadier), ratfish, kelp greenling, shortbelly, and cabezon in Washington. Size limits have been designated as routine for sablefish and lingcod. Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on a biennial or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraphs (c)(1)(i)(A) and (B) of this section.

* * * * *

■ 6. In § 660.72:

■ a. Redesignate paragraphs (f)(199) through (f)(211) as paragraphs (f)(200) through (f)(212);

■ b. Revise paragraph (c) and newly redesignated paragraph (f)(207);

■ c. Add paragraph (f)(199) to read as follows:

§ 660.72 Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours.

* * * * *

(c) * * *

(1) 34°08.40′ N. lat., 120°33.78′ W. long.;

(2) 34°07.80′ N. lat., 120°30.99′ W. long.;

(3) 34°08.42′ N. lat., 120°27.92′ W. long.;

(4) 34°09.31′ N. lat., 120°27.81′ W. long.;

(5) 34°05.85′ N. lat., 120°17.13′ W. long.;

(6) 34°05.73′ N. lat., 120°05.93′ W. long.;

(7) 34°06.14′ N. lat., 120°04.86′ W. long.;

(8) 34°05.70′ N. lat., 120°03.17′ W. long.;

(9) 34°05.67′ N. lat., 119°58.98′ W. long.;

(10) 34°06.34′ N. lat., 119°56.78′ W. long.;

(11) 34°05.57′ N. lat., 119°51.35′ W. long.;

(12) 34°07.08′ N. lat., 119°52.43′ W. long.;

(13) 34°04.49′ N. lat., 119°35.55′ W. long.;

(14) 34°04.73′ N. lat., 119°32.77′ W. long.;

(15) 34°02.02′ N. lat., 119°19.18′ W. long.;

(16) 34°01.03′ N. lat., 119°19.50′ W. long.;

(17) 33°59.45′ N. lat., 119°22.38′ W. long.;

(18) 33°58.68′ N. lat., 119°32.36′ W. long.;

(19) 33°56.43′ N. lat., 119°41.13′ W. long.;

(20) 33°56.04′ N. lat., 119°48.20′ W. long.;

(21) 33°57.32′ N. lat., 119°51.96′ W. long.;

(22) 33°59.32′ N. lat., 119°55.59′ W. long.;

(23) 33°57.52′ N. lat., 119°55.19′ W. long.;

(24) 33°56.26′ N. lat., 119°54.29′ W. long.;

(25) 33°54.30′ N. lat., 119°54.83′ W. long.;

(26) 33°50.97′ N. lat., 119°57.03′ W. long.;

(27) 33°50.25′ N. lat., 120°00.00′ W. long.;

(28) 33°50.03′ N. lat., 120°03.00′ W. long.;

(29) 33°51.06′ N. lat., 120°03.73′ W. long.;

(30) 33°54.49′ N. lat., 120°12.85′ W. long.;

(31) 33°58.90′ N. lat., 120°20.15′ W. long.;

(32) 34°00.71′ N. lat., 120°28.21′ W. long.;

(33) 34°02.20′ N. lat., 120°30.37′ W. long.;

(34) 34°03.60′ N. lat., 120°30.60′ W. long.;

(35) 34°06.96′ N. lat., 120°34.22′ W. long.;

(36) 34°08.01′ N. lat., 120°35.24′ W. long.; and

(37) 34°08.40′ N. lat., 120°33.78′ W. long.

* * * * *

(f) * * *

(199) 32°56.00′ N. lat., 117°19.16′ W. long.;

* * * * *

(207) 32°44.89′ N. lat., 117°21.89′ W. long.;

* * * * *

■ 7. In § 660.73, paragraph (a)(123) is revised to read as follows:

§ 660.73 Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours.

* * * * *

(a) * * *

(123) 43° 56.07′ N. lat., 124° 55.41′ W. long.;

* * * * *

■ 8. In § 660.74:

■ a. Remove paragraphs (l)(80) through (l)(82);

■ b. Redesignate paragraphs (l)(83) through (l)(245) as (l)(87) through (l)(249);

■ c. Add paragraphs (l)(80) through (l)(86) to read as follows:

§ 660.74 Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.

* * * * *

(l) * * *

(80) 44°48.25′ N. lat., 124°40.61′ W. long.;

(81) 44°42.24′ N. lat., 124°48.05′ W. long.;

(82) 44°41.35′ N. lat., 124°48.03′ W. long.;

(83) 44°40.27′ N. lat., 124°49.11′ W. long.;

(84) 44°38.52′ N. lat., 124°49.11′ W. long.;

(85) 44°21.73′ N. lat., 124°49.82′ W. long.;

(86) 44°17.57′ N. lat., 124°55.04′ W. long.;

* * * * *

■ 9. Tables 1a through 1d, Subpart C are revised to read as follows:

Table 1a. to Part 660, Subpart C- 2015, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest Guidelines (Weights in Metric Tons).

	OFL	ABC	ACL a/	Fishery HG b/
BOCACCIO S. of 40°10' N. lat. c/	1,444	1,380	349	341
CANARY ROCKFISH d/	733	701	122	107
COWCOD S. of 40°10' N. lat. e/	67	60	10	8
DARKBLOTCHED ROCKFISH f/	574	549	338	317
PACIFIC OCEAN PERCH g/	842	805	158	143
PETRALE SOLE h/	2,946	2,816	2,816	2,579
YELLOWEYE ROCKFISH i/	52	43	18	12
Arrowtooth flounder j/	6,599	5,497	5,497	3,410
Black rockfish (OR-CA) k/	1,176	1,124	1,000	999
Black rockfish (WA) l/	421	402	402	388
Cabezon (CA) m/	161	154	154	154
Cabezon (OR) n/	49	47	47	47
California scorpionfish o/	119	114	114	112
Chilipepper S. of 40°10' N. lat. p/	1,703	1,628	1,628	1,604
Dover sole q/	66,871	63,929	50,000	48,406
English sole r/	10,792	9,853	9,853	9,640
Lingcod N. of 40°10' N. lat. s/	3,010	2,830	2,830	2,552
Lingcod S. of 40°10' N. lat. t/	1,205	1,004	1,004	995
Longnose skate u/	2,449	2,341	2,000	1,927
Longspine thornyhead (coastwide) v/	5,007	4,171	NA	NA
Longspine thornyhead N. of 34°27' N. lat.	NA	NA	3,170	3,124
Longspine thornyhead S. of 34°27' N. lat.	NA	NA	1,001	998
Pacific Cod w/	3,200	2,221	1,600	1,091
Pacific whiting x/	x/	x/	x/	x/
Sablefish (coastwide)	7,857	7,173	NA	NA
Sablefish N. of 36° N. lat. y/	NA	NA	4,793	See Table 1c
Sablefish S. of 36° N. lat. z/	NA	NA	1,719	1,714
Shortbelly aa/	6,950	5,789	500	498
Shortspine thornyhead (coastwide) bb/	3,203	2,668	NA	NA
Shortspine thornyhead N. of 34°27' N. lat.	NA	NA	1,745	1,686
Shortspine thornyhead S. of 34°27' N. lat.	NA	NA	923	881
Spiny dogfish cc/	2,523	2,101	2,101	1,763
Splitnose S. of 40°10' N. lat. dd/	1,794	1,715	1,715	1,705
Starry flounder ee/	1,841	1,534	1,534	1,524
Widow rockfish ff/	4,137	3,929	2,000	1,880
Yellowtail N. of 40°10' N. lat. gg/	7,218	6,590	6,590	5,560
Minor Nearshore Rockfish N. of 40°10' N. lat. hh/	88	77	69	69
Minor Shelf Rockfish N. of 40°10' N. lat. ii/	2,209	1,944	1,944	1,872
Minor Slope Rockfish N. of 40°10' N. lat. jj/	1,831	1,693	1,693	1,629
Minor Nearshore Rockfish S. of 40°10' N. lat. kk/	1,313	1,169	1,114	1,110
Minor Shelf Rockfish S. of 40°10' N. lat. ll/	1,918	1,625	1,624	1,575
Minor Slope Rockfish S. of 40°10' N. lat. mm/	813	705	693	673
Other Flatfish nn/	11,453	8,749	8,749	8,545
Other Fish oo/	291	242	242	242

a/ Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

b/ Fishery harvest guidelines means the harvest guideline or quota after subtracting Pacific Coast treaty Indian

tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

c/ Bocaccio. A bocaccio stock assessment update was conducted in 2013 for the bocaccio stock between the U.S.-Mexico border and Cape Blanco. The stock is managed with stock-specific harvest specifications south of 40°10′ N. lat. and within the Minor Shelf Rockfish complex north of 40°10 N. lat. A historical catch distribution of approximately 6 percent was used to apportion the assessed stock to the area north of 40°10′ N. lat. The bocaccio stock was estimated to be at 31.4 percent of its unfished biomass in 2013. The OFL of 1,444 mt is projected in the 2013 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,380 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The 349 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2022 and an SPR harvest rate of 77.7 percent. 8.3 mt is deducted from the ACL to accommodate the incidental open access fishery (0.7 mt), EFP catch (3.0 mt) and research catch (4.6 mt), resulting in a fishery HG of 340.7 mt. The California recreational fishery has an HG of 178.8 mt.

d/ Canary rockfish. A canary rockfish stock assessment update was conducted in 2011 and the stock was estimated to be at 23.2 percent of its unfished biomass coastwide in 2011. The coastwide OFL of 733 mt is projected in the 2011 rebuilding analysis using an F_{MSY} proxy of $F_{50\%}$. The ABC of 701 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 122 mt is based on the current rebuilding plan with a target year to rebuild of 2030 and an SPR harvest rate of 88.7 percent. 15.2 mt is deducted from the ACL to accommodate the Tribal fishery (7.7 mt), the incidental open access fishery (2 mt), EFP catch (1.0 mt) and research catch (4.5 mt) resulting in a fishery HG of 106.8 mt. Recreational HGs are: 3.4 mt (Washington); 11.7 mt (Oregon); and 24.3 mt (California).

e/ Cowcod. A stock assessment for the Conception Area was conducted in 2013 and the stock was estimated to be at 33.9 percent of its unfished biomass in 2013. The Conception Area OFL of 55.0 mt is projected in the 2013 rebuilding analysis using an F_{MSY} proxy of $F_{50\%}$. The OFL contribution of 11.6 mt for the unassessed portion of the stock in the Monterey area is based on depletion-based stock reduction analysis. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10′ N. lat. OFL of 66.6 mt. The ABC for the area south of 40°10′ N. lat. is 59.9 mt. The assessed portion of the stock in the Conception Area is considered category 2, with a Conception area contribution to the ABC of 50.2 mt, which is an 8.7 percent reduction from the Conception area OFL (σ=0.72/P*=0.45). The unassessed portion of the stock in the Monterey area is considered a category 3 stock, with a contribution to the ABC of 9.7 mt, which is a 16.6 percent reduction from the Monterey area OFL (σ=1.44/P*=0.45). A single ACL of 10.0 mt is being set for both areas combined. The ACL of 10.0 mt is based on the rebuilding plan with a target year to rebuild of 2020 and an SPR harvest rate of 82.7 percent, which is equivalent to an exploitation rate (catch over age 11+ biomass) of 0.007. 2.0 mt is deducted from the ACL to accommodate EFP fishing (less than 0.02 mt) and research activity (2.0 mt), resulting in a fishery HG of 8.0 mt. Any additional mortality in research activities will be deducted from the ACL. A single ACT of 4.0 mt is being set for both areas combined.

f/ Darkblotched rockfish. A 2013 stock assessment estimated the stock to be at 36 percent of its unfished biomass in 2013. The OFL of 574 mt is projected in the 2013 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 549 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 338 mt is based on the current rebuilding plan with a target year to rebuild of 2025 and an SPR harvest rate of 64.9 percent. 20.8 mt is deducted from the ACL to accommodate the Tribal fishery (0.2 mt), the incidental open access fishery (18.4 mt), EFP catch (0.1 mt) and research catch (2.1 mt), resulting in a fishery HG of 317.2 mt.

g/ Pacific Ocean Perch. A POP stock assessment was conducted in 2011 and the stock was estimated to be at 19.1 percent of its unfished biomass in 2011. The OFL of 842 mt for the area north of 40°10′ N. lat. is projected in the 2011 rebuilding analysis using an $F_{50\%}$ F_{MSY} proxy. The ABC of 805 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 158 mt is based on the current rebuilding plan with a target year to rebuild of 2051 and an SPR harvest rate of 86.4 percent. 15 mt is deducted from the ACL to accommodate the Tribal fishery (9.2 mt), the incidental open access fishery (0.6 mt), and research catch (5.2 mt), resulting in a fishery HG of 143.0 mt.

h/ Petrale sole. A 2013 stock assessment estimated the stock to be at 22.3 percent of its unfished biomass in 2013. The OFL of 2,946 mt is projected in the 2013 assessment using an $F_{30\%}$ F_{MSY} proxy. The ABC of 2,816 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is based on the 25–5 harvest control rule specified in the current rebuilding plan; since the stock is projected to be rebuilt at the start of 2014, the ACL is set equal to the ABC. 236.6 mt is deducted from the ACL to accommodate the Tribal fishery (220 mt), the incidental open access fishery (2.4 mt), and research catch (14.2 mt), resulting in a fishery HG of 2,579.4 mt.

i/ Yelloweye rockfish. A stock assessment update was conducted in 2011. The stock was estimated to be at 21.4 percent of its unfished biomass in 2011. The 52 mt coastwide OFL was projected in the 2011 rebuilding analysis using an F_{MSY} proxy of $F_{50\%}$. The ABC of 43 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The 18 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2074 and an SPR harvest rate of 76.0 percent. 5.8 mt is deducted from the ACL to accommodate the Tribal fishery (2.3 mt), the incidental open access fishery (0.2 mt), EFP catch (0.03 mt) and research catch (3.3 mt) resulting in a fishery HG of 12.2 mt. Recreational HGs are: 2.9 mt (Washington); 2.6 mt (Oregon); and 3.4 mt (California).

j/ Arrowtooth flounder. The arrowtooth flounder stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 6,599 mt is derived from the 2007 assessment using an $F_{30\%}$ F_{MSY} proxy. The ABC of 5,497 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. 2,087 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), the incidental open access fishery (30 mt), and research catch (16.4 mt), resulting in a fishery HG of 3,410 mt.

k/ Black rockfish south (Oregon and California). A stock assessment was conducted for black rockfish south of 45°46′ N. lat. (Cape Falcon, Oregon) to Central California (*i.e.,* the southern-most extent of black rockfish, Love et al. 2002) in 2007. The biomass in the south was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is derived from the 2007 assessment using an F_{MSY} harvest rate proxy of $F_{50\%}$ plus 3 percent of the OFL from the stock assessment conducted for black rockfish north of 45°46′ N. lat., to cover the portion of the stock occurring off

Oregon north of Cape Falcon (the 3% adjustment is based on historical catch distribution). The resulting OFL for the area south of 46°16′ N. lat. is 1,176 mt. The ABC of 1,124 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The 2015 ACL is 1,000 mt, which maintains the constant catch strategy designed to keep the stock above its target biomass of $B_{40\%}$. 1 mt is deducted from the ACL to accommodate EFP catch, resulting in a fishery HG of 999 mt. The black rockfish ACL, in the area south of 46°16′ N. lat. (Columbia River), is subdivided with separate HGs for waters off Oregon (579 mt/58 percent) and for waters off California (420 mt/42 percent).

l/ Black rockfish north (Washington). A stock assessment was conducted for black rockfish north of 45°46′ N. lat. (Cape Falcon, Oregon) in 2007. The biomass in the north was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is derived from the 2007 assessment using an F_{MSY} harvest rate proxy of $F_{50\%}$. The resulting OFL for the area north of 46°16′ N. lat. is 421 mt and is 97 percent of the OFL from the assessed area based on the area distribution of historical catch. The ABC of 402 mt for the north is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC since the stock is above its target biomass of $B_{40\%}$. 14 mt is deducted from the ACL to accommodate the Tribal fishery, resulting in a fishery HG of 388 mt.

m/ Cabezon (California). A cabezon stock assessment was conducted in 2009. The cabezon spawning biomass in waters off California was estimated to be at 48.3 percent of its unfished biomass in 2009. The OFL of 161 mt is calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 154 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. There are no deductions from the ACL so the fishery HG is equal to the ACL of 154 mt.

n/ Cabezon (Oregon). A cabezon stock assessment was conducted in 2009. The cabezon spawning biomass in waters off Oregon was estimated to be at 52 percent of its unfished biomass in 2009. The OFL of 49 mt is calculated using an F_{MSY} proxy of $F_{45\neq}$. The ABC of 47 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\neq}$. There are no deductions from the ACL so the fishery HG is also equal to the ACL of 47 mt.

o/ California scorpionfish was assessed in 2005 and was estimated to be at 79.8 percent of its unfished biomass in 2005. The OFL of 119 mt is projected in the 2005 assessment using an F_{MSY} harvest rate proxy of $F_{50\%}$. The ABC of 114 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 2 mt is deducted from the ACL to accommodate the incidental open access fishery, resulting in a fishery HG of 112 mt.

p/ Chilipepper. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 70 percent of its unfished biomass in 2006. Chilipepper are managed with stock-specific harvest specifications south of 40°10 N. lat. and within the Minor Shelf Rockfish complex north of 40°10′ N. lat. Projected OFLs are stratified north and south of 40°10′ N. lat. based on the average 1998–2008 assessed area catch, which is 93 percent for the area south of 40°10′ N. lat. and 7 percent for the area north of 40°10′ N. lat. The OFL of 1,703 mt for the area south of 40°10′ N. lat. is projected in the 2007 assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,628 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 24 mt is deducted from the ACL to accommodate the incidental open access fishery (5 mt), EFP fishing (10 mt), and research catch (9 mt), resulting in a fishery HG of 1,604 mt.

q/ Dover sole. A 2011 Dover sole assessment estimated the stock to be at 83.7 percent of its unfished biomass in 2011. The OFL of 66,871 mt is projected in the 2011 stock assessment using an F_{MSY} proxy of $F_{30\%}$. The ABC of 63,929 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL could be set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. However, the ACL of 50,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. 1,594 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), the incidental open access fishery (55 mt), and research catch (41.9 mt), resulting in a fishery HG of 48,406 mt.

r/ English sole. A 2013 stock assessment was conducted, which estimated the stock to be at 88 percent of its unfished biomass in 2013. The OFL of 10,792 mt is projected in the 2013 assessment using an F_{MSY} proxy of $F_{30\%}$. The ABC of 9,853 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) as it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. 213 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (7 mt) and research catch (5.8 mt), resulting in a fishery HG of 9,640 mt.

s/ Lingcod north. A lingcod stock assessment was conducted in 2009. The lingcod spawning biomass off Washington and Oregon was estimated to be at 62 percent of its unfished biomass in 2009. The OFL for Washington and Oregon of 1,898 mt is calculated using an F_{MSY} proxy of $F_{45\%}$. The OFL is re-apportioned by adding 48% of the OFL from California, resulting in an OFL of 3,010 mt for the area north of 40°10′ N. lat. The ABC of 2,830 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) for the area north of 42° N. lat. as it's a category 1 stock, and an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) for the area between 42° N. lat. and 40°10′ N. lat. as it's a category 2 stock. The ACL is set equal to the ABC. 278 mt is deducted from the ACL for the Tribal fishery (250 mt), the incidental open access fishery (16 mt), EFP catch (0.5 mt) and research catch (11.7 mt), resulting in a fishery HG of 2,552 mt.

t/ Lingcod south. A lingcod stock assessment was conducted in 2009. The lingcod spawning biomass off California was estimated to be at 74 percent of its unfished biomass in 2009. The OFL for California of 2,317 mt is projected in the assessment using an F_{MSY} proxy of F45%. The OFL is re-apportioned by subtracting 48% of the OFL, resulting in an OFL of 1,205 mt for the area south of 40°10′ N. lat. The ABC of 1,004 mt is based on a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC since the stock is above its target biomass of $B_{40\%}$. 9 mt is deducted from the ACL to accommodate the incidental open access fishery (7 mt), EFP fishing (1 mt), and research catch (1.1 mt), resulting in a fishery HG of 995 mt.

u/ Longnose skate. A stock assessment was conducted in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 2,449 mt is derived from the 2007 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 2,341 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 2,000 mt is a fixed harvest level that provides greater access to the stock and is less than the

ABC. 73 mt is deducted from the ACL to accommodate the Tribal fishery (56 mt), incidental open access fishery (3.8 mt), and research catch (13.2 mt), resulting in a fishery HG of 1,927 mt.

v/ Longspine thornyhead. A 2013 longspine thornyhead coastwide stock assessment estimated the stock to be at 75 percent of its unfished biomass in 2013. A coastwide OFL of 5,007 mt is projected in the 2013 stock assessment using an $F_{50\%}$ F_{MSY} proxy. The ABC of 4,171 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 3,170 mt, and is 76 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 47 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (3 mt), and research catch (13.5 mt) resulting in a fishery HG of 3,124 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 1,001 mt and is 24 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 3 mt is deducted from the ACL to accommodate the incidental open access fishery (2 mt), and research catch (1 mt) resulting in a fishery HG of 998 mt.

w/ Pacific cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,221 mt is a 30.6 percent reduction from the OFL (σ=1.44/P*=0.40) as it's a category 3 stock. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. 509 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), research catch (7 mt), and the incidental open access fishery (2.0 mt), resulting in a fishery HG of 1,091 mt.

x/ Pacific whiting. Pacific whiting are assessed annually. The final specifications will be determined consistent with the U.S.-Canada Pacific Whiting Agreement and will be announced after the Council's April 2015 meeting.

y/ Sablefish north. A coastwide sablefish stock assessment was conducted in 2011. The coastwide sablefish biomass was estimated to be at 33 percent of its unfished biomass in 2011. The coastwide OFL of 7,857 mt is projected in the 2011 stock assessment using an F_{MSY} proxy of $F_{45\%}$. The ABC of 7,173 mt is an 8.7 percent reduction from the OFL (σ=0.36/P*=0.40). The 40–10 adjustment is applied to the ABC to derive a coastwide ACL value because the stock is in the precautionary zone. This coastwide ACL value is not specified in regulations. The coastwide ACL value is apportioned north and south of 36° N. lat., using the 2003–2010 average estimated swept area biomass from the NMFS NWFSC trawl survey, with 73.6 percent apportioned north of 36° N. lat. and 26.4 percent apportioned south of 36° N. lat. The northern ACL is 4,793 mt and is reduced by 479 mt for the tribal allocation (10 percent of the ACL north of 36° N. lat.). The 479 mt Tribal allocation is reduced by 1.6 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

z/ Sablefish south. The ACL for the area south of 36° N. lat. is 1,719 mt (26.4 percent of the calculated coastwide ACL value). 5 mt is deducted from the ACL to accommodate the incidental open access fishery (2 mt) and research catch (3 mt), resulting in a fishery HG of 1,714 mt.

aa/ Shortbelly rockfish. A non-quantitative shortbelly rockfish assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated to be 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt is based on the estimated MSY in the 2007 stock assessment. The ABC of 5,789 mt is a 16.7 percent reduction of the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The 500 mt ACL is set to accommodate incidental catch when fishing for co-occurring healthy stocks and in recognition of the stock's importance as a forage species in the California Current ecosystem. 2 mt is deducted from the ACL to accommodate research catch, resulting in a fishery HG of 498 mt.

bb/ Shortspine thornyhead. A 2013 coastwide shortspine thornyhead stock assessment estimated the stock to be at 74.2 percent of its unfished biomass in 2013. A coastwide OFL of 3,203 mt is projected in the 2013 stock assessment using an $F_{50\%}$ F_{MSY} proxy. The coastwide ABC of 2,668 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,745 mt. The northern ACL is 65.4 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 59 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (2 mt), and research catch (7 mt) resulting in a fishery HG of 1,686 mt for the area north of 34°27′ N. lat. For that portion of the stock south of 34°27′ N. lat. the ACL is 923 mt. The southern ACL is 35.6 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 42 mt is deducted from the ACL to accommodate the incidental open access fishery (41 mt) and research catch (1 mt), resulting in a fishery HG of 881 mt for the area south of 34°27′ N. lat.

cc/ Spiny dogfish. A coastwide spiny dogfish stock assessment was conducted in 2011. The coastwide spiny dogfish biomass was estimated to be at 63 percent of its unfished biomass in 2011. The coastwide OFL of 2,523 mt is derived from the 2011 assessment using an F_{MSY} proxy of $F_{50\%}$. The coastwide ABC of 2,101 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 338 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), the incidental open access fishery (49.5 mt), EFP catch (1 mt), and research catch (12.5 mt), resulting in a fishery HG of 1,763 mt.

dd/ Splitnose rockfish. A splitnose rockfish coastwide assessment was conducted in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose rockfish in the north is managed in the Minor Slope Rockfish complex and with species-specific harvest specifications south of 40°10′ N. lat. The coastwide OFL is projected in the 2009 assessment using an F_{MSY} proxy of $F_{50\%}$. The coastwide OFL is apportioned north and south of 40°10′ N. lat. based on the average 1916–2008 assessed area catch resulting in 64.2 percent of the coastwide OFL apportioned south of 40°10′ N. lat., and 35.8 percent apportioned for the contribution of splitnose rockfish to the northern Minor Slope Rockfish complex. The southern OFL of 1,794 mt results from the apportionment described above. The southern ABC of 1,715 mt is a 4.4 percent reduction from the southern OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is estimated to be above its target biomass of $B_{40\%}$. 10.5 mt is deducted from the ACL to accommodate research catch (9 mt) and EFP catch (1.5 mt), resulting in a fishery HG of 1,705 mt.

ee/ Starry Flounder. The stock was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005 (44 percent in Washington and Oregon, and 62 percent in California). The coastwide OFL of 1,841 mt is derived from the 2005 assessment using an F_{MSY} proxy of $F_{30\%}$. The ABC of 1,534 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The

ACL is set equal to the ABC because the stock is estimated to be above its target biomass of $B_{25\%}$. 10.3 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), and the incidental open access fishery (8.3 mt), resulting in a fishery HG of 1,524 mt.

ff/ Widow rockfish. The widow rockfish stock was assessed in 2011 and was estimated to be at 51.1 percent of its unfished biomass in 2011. The OFL of 4,137 mt is projected in the 2011 stock assessment using an $F_{50\%}$ F_{MSY} proxy. The ABC of 3,929 mt is a 5 percent reduction from the OFL (σ=0.41/P*=0.45). A unique sigma of 0.41 was calculated for widow rockfish since the variance in estimated biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The ACL could be set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. However, the ACL of 2,000 mt is less than the ABC due to high uncertainty in estimated biomass, yet this level of allowable harvest will allow access to healthy co-occurring species, such as yellowtail rockfish. 120.2 mt is deducted from the ACL to accommodate the Tribal fishery (100 mt), the incidental open access fishery (3.3 mt), EFP catch (9 mt), and research catch (7.9 mt), resulting in a fishery HG of 1,880 mt.

gg/ Yellowtail rockfish. A 2013 yellowtail rockfish stock assessment was conducted for the portion of the population north of 40°10′ N. lat. The estimated stock depletion is 69 percent of its unfished biomass in 2013. The OFL of 7,218 mt is projected in the 2013 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 6,590 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) as it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 1,029.6 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), the incidental open access fishery (3 mt), EFP catch (10 mt), and research catch (16.6 mt), resulting in a fishery HG of 5,560 mt.

hh/ Minor Nearshore Rockfish north. The OFL for Minor Nearshore Rockfish north of 40°10′ N. lat. of 88 mt is the sum of the OFL contributions for the component species managed in the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.72 for category 2 stocks (*i.e.,* blue rockfish in California, brown rockfish, China rockfish, and copper rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 77 mt is the summed contribution of the ABCs for the component species. The ACL of 69 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks plus the ACL contributions for blue rockfish in California and China rockfish where the 40–10 adjustment was applied to the ABC contributions for these two stocks, because those stocks are in the precautionary zone. No deductions are made to the ACL, thus the fishery HG is equal to the ACL, which is 69 mt. Between 40°10′ N. lat. and 42° N. lat. the Minor Nearshore Rockfish complex north has a harvest guideline of 23.7 mt. Blue rockfish south of 42° N. lat. has a species-specific HG, described in footnote kk/.

ii/ Minor Shelf Rockfish north. The OFL for Minor Shelf Rockfish north of 40°10′ N. lat. of 2,209 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.72 for category 2 stocks (*i.e.,* greenspotted rockfish between 40°10′ and 42° N. lat. and greenstriped rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,944 mt is the summed contribution of the ABCs for the component species. The ACL of 1,944 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of greenspotted rockfish in California where the 40–10 adjustment was applied to the ABC contribution because the stock is in the precautionary zone (the ACL is slightly less than the ABC but rounds to the ABC value). 72 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (26 mt), EFP catch (3 mt), and research catch (13.4 mt), resulting in a fishery HG of 1,872 mt.

jj/ Minor Slope Rockfish north. The OFL for Minor Slope Rockfish north of 40°10′ N. lat. of 1,831 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the Minor Slope Rockfish complexes are based on a sigma value of 0.39 for aurora rockfish, a sigma value of 0.36 for other category 1 stocks (*i.e.,* splitnose rockfish), a sigma value of 0.72 for category 2 stocks (*i.e.,* rougheye rockfish, blackspotted rockfish and sharpchin rockfish), and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. A unique sigma of 0.39 was calculated for aurora rockfish since the variance in estimated spawning biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The resulting ABC of 1,693 mt is the summed contribution of the ABCs for the component species. The ACL is set equal to the ABC because all the assessed component stocks are above the target biomass of $B_{40\%}$. 64 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (1 mt), and research catch (8.1 mt), resulting in a fishery HG of 1,629 mt.

kk/ Minor Nearshore Rockfish south. The OFL for the Minor Nearshore Rockfish complex south of 40°10′ N. lat. of 1,313 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern Minor Nearshore Rockfish complex is based on a sigma value of 0.36 for category 1 stocks (*i.e.,* gopher rockfish north of 34°27′ N. lat.), a sigma value of 0.72 for category 2 stocks (*i.e.,* blue rockfish north of 34°27′ N. lat., brown rockfish, China rockfish, and copper rockfish), and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,169 mt is the summed contribution of the ABCs for the component species. The ACL of 1,114 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution for blue rockfish north of 34°27′ N. lat. where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 4 mt is deducted from the ACL to accommodate the incidental open access fishery (1.4 mt) and research catch (2.6 mt), resulting in a fishery HG of 1,110 mt. Blue rockfish south of 42° N. lat. has a species-specific HG set equal to the 40–10-adjusted ACL for the portion of the stock north of 34°27′ N lat. (133.6 mt) plus the ABC contribution for the unassessed portion of the stock south of 34°27′ N lat. (60.8 mt). The California (*i.e.,* south of 42° N. lat.) blue rockfish HG is 194.4 mt.

ll/ Minor Shelf Rockfish south. The OFL for the Minor Shelf Rockfish complex south of 40°10′ N. lat. of 1,918 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the southern Minor Shelf Rockfish complex is based on a sigma value of 0.72 for category 2 stocks (*i.e.,* greenspotted and greenstriped rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,625 mt is the summed contribution of the ABCs for the component species. The ACL of 1,624 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of greenspotted rockfish in California where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 49 mt is deducted from the ACL to accommodate

the incidental open access fishery (9 mt), EFP catch (30 mt), and research catch (9.6 mt), resulting in a fishery HG of 1,575 mt.

mm/ Minor Slope Rockfish south. The OFL for the Minor Slope Rockfish complex south of 40°10′ N. lat. of 813 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern Minor Slope Rockfish complex is based on a sigma value of 0.39 for aurora rockfish, a sigma value of 0.72 for category 2 stocks (*i.e.,* blackgill rockfish, rougheye rockfish, blackspotted rockfish, and sharpchin rockfish), and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. A unique sigma of 0.39 was calculated for aurora rockfish since the variance in estimated biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The resulting ABC of 705 mt is the summed contribution of the ABCs for the component species. The ACL of 693 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of blackgill rockfish where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 20 mt is deducted from the ACL to accommodate the incidental open access fishery (17 mt), EFP catch (1 mt), and research catch (2 mt), resulting in a fishery HG of 673 mt. Blackgill rockfish has a species-specific HG set equal to the species' contribution to 40–10-adjusted ACL. The blackgill rockfish HG is 114 mt.

nn/ Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with species-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed and include butter sole, curlfin sole, flathead sole, Pacific sanddab (assessed in 2013 but the assessment results were too uncertain to inform harvest specifications), rock sole, sand sole, and rex sole (assessed in 2013). The Other Flatfish OFL of 11,453 mt is based on the sum of the OFL contributions of the component stocks. The ABC of 8,749 mt is based on a sigma value of 0.72 for category 2 stocks (*i.e.,* rex sole) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.40. The ACL is set equal to the ABC since all of the assessed stocks (*i.e.,* Pacific sanddabs and rex sole) were above their target biomass of $B_{25\%}$. 204 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (19 mt), resulting in a fishery HG of 8,545 mt.

oo/ Other Fish. The Other Fish complex is comprised of kelp greenling coastwide, cabezon off Washington, and leopard shark coastwide. These species are unassessed. The OFL of 291 mt is the sum of the OFL contributions for kelp greenling off California (the SSC has not approved methods for calculating the OFL contributions for kelp greenling off Oregon and Washington), cabezon off Washington, and leopard shark coastwide. The ABC of 242 mt is the sum of ABC contributions for kelp greenling off California, cabezon off Washington and leopard shark coastwide calculated by applying a P* of 0.45 and a sigma of 1.44 to the OFL contributions for those stocks. The ACL is set equal to the ABC. There are no deductions from the ACL so the fishery HG is equal to the ACL of 242 mt.

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Table 1b to Part 660, Subpart C – 2015, Allocations by Species or Species Group. (Weight in Metric Tons)

Species	Area	Fishery HG or ACT	Trawl		Non-trawl	
			%	Mt	%	Mt
BOCACCIO a/	S of 40°10' N. lat.	340.7	N/A	81.9	N/A	258.8
CANARY ROCKFISH a/ b/	Coastwide	106.8	N/A	56.9	N/A	49.9
COWCOD a/ c/	S of 40°10' N. lat.	4.0	N/A	1.4	N/A	2.6
DARKBLOTCHED ROCKFISH d/	Coastwide	317.2	95%	301.3	5%	15.9
PACIFIC OCEAN PERCH e/	N of 40°10' N. lat.	143.0	95%	135.9	5%	7.2
PETRALE SOLE a/	Coastwide	2,579.4	N/A	2,544.4	N/A	35.0
YELLOWEYE ROCKFISH a/	Coastwide	12.2	N/A	1.0	N/A	11.2
Arrowtooth flounder	Coastwide	3,410	95%	3,239	5%	170
Chilipepper	S of 40°10' N. lat.	1,604	75%	1,203	25%	401
Dover sole	Coastwide	48,406	95%	45,986	5%	2,420
English sole	Coastwide	9,640	95%	9,158	5%	482
Lingcod	N of 40'10° N. lat.	2,552	45%	1,148	55%	1,404
Lingcod	S of 40'10° N. lat.	995	45%	448	55%	547
Longnose skate a/	Coastwide	1,927	90%	1,734	10%	193
Longspine thornyhead	N of 34°27' N. lat.	3,124	95%	2,967	5%	156
Pacific cod	Coastwide	1,091	95%	1,036	5%	55
Pacific whiting	Coastwide	TBD	100%	TBD	0%	TBD
Sablefish	N of 36° N. lat.	0	See Table 1 c			
Sablefish	S of 36° N. lat.	1,714	42%	720	58%	994
Shortspine thornyhead	N of 34°27' N. lat.	1,686	95%	1,601	5%	84
Shortspine thornyhead	S of 34°27' N. lat.	881	NA	50	NA	831
Splitnose	S of 40°10' N. lat.	1,705	95%	1,619	5%	85
Starry flounder	Coastwide	1,524	50%	762	50%	762
Widow rockfish f/	Coastwide	1,880	91%	1,711	9%	169
Yellowtail rockfish	N of 40°10' N. lat.	5,560	88%	4,893	12%	667
Minor Shelf Rockfish complex a/	N of 40°10' N. lat.	1,872	60.2%	1,127	39.8%	745
Minor Shelf Rockfish complex a/	S of 40°10' N. lat.	1,575	12.2%	192	87.8%	1,383
Minor Slope Rockfish complex	N of 40°10' N. lat.	1,629	81%	1,319	19%	309
Minor Slope Rockfish complex	S of 40°10' N. lat.	673	63%	424	37%	249
Other Flatfish complex	Coastwide	8,545	90%	7,691	10%	855

a/ Allocations decided through the biennial specification process.

b/ 13.7 mt of the total trawl allocation of canary rockfish is allocated to the at-sea whiting fisheries, as follows: 5.7 mt for the mothership fishery, and 8.0 mt for the catcher/processor fishery.

c/ The cowcod fishery harvest guideline is further reduced to an ACT of 4.0 mt.

d/ Consistent with regulations at §660.55(c), 9 percent (27.1 mt) of the total trawl allocation for darkblotched rockfish is allocated to the whiting fisheries, as follows: 11.4 mt for the shorebased IFQ fishery, 6.5 mt for the mothership fishery, and 9.2 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

e/ Consistent with regulations at §660.55(c), 30 mt of the total trawl allocation for POP is allocated to the whiting fisheries, as follows: 12.6 mt for the shorebased IFQ fishery, 7.2 mt for the mothership fishery, and 10.2 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

f/ Consistent with regulations at §660.55(c), 500 mt of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 210 mt for the shorebased IFQ fishery, 120 mt for the mothership fishery, and 170 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

Table 1c. to Part 660, Subpart C – Sablefish North of 36° N. lat. Allocations, 2015

Year	ACL	Set-asides		Recreational Estimate	EFP	Commercial HG	Limited Entry HG		Open Access HG	
		Tribal a/	Research				%	Mt	%	MT b/
2015	4,793	479	26	6.1	1	4,281	90.6%	3,878	9.4%	402

Year	LE All	Limited Entry Trawl c/			Limited Entry Fixed Gear d/		
		ALL Trawl	At-sea Whiting	Shorebased IFQ	ALL FG	Primary	DTL
2015	3,878	2,249	50	2,199	1,629	1,385	244

a/ The tribal allocation is further reduced by 1.6% for discard mortality resulting in 471.6 mt in 2015.

b/ The open access HG is taken by the incidental OA fishery and the directed OA fishery.

c/ The trawl allocation is 58% of the limited entry HG.

d/ The limited entry fixed gear allocation is 42% of the limited entry HG.

Table 1d. to Part 660, Subpart C – At-Sea Whiting Fishery Annual Set-Asides, 2015

Species or Species Complex	Area	Set Aside (mt)
BOCACCIO	S. of 40°10 N. lat.	NA
CANARY ROCKFISH a/	Coastwide	Allocation
COWCOD	S. of 40°10 N. lat.	NA
DARKBLOTCHED ROCKFISH a/	Coastwide	Allocation
PACIFIC OCEAN PERCH a/	N. of 40°10 N. lat.	Allocation
PETRALE SOLE	Coastwide	5
YELLOWEYE	Coastwide	0
Arrowtooth Flounder	Coastwide	45
Chilipepper	S. of 40°10 N. lat.	NA
Dover Sole	Coastwide	5
English Sole	Coastwide	5
Lingcod	N. of 40°10 N. lat.	15
Lingcod	S. of 40°10 N. lat.	NA
Longnose Skate	Coastwide	5
Longspine Thornyhead	N. of 34°27 N. lat.	5
Longspine Thornyhead	S. of 34°27 N. lat.	NA
Minor Nearshore Rockfish	N. of 40°10 N. lat.	NA
Minor Nearshore Rockfish	S. of 40°10 N. lat.	NA
Minor Shelf Rockfish	N. of 40°10 N. lat.	35
Minor Shelf Rockfish	S. of 40°10 N. lat.	NA
Minor Slope Rockfish	N. of 40°10 N. lat.	100
Minor Slope Rockfish	S. of 40°10 N. lat.	NA
Other Fish	Coastwide	NA
Other Flatfish	Coastwide	20
Pacific Cod	Coastwide	5
Pacific Halibut b/	Coastwide	10
Pacific Whiting	Coastwide	Allocation
Sablefish	N. of 36° N. lat.	50
Sablefish	S. of 36° N. lat.	NA
Shortspine Thornyhead	N. of 34°27 N. lat.	20
Shortspine Thornyhead	S. of 34°27 N. lat.	NA
Starry Flounder	Coastwide	5
Widow Rockfish a/	Coastwide	Allocation
Yellowtail	N. of 40°10 N. lat.	300

a/ See Table 1.b., to Subpart C, for the at-sea whiting allocations for these species.

b/ As stated in §660.55 (m), the Pacific halibut set-aside is 10 mt, to accommodate bycatch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10 N. lat. (estimated to 5 mt each).

* * * * *

■ 10. Tables 2a through 2d, Subpart C, are revised to read as follows:

■ 10. Tables 2a through 2d, Subpart C, are revised to read as follows:

Table 2a. to Part 660, Subpart C- 2016, and Beyond, Specifications of OFL, ABC, ACL, ACT and Fishery harvest guidelines (weights in metric tons).

	OFL	ABC	ACL a/	Fishery HG b/
BOCACCIO S. of 40°10' N. lat. c/	1,351	1,291	362	354
CANARY ROCKFISH d/	729	697	125	110
COWCOD S. of 40°10' N. lat. e/	68	62	10	8
DARKBLOTCHED ROCKFISH f/	580	554	346	325
PACIFIC OCEAN PERCH g/	850	813	164	149
PETRALE SOLE h/	3,044	2,910	2,910	2,673
YELLOWEYE ROCKFISH i/	52	43	19	13
Arrowtooth flounder j/	6,396	5,328	5,328	3,241
Black rockfish (OR-CA) k/	1,183	1,131	1,000	999
Black rockfish (WA) l/	423	404	404	390
Cabezon (CA) m/	158	151	151	151
Cabezon (OR) n/	49	47	47	47
California scorpionfish o/	117	111	111	109
Chilipepper S. of 40°10' N. lat. p/	1,694	1,619	1,619	1,595
Dover sole q/	59,221	56,615	50,000	48,406
English sole r/	7,890	7,204	7,204	6,991
Lingcod N. of 40°10' N. lat. s/	2,891	2,719	2,719	2,441
Lingcod S. of 40°10' N. lat. t/	1,136	946	946	937
Longnose skate u/	2,405	2,299	2,000	1,927
Longspine thornyhead (coastwide) v/	4,763	3,968	NA	NA
Longspine thornyhead N. of 34°27' N. lat.	NA	NA	3,015	2,969
Longspine thornyhead S. of 34°27' N. lat.	NA	NA	952	949
Pacific Cod w/	3,200	2,221	1,600	1,091
Pacific whiting x/	x/	x/	x/	x/
Sablefish (coastwide)	8,526	7,784	NA	NA
Sablefish N. of 36° N. lat. y/	NA	NA	5,241	See Table 2c
Sablefish S. of 36° N. lat. z/	NA	NA	1,880	1,875
Shortbelly aa/	6,950	5,789	500	498
Shortspine thornyhead (coastwide) bb/	3,169	2,640	NA	NA
Shortspine thornyhead N. of 34°27' N. lat.	NA	NA	1,726	1,667
Shortspine thornyhead S. of 34°27' N. lat.	NA	NA	913	871
Spiny dogfish cc/	2,503	2,085	2,085	1,747
Splitnose S. of 40°10' N. lat. dd/	1,826	1,746	1,746	1,736
Starry flounder ee/	1,847	1,539	1,539	1,529
Widow rockfish ff/	3,990	3,790	2,000	1,880
Yellowtail N. of 40°10' N. lat. gg/	6,949	6,344	6,344	5,314
Minor Nearshore Rockfish N. of 40°10' N. lat. hh/	88	77	69	69
Minor Shelf Rockfish N. of 40°10' N. lat. ii/	2,218	1,953	1,952	1,880
Minor Slope Rockfish N. of 40°10' N. lat. jj/	1,844	1,706	1,706	1,642
Minor Nearshore Rockfish S. of 40°10' N. lat. kk/	1,288	1,148	1,006	1,002
Minor Shelf Rockfish S. of 40°10' N. lat. ll/	1,919	1,626	1,625	1,576
Minor Slope Rockfish S. of 40°10' N. lat. mm/	814	705	695	675
Other Flatfish nn/	9,645	7,243	7,243	7,039
Other Fish oo/	291	243	243	243

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[a] Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

[b] Fishery harvest guidelines means the harvest guideline or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

[c] Bocaccio. A bocaccio stock assessment update was conducted in 2013 for the bocaccio stock between the U.S.-Mexico border and Cape Blanco. The stock is managed with stock-specific harvest specifications south of 40°10′ N. lat. and within the Minor Shelf Rockfish complex north of 40°10′ N. lat. A historical catch distribution of approximately 6 percent was used to apportion the assessed stock to the area north of 40°10′ N. lat. The bocaccio stock was estimated to be at 31.4 percent of its unfished biomass in 2013. The OFL of 1,351 mt is projected in the 2013 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,291 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The 362 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2022 and an SPR harvest rate of 77.7 percent. 8.3 mt is deducted from the ACL to accommodate the incidental open access fishery (0.7 mt), EFP catch (3.0 mt) and research catch (4.6 mt), resulting in a fishery HG of 353.7 mt. The California recreational fishery has an HG of 185.6 mt.

[d] Canary rockfish. A canary rockfish stock assessment update was conducted in 2011 and the stock was estimated to be at 23.2 percent of its unfished biomass coastwide in 2011. The coastwide OFL of 729 mt is projected in the 2011 rebuilding analysis using an F_{MSY} proxy of $F_{50\%}$. The ABC of 697 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 125 mt is based on the current rebuilding plan with a target year to rebuild of 2030 and an SPR harvest rate of 88.7 percent. 15.2 mt is deducted from the ACL to accommodate the Tribal fishery (7.7 mt), the incidental open access fishery (2 mt), EFP catch (1.0 mt) and research catch (4.5 mt) resulting in a fishery HG of 109.8 mt. Recreational HGs are: 3.5 mt (Washington); 12.0 mt (Oregon); and 25.0 mt (California).

[e] Cowcod. A stock assessment for the Conception Area was conducted in 2013 and the stock was estimated to be 33.9 percent of its unfished biomass in 2013. The Conception Area OFL of 56.4 mt is projected in the 2013 rebuilding analysis using an F_{MSY} proxy of $F_{50\%}$. The OFL of 12.0 mt for the unassessed portion of the stock in the Monterey area is based on depletion-based stock reduction analysis. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10′ N. lat. OFL of 68.4 mt. The ABC for the area south of 40°10′ N. lat. is 61.5 mt. The assessed portion of the stock in the Conception Area is considered category 2, with a Conception Area contribution to the ABC of 51.5 mt, which is an 8.7 percent reduction from the Conception area OFL (σ=0.72/P*=0.45). The unassessed portion of the stock in the Monterey area is considered a category 3 stock, with a contribution to the ABC of 10.0 mt, which is a 17 percent reduction from the Monterey area OFL (σ=1.44/P*=0.45). A single ACL of 10.0 mt is being set for both areas combined. The ACL of 10.0 mt is based on the rebuilding plan with a target year to rebuild of 2020 and an SPR harvest rate of 82.7 percent, which is equivalent to an exploitation rate (catch over age 11+ biomass) of 0.007. 2.0 mt is deducted from the ACL to accommodate EFP fishing (less than 0.02 mt) and research activity (2.0 mt), resulting in a fishery HG of 8.0 mt. Any additional mortality in research activities will be deducted from the ACL. A single ACT of 4.0 mt is being set for both areas combined.

[f] Darkblotched rockfish. A 2013 stock assessment estimated the stock to be at 36 percent of its unfished biomass in 2013. The OFL of 580 mt is projected in the 2013 stock assessment using an F_{MSY} proxy of $F_{50\%}$.The ABC of 554 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 346 mt is based on the current rebuilding plan with a target year to rebuild of 2025 and an SPR harvest rate of 64.9 percent. 20.8 mt is deducted from the ACL to accommodate the Tribal fishery (0.2 mt), the incidental open access fishery (18.4 mt), EFP catch (0.1 mt) and research catch (2.1 mt), resulting in a fishery HG of 325.2 mt.

[g] Pacific Ocean Perch. A POP stock assessment was conducted in 2011 and the stock was estimated to be at 19.1 percent of its unfished biomass in 2011. The OFL of 850 mt for the area north of 40°10′ N. lat. is projected in the 2011 rebuilding analysis using an $F_{50\%}$ F_{MSY} proxy. The ABC of 850 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 164 mt is based on the current rebuilding plan with a target year to rebuild of 2051 and an SPR harvest rate of 86.4 percent. 15 mt is deducted from the ACL to accommodate the Tribal fishery (9.2 mt), the incidental open access fishery (0.6 mt), and research catch (5.2 mt), resulting in a fishery HG of 149.0 mt.

[h] Petrale sole. A 2013 stock assessment estimated the stock to be at 22.3 percent of its unfished biomass in 2013. The OFL of 3,044 mt is projected in the 2013 assessment using an $F_{30\%}$ F_{MSY} proxy. The ABC of 2,910 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is based on the 25–5 harvest control rule specified in the current rebuilding plan; since the stock is projected to be rebuilt at the start of 2014, the ACL is set equal to the ABC. 236.6 mt is deducted from the ACL to accommodate the Tribal fishery (220 mt), the incidental open access fishery (2.4 mt), and research catch (14.2 mt), resulting in a fishery HG of 2,673.4 mt.

[i] Yelloweye rockfish. A stock assessment update was conducted in 2011. The stock was estimated to be at 21.4 percent of its unfished biomass in 2011. The 52 mt coastwide OFL was projected in the 2011 rebuilding analysis using an F_{MSY} proxy of $F_{50\%}$. The ABC of 43 mt is a 16.77 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The 19 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2074 and an SPR harvest rate of 76.0 percent. 5.8 mt is deducted from the ACL to accommodate the Tribal fishery (2.3 mt), the incidental open access fishery (0.2 mt), EFP catch (0.03 mt) and research catch (3.3 mt) resulting in a fishery HG of 13.2 mt. Recreational HGs are being established: 3.1 mt (Washington); 2.8 mt (Oregon); and 3.7 mt (California).

[j] Arrowtooth flounder. The arrowtooth flounder stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 6,396 mt is derived from the 2007 assessment using an $F_{30\%}$ F_{MSY} proxy. The ABC of 5,328 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. 2,087 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), the incidental open access fishery (30 mt), and research catch (16.4 mt), resulting in a fishery HG of 3,241 mt.

[k] Black rockfish south (Oregon and California). A stock assessment was conducted for black rockfish south of 45°46′ N. lat. (Cape Falcon, Oregon) to Central California (*i.e.,* the southern-most extent of black rockfish, Love et al. 2002) in 2007. The biomass in the south was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is derived from the 2007 assessment using an F_{MSY} harvest rate proxy of $F_{50\%}$ plus 3 percent of the OFL from the stock assessment conducted for black rockfish north of 45°46′ N. lat., to cover the portion of the stock occurring off Oregon north of Cape Falcon (the 3% adjustment is based on historical catch distribution). The resulting OFL for the area south of 46°16′ N. lat. is 1,183 mt. The ABC of 1,131 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The 2016 ACL is 1,000 mt, which maintains the constant catch strategy designed to keep the stock above its target biomass of $B_{40\%}$. 1 mt is deducted from the ACL to accommodate EFP catch, resulting in a fishery HG of 999 mt. The black rockfish ACL, in the area south of 46°16′ N. lat. (Columbia River), is subdivided with separate HGs for waters off Oregon (579 mt/58 percent) and for waters off California (420 mt/42 percent).

[l] Black rockfish north (Washington). A stock assessment was conducted for black rockfish north of 45°46′ N. lat. (Cape Falcon, Oregon) in 2007. The biomass in the north was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is derived from the 2007 assessment using an F_{MSY} harvest rate proxy of $F_{50\%}$. The resulting OFL for the area north of 46°16′ N. lat. is 423 mt and is 97 percent of the OFL from the assessed area based on the area distribution of historical catch. The ABC of 404 mt for the north is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC since the stock is above its target biomass of $B_{40\%}$. 14 mt is deducted from the ACL to accommodate the Tribal fishery, resulting in a fishery HG of 390 mt.

[m] Cabezon (California). A cabezon stock assessment was conducted in 2009. The

cabezon spawning biomass in waters off California was estimated to be at 48.3 percent of its unfished biomass in 2009. The OFL of 158 mt is calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 151 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. There are no deductions from the ACL so the fishery HG is equal to the ACL of 151 mt.

[n] Cabezon (Oregon). A cabezon stock assessment was conducted in 2009. The cabezon spawning biomass in waters off Oregon was estimated to be at 52 percent of its unfished biomass in 2009. The OFL of 49 mt is calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 47 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. There are no deductions from the ACL so the fishery HG is also equal to the ACL of 47 mt.

[o] California scorpionfish was assessed in 2005 and was estimated to be at 79.8 percent of its unfished biomass in 2005. The OFL of 117 mt is projected in the 2005 assessment using an F_{MSY} harvest rate proxy of $F_{50\%}$. The ABC of 111 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 2 mt is deducted from the ACL to accommodate the incidental open access fishery, resulting in a fishery HG of 109 mt.

[p] Chilipepper. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 70 percent of its unfished biomass in 2006. Chilipepper are managed with stock-specific harvest specifications south of 40°10′ N. lat. and within the Minor Shelf Rockfish complex north of 40°10′ N. lat. Projected OFLs are stratified north and south of 40°10′ N. lat. based on the average 1998–2008 assessed area catch, which is 93 percent for the area south of 40°10′ N. lat. and 7 percent for the area north of 40°10′ N. lat. The OFL of 1,694 mt for the area south of 40°10′ N. lat. is projected in the 2007 assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,619 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 24 mt is deducted from the ACL to accommodate the incidental open access fishery (5 mt), EFP fishing (10 mt), and research catch (9 mt), resulting in a fishery HG of 1,595 mt.

[q] Dover sole. A 2011 Dover sole assessment estimated the stock to be at 83.7 percent of its unfished biomass in 2011. The OFL of 59,221 mt is projected in the 2011 stock assessment using an F_{MSY} proxy of $F_{30\%}$. The ABC of 56,615 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL could be set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. However, the ACL of 50,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. 1,594 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), the incidental open access fishery (55 mt), and research catch (41.9 mt), resulting in a fishery HG of 48,406 mt.

[r] English sole. A 2013 stock assessment was conducted, which estimated the stock to be at 88 percent of its unfished biomass in 2013. The OFL of 7890 mt is projected in the 2013 assessment using an F_{MSY} proxy of $F_{30\%}$. The ABC of 7,204 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) as it is a category 2 stock. The ACL could be set equal to the ABC because the stock is above its target biomass of $B_{25\%}$. 213 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (7 mt) and research catch (5.8 mt), resulting in a fishery HG of 6,991 mt.

[s] Lingcod north. A lingcod stock assessment was conducted in 2009. The lingcod spawning biomass off Washington and Oregon was estimated to be at 62 percent of its unfished biomass in 2009. The OFL for Washington and Oregon of 1,842 mt is calculated using an F_{MSY} proxy of $F_{45\%}$. The OFL is re-apportioned by adding 48% of the OFL from California, resulting in an OFL of 2,891 mt for the area north of 40°10′ N. lat. The ABC of 2,719 mt is based on a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) for the area north of 42° N. lat. as it's a category 1 stock, and an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) for the area between 42° N. lat. and 40°10′ N. lat., as it's a category 2 stock. The ACL is set equal to the ABC since the stock is above its target biomass of $B_{40\%}$. 278 mt is deducted from the ACL to accommodate the Tribal fishery (250 mt), the incidental open access fishery (16 mt), EFP catch (0.5 mt) and research catch (11.7 mt), resulting in a fishery HG of 2,441 mt.

[t] Lingcod south . A lingcod stock assessment was conducted in 2009. The lingcod spawning biomass off California was estimated to be at 74 percent of its unfished biomass in 2009. The OFL for California of 2,185 mt is projected in the assessment using an F_{MSY} proxy of $F_{45\%}$. The OFL is re-apportioned by subtracting 48% of the OFL, resulting in an OFL of 1,136 mt for the area south of 40°10′ N. lat. The ABC of 946 mt is based on a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC since the stock is above its target biomass of $B_{40\%}$. 9 mt is deducted from the ACL to accommodate the incidental open access fishery (7 mt), EFP fishing (1 mt), and research catch (1.1 mt), resulting in a fishery HG of 937 mt.

[u] Longnose skate. A stock assessment was conducted in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 2,405 mt is derived from the 2007 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 2,299 mt is a 4.4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 2,000 mt is a fixed harvest level that provides greater access to the stock and is less than the ABC. 73 mt is deducted from the ACL to accommodate the Tribal fishery (56 mt), incidental open access fishery (3.8 mt), and research catch (13.2 mt), resulting in a fishery HG of 1,927 mt.

[v] Longspine thornyhead. A 2013 longspine thornyhead coastwide stock assessment estimated the stock to be at 75 percent of its unfished biomass in 2013. A coastwide OFL of 4,763 mt is projected in the 2013 stock assessment using an $F_{50\%}$ F_{MSY} proxy. The ABC of 3,968 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 3,015 mt, and is 76 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 46 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (3 mt), and research catch (13.5 mt) resulting in a fishery HG of 2,969 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 952 mt and is 24 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 3 mt is deducted from the ACL to accommodate the incidental open access fishery (2 mt), and research catch (1 mt) resulting in a fishery HG of 949 mt.

[w] Pacific cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,221 mt is a 30.6 percent reduction from the OFL (σ=1.44/P*=0.40) as it's a category 3 stock. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. 509 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), research catch (7 mt), and the incidental open access fishery (2.0 mt), resulting in a fishery HG of 1,091 mt.

[x] Pacific whiting. Pacific whiting are assessed annually. The final specifications will be determined consistent with the U.S.-Canada Pacific Whiting Agreement and will be announced after the Council's April 2016 meeting.

[y] Sablefish north. A coastwide sablefish stock assessment was conducted in 2011. The coastwide sablefish biomass was estimated to be at 33 percent of its unfished biomass in 2011. The coastwide OFL of 8,526 mt is projected in the 2011 stock assessment using an F_{MSY} proxy of $F_{45\%}$. The ABC of 7,784 mt is an 8.7 percent reduction from the OFL (σ=0.36/P*=0.40). The 40–10 adjustment was applied to the ABC to derive a coastwide ACL value because the stock is in the precautionary zone. This coastwide ACL value is not specified in regulations. The coastwide ACL value is apportioned north and south of 36° N. lat., using the 2003–2010 average estimated swept area biomass from the NMFS NWFSC trawl survey, with 73.6 percent apportioned north of 36° N. lat. and 26.4 percent apportioned south of 36° N. lat. The northern ACL is 5,241 mt and is reduced by 524 mt for the tribal allocation (10 percent of the ACL north of 36° N. lat.). The 524 mt Tribal allocation is reduced by 1.6 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

[z] Sablefish south. The ACL for the area south of 36° N. lat. is 1,880 mt (26.4 percent of the calculated coastwide ACL value). 5 mt is deducted from the ACL to accommodate the incidental open access fishery (2 mt) and research catch (3 mt), resulting in a fishery HG of 1,875 mt.

[aa] Shortbelly rockfish. A non-quantitative shortbelly rockfish assessment was

conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated to be 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt is based on the estimated MSY in the 2007 stock assessment. The ABC of 5,789 mt is a 16.7 percent reduction of the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The 500 mt ACL is set to accommodate for incidental catch when fishing for co-occurring healthy stocks and in recognition of the stock's importance as a forage species in the California Current ecosystem. 2 mt is deducted from the ACL to accommodate research catch, resulting in a fishery HG of 498 mt.

[bb] Shortspine thornyhead. A 2013 coastwide shortspine thornyhead stock assessment estimated the stock to be at 74.2 percent of its unfished biomass in 2013. A coastwide OFL of 3,169 mt is projected in the 2013 stock assessment using an $F_{50\%}$ F_{MSY} proxy. The coastwide ABC of 2,640 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,726 mt. The northern ACL is 65.4 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey 59 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (2 mt), and research catch (7 mt) resulting in a fishery HG of 1,667 mt for the area north of 34°27′ N. lat. For that portion of the stock south of 34°27′ N. lat. the ACL is 913 mt. The southern ACL is 35.6 percent of the coastwide ABC based on the average swept-area biomass estimates (2003–2012) from the NMFS NWFSC trawl survey. 42 mt is deducted from the ACL to accommodate the incidental open access fishery (41 mt) and research catch (1 mt), resulting in a fishery HG of 871 mt for the area south of 34°27′ N. lat.

[cc] Spiny dogfish. A coastwide spiny dogfish stock assessment was conducted in 2011. The coastwide spiny dogfish biomass was estimated to be at 63 percent of its unfished biomass in 2011. The coastwide OFL of 2,503 mt is derived from the 2011 assessment using an F_{MSY} proxy of $F_{50\%}$. The coastwide ABC of 2,085 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 338 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), the incidental open access fishery (49.5 mt), EFP catch (1 mt), and research catch (12.5 mt), resulting in a fishery HG of 1,747 mt.

[dd] Splitnose rockfish. A splitnose rockfish coastwide assessment was conducted in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose rockfish in the north is managed in the Minor Slope Rockfish complex and with species-specific harvest specifications south of 40°10′ N. lat. The coastwide OFL is projected in the 2009 assessment using an F_{MSY} proxy of $F_{50\%}$. The coastwide OFL is apportioned north and south of 40°10′ N. lat. based on the average 1916–2008 assessed area catch resulting in 64.2 percent of the coastwide OFL apportioned south of 40°10′ N. lat., and 35.8 percent apportioned for the contribution of splitnose rockfish to the northern Minor Slope Rockfish complex. The southern OFL of 1,826 mt results from the apportionment described above. The southern ABC of 1,746 mt is a 4.4 percent reduction from the southern OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC because the stock is estimated to be above its target biomass of $B_{40\%}$. 110.5 mt is deducted from the ACL to accommodate research catch (9 mt) and EFP catch (1.5 mt), resulting in a fishery HG of 1,736 mt.

[ee] Starry Flounder. The stock was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005 (44 percent in Washington and Oregon, and 62 percent in California). The coastwide OFL of 1,847 mt is derived from the 2005 assessment using an F_{MSY} proxy of $F_{30\%}$. The ABC of 1,539 mt is a 16.7 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL is set equal to the ABC because the stock is estimated to be above its target biomass of $B_{25\%}$. 10.3 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), and the incidental open access fishery (8.3 mt), resulting in a fishery HG of 1,529 mt.

[ff] Widow rockfish. The widow rockfish stock was assessed in 2011 and was estimated to be at 51.1 percent of its unfished biomass in 2011. The OFL of 3,990 mt is projected in the 2011 stock assessment using an $F_{50\%}$ F_{MSY} proxy. The ABC of 3,790 mt is a 5 percent reduction from the OFL (σ=0.41/P*=0.45). A unique sigma of 0.41 was calculated for widow rockfish since the variance in estimated biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The ACL could be set equal to the ABC because the stock is above its target biomass of B40%. However, the ACL of 2,000 mt is less than the ABC due to high uncertainty in estimated biomass, yet this level of allowable harvest will allow access to healthy co-occurring species, such as yellowtail rockfish. 120.2 mt is deducted from the ACL to accommodate the Tribal fishery (100 mt), the incidental open access fishery (3.3 mt), EFP catch (9 mt), and research catch (7.9 mt), resulting in a fishery HG of 1,880 mt.

[gg] Yellowtail rockfish. A 2013 yellowtail rockfish stock assessment was conducted for the portion of the population north of 40°10′ N. lat. The estimated stock depletion is 69 percent of its unfished biomass in 2013. The OFL of 6,949 mt is projected in the 2013 stock assessment using an F_{MSY} proxy of $F_{50\%}$. The ABC of 6,344 mt is an 8.7 percent reduction from the OFL (σ=0.72/P*=0.45) as it is a category 2 stock. The ACL is set equal to the ABC because the stock is above its target biomass of $B_{40\%}$. 1,029.6 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), the incidental open access fishery (3 mt), EFP catch (10 mt) and research catch (16.6 mt), resulting in a fishery HG of 5,314 mt.

[hh] Minor Nearshore Rockfish north. The OFL for Minor Nearshore Rockfish north of 40°10′ N. lat. of 88 mt is the sum of the OFL contributions for the component species managed in the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.72 for category 2 stocks (*i.e.,* blue rockfish in California, brown rockfish, China rockfish, and copper rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 77 mt is the summed contribution of the ABCs for the component species. The ACL of 69 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contributions for blue rockfish in California and China rockfish where the 40–10 adjustment was applied to the ABC contributions for these two stocks because they are in the precautionary zone. No deductions are made to the ACL, thus the fishery HG is equal to the ACL, which is 69 mt. Between 40°10′ N. lat. and 42° N. lat. the Minor Nearshore Rockfish complex north has a harvest guideline of 23.7 mt. Blue rockfish south of 42° N. lat. has a species-specific HG, described in footnote kk/.

[ii] Minor Shelf Rockfish north. The OFL for Minor Shelf Rockfish north of 40°10′ N. lat. of 2,218 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.72 for category 2 stocks (*i.e.,* greenspotted rockfish between 40°10′ and 42° N. lat. and greenstriped rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,953 mt is the summed contribution of the ABCs for the component species. The ACL of 1,952 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of greenspotted rockfish in California where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 72 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (26 mt), EFP catch (3 mt), and research catch (13.4 mt), resulting in a fishery HG of 1,880 mt.

[jj] Minor Slope Rockfish north. The OFL for Minor Slope Rockfish north of 40°10′ N. lat. of 1,844 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the Minor Slope Rockfish complexes are based on a sigma value of 0.39 for aurora rockfish, a sigma value of 0.36 for other category 1 stocks (*i.e.,* splitnose rockfish), a sigma value of 0.72 for category 2 stocks (*i.e.,* rougheye rockfish, blackspotted rockfish and sharpchin rockfish), and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. A unique sigma of 0.39 was calculated for aurora rockfish since the variance in estimated spawning biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The resulting ABC of 1,706 mt is the summed contribution of the ABCs for the component species. The ACL is set equal to the ABC because all the assessed component stocks are above the target biomass of $B_{40\%}$. 64 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (1 mt), and research catch (8.1 mt), resulting in a fishery HG of 1,642 mt.

[kk] Minor Nearshore Rockfish south. The OFL for the Minor Nearshore Rockfish complex south of 40°10′ N. lat. of 1,288 mt

is the sum of the OFL contributions for the component species within the complex. The ABC for the southern Minor Nearshore Rockfish complex is based on a sigma value of 0.36 for category 1 stocks (*i.e.,* gopher rockfish north of 34°27′ N. lat.), a sigma value of 0.72 for category 2 stocks (*i.e.,* blue rockfish north of 34°27′ N. lat., brown rockfish, China rockfish and copper rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,148 mt is the summed contribution of the ABCs for the component species. The ACL of 1,006 mt is the sum of the contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution for blue rockfish north of 34°27′ N. lat. where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 4 mt is deducted from the ACL to accommodate the incidental open access fishery (1.4 mt) and research catch (2.6 mt), resulting in a fishery HG of 1,002 mt. Blue rockfish south of 42° N. lat. has a species-specific HG set equal to the 40–10-adjusted ACL for the portion of the stock north of 34°27′ N lat. (137.5) plus the ABC contribution for the unassessed portion of the stock south of 34°27′ N. lat. (60.8 mt). The California (*i.e.* south of 42° N. lat.) blue rockfish HG is 198.3 mt.

[ll] Minor Shelf Rockfish south. The OFL for the Minor Shelf Rockfish complex south of 40°10′ N. lat. of 1,919 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the southern Minor Shelf Rockfish complex is based on a sigma value of 0.72 for category 2 stocks (*i.e.,* greenspotted and greenstriped rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,626 mt is the summed contribution of the ABCs for the component species. The ACL of 1,625 mt is the sum of contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of greenspotted rockfish in California where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 49 mt is deducted from the ACL to accommodate the incidental open access fishery (9 mt), EFP catch (30 mt), and research catch (9.6 mt), resulting in a fishery HG of 1,576 mt.

[mm] Minor Slope Rockfish south. The OFL of 814 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern Minor Slope Rockfish complex is based on a sigma value of 0.39 for aurora rockfish, a sigma value of 0.72 for category 2 stocks (*i.e.,* blackgill rockfish, rougheye rockfish, blackspotted rockfish, sharpchin rockfish) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.45. A unique sigma of 0.39 was calculated for aurora rockfish since the variance in estimated biomass was greater than the 0.36 used as a proxy for other category 1 stocks. The resulting ABC of 705 mt is the summed contribution of the ABCs for the component species. The ACL of 695 mt is the sum of the contributing ABCs of healthy assessed stocks and unassessed stocks, plus the ACL contribution of blackgill rockfish where the 40–10 adjustment was applied to the ABC contribution for this stock because it is in the precautionary zone. 20 mt is deducted from the ACL to accommodate the incidental open access fishery (17 mt), EFP catch (1 mt), and research catch (2 mt), resulting in a fishery HG of 675 mt. Blackgill rockfish has a species-specific HG set equal to the species' contribution to the 40–10-adjusted ACL. The blackgill rockfish HG is 117 mt.

[nn] Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with species-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed, and include: butter sole, curlfin sole, flathead sole, Pacific sanddab (assessed in 2013, but the assessment results were too uncertain to inform harvest specifications), rock sole, sand sole, and rex sole (assessed in 2013). The Other Flatfish OFL of 9,645 mt is based on the sum of the OFL contributions of the component stocks. The ABC of 7,243 mt is based on a sigma value of 0.72 for category 2 stocks (*i.e.,* rex sole) and a sigma value of 1.44 for category 3 stocks (all others) with a P* of 0.40. The ACL is set equal to the ABC. The ACL is set equal to the ABC since all of the assessed stocks (*i.e.,* Pacific sanddabs and rex sole) were above their target biomass of B25%. 204 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (19 mt), resulting in a fishery HG of 7,039 mt.

[oo] Other Fish. The Other Fish complex is comprised of kelp greenling coastwide, cabezon off Washington, and leopard shark coastwide. These species are unassessed. The OFL of 291 mt is the sum of the OFL contributions for kelp greenling off California (the SSC has not approved methods for calculating the OFL contributions for kelp greenling off Oregon and Washington), cabezon off Washington, and leopard shark coastwide. The ABC of 243 mt is the sum of ABC contributions for kelp greenling off California, cabezon off Washington and leopard shark coastwide calculated by applying a P* of 0.45 and a sigma of 1.44 to the OFL contributions for those stocks. The ACL is set equal to the ABC. There are no deductions from the ACL so the fishery HG is equal to the ACL of 243 mt.

Table 2b. to Part 660, Subpart C – 2016, and Beyond, Allocations by Species or Species Group (Weights in Metric Tons).

Species	Area	Fishery HG or ACT	Trawl		Non-trawl	
			%	Mt	%	Mt
BOCACCIO a/	S of 40°10' N. lat.	353.7	N/A	85.0	N/A	268.7
CANARY ROCKFISH a/ b/	Coastwide	109.8	N/A	58.5	N/A	51.3
COWCOD a/ c/	S of 40°10' N. lat.	4.0	N/A	1.4	N/A	2.6
DARKBLOTCHED ROCKFISH d/	Coastwide	325.2	95%	308.9	5%	16.3
PETRALE SOLE a/	Coastwide	2,673.4	N/A	2,638.4	N/A	35.0
PACIFIC OCEAN PERCH e/	N of 40°10' N. lat.	149.0	95%	141.6	5%	7.5
YELLOWEYE ROCKFISH a/	Coastwide	13.2	N/A	1.1	N/A	12.1
Arrowtooth flounder	Coastwide	3,241	95%	3,079	5%	162
Chilipepper	S of 40°10' N. lat.	1,595	75%	1,196	25%	399
Dover sole	Coastwide	48,406	95%	45,986	5%	2,420
English sole	Coastwide	6,991	95%	6,642	5%	350
Lingcod	N of 40'10° N. lat.	2,441	45%	1,098	55%	1,342
Lingcod	S of 40'10° N. lat.	937	45%	422	55%	515
Longnose skate a/	Coastwide	1,927	90%	1,734	10%	193
Longspine thornyhead	N of 34°27' N. lat.	2,969	95%	2,820	5%	148
Pacific cod	Coastwide	1,091	95%	1,036	5%	55
Pacific whiting	Coastwide	TBD	100%	TBD	0%	TBD
Sablefish	N of 36° N. lat.	0	See Table 1 c			
Sablefish	S of 36° N. lat.	1,875	42%	788	58%	1,088
Shortspine thornyhead	N of 34°27' N. lat.	1,667	95%	1,583	5%	83
Shortspine thornyhead	S of 34°27' N. lat.	871	NA	50	NA	821
Splitnose	S of 40°10' N. lat.	1,736	95%	1,649	5%	87
Starry flounder	Coastwide	1,529	50%	764	50%	764
Widow rockfish f/	Coastwide	1,880	91%	1,711	9%	169
Yellowtail rockfish	N of 40°10' N. lat.	5,314	88%	4,677	12%	638
Minor Shelf Rockfish complex a/	N of 40°10' N. lat.	1,880	60.2%	1,132	39.8%	748
Minor Shelf Rockfish complex a/	S of 40°10' N. lat.	1,576	12.2%	192	87.8%	1,384
Minor Slope Rockfish complex	N of 40°10' N. lat.	1,642	81%	1,330	19%	312
Minor Slope Rockfish complex	S of 40°10' N. lat.	675	63%	425	37%	250
Other Flatfish complex	Coastwide	7,039	90%	6,335	10%	704

a/ Allocations decided through the biennial specification process.

b/ 14.0 mt of the total trawl allocation of canary rockfish is allocated to the at-sea whiting fisheries, as follows: 5.8 mt for the mothership fishery, and 8.2 mt for the catcher/processor fishery.

c/ The cowcod fishery harvest guideline is further reduced to an ACT of 4.0 mt.

d/ Consistent with regulations at §660.55(c), 9 percent (27.8 mt) of the total trawl allocation for darkblotched rockfish is allocated to the whiting fisheries, as follows: 11.7 mt for the shorebased IFQ fishery, 6.7 mt for the mothership fishery, and 9.4 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

e/ Consistent with regulations at §660.55(c), 30 mt of the total trawl allocation for POP is allocated to the whiting fisheries, as follows: 12.6 mt for the shorebased IFQ fishery, 7.2 mt for the mothership fishery, and 10.2 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

f/ Consistent with regulations at §660.55(c), 500 mt of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 210 mt for the shorebased IFQ fishery, 120 mt for the mothership fishery, and 170 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

Table 2c. to Part 660, Subpart C – Sablefish North of 36° N. lat. Allocations, 2016 and Beyond.

Year	ACL	Set-asides		Recreational Estimate	EFP	Commercial HG	Limited Entry HG		Open Access HG	
		Tribal a/	Research				%	Mt	%	MT b/
2016	5,241	524	26	6.1	1	4,684	90.6%	4,244	9.4%	440

Year	LE All	Limited Entry Trawl c/			Limited Entry Fixed Gear d/		
		ALL Trawl	At-sea Whiting	Shorebased IFQ	ALL FG	Primary	DTL
2016	4,244	2,461	50	2,411	1,782	1,515	267

a/ The tribal allocation is further reduced by 1.6% for discard mortality resulting in 515.7 mt in 2016.

b/ The open access HG is taken by the incidental OA fishery and the directed OA fishery.

c/ The trawl allocation is 58% of the limited entry HG

d/ The limited entry fixed gear allocation is 42% of the limited entry HG

Table 2d. to Part 660, Subpart C – At-Sea Whiting Fishery Annual Set-Asides, 2016 and Beyond.

Species or Species Complex	Area	Set Aside (mt)
BOCACCIO	S. of 40°10 N. lat.	NA
CANARY ROCKFISH a/	Coastwide	Allocation
COWCOD	S. of 40°10 N. lat.	NA
DARKBLOTCHED ROCKFISH a/	Coastwide	Allocation
PACIFIC OCEAN PERCH a/	N. of 40°10 N. lat.	Allocation
PETRALE SOLE	Coastwide	5
YELLOWEYE	Coastwide	0
Arrowtooth Flounder	Coastwide	45
Chilipepper	S. of 40°10 N. lat.	NA
Dover Sole	Coastwide	5
English Sole	Coastwide	5
Lingcod	N. of 40°10 N. lat.	15
Lingcod	S. of 40°10 N. lat.	NA
Longnose Skate	Coastwide	5
Longspine Thornyhead	N. of 34°27 N. lat.	5
Longspine Thornyhead	S. of 34°27 N. lat.	NA
Minor Nearshore Rockfish	N. of 40°10 N. lat.	NA
Minor Nearshore Rockfish	S. of 40°10 N. lat.	NA
Minor Shelf Rockfish	N. of 40°10 N. lat.	35
Minor Shelf Rockfish	S. of 40°10 N. lat.	NA
Minor Slope Rockfish	N. of 40°10 N. lat.	100
Minor Slope Rockfish	S. of 40°10 N. lat.	NA
Other Fish	Coastwide	NA
Other Flatfish	Coastwide	20
Pacific Cod	Coastwide	5
Pacific Halibut b/	Coastwide	10
Pacific Whiting	Coastwide	Allocation
Sablefish	N. of 36° N. lat.	50
Sablefish	S. of 36° N. lat.	NA
Shortspine Thornyhead	N. of 34°27 N. lat.	20
Shortspine Thornyhead	S. of 34°27 N. lat.	NA
Starry Flounder	Coastwide	5
Widow Rockfish a/	Coastwide	Allocation
Yellowtail	N. of 40°10 N. lat.	300

a/ See Table 1.b., to Subpart C, for the at-sea whiting allocations for these species.

b/ As stated in §660.55 (m), the Pacific halibut set-aside is 10 mt, to accommodate bycatch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10 N. lat. (estimated to 5 mt each).

* * * * *

■ 11. In § 660.130, paragraphs (d)(1)(i) and (e)(4)(iv) are revised to read as follows:

§ 660.130 Trawl fishery-management measures.

* * * * *

(d) * * *

(1) * * *

(i) *Coastwide.* Widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortraker rockfish, rougheye/blackspotted rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, other fish, longnose skate, and Pacific whiting;

* * * * *

(e) * * *

(4) * * *

(iv) If a vessel fishes in the trawl RCA, it may not participate in any fishing on that trip that is prohibited within the trawl RCA. Nothing in these Federal regulations supersedes any state regulations that may prohibit trawling shoreward of the fishery management area (3–200 nm).

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■ 12. In § 660.140 paragraph (d)(1)(ii)(D) is revised to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) For the trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

IFQ Species	Management Area	2015 Shorebased Trawl Allocation (mt)	2016 Shorebased Trawl Allocation (mt)
Arrowtooth flounder		3,193.93	3,033.38
BOCACCIO	South of 40°10' N. lat.	81.89	85.02
CANARY ROCKFISH		43.26	44.48
Chilipepper	South of 40°10' N. lat.	1,203.00	1,196.25
COWCOD	South of 40°10' N. lat.	1.44	1.44
DARKBLOTCHED ROCKFISH		285.61	292.81
Dover sole		45,980.80	45,980.80
English sole		9,153.19	6,636.64
Lingcod	North of 40°10' N. lat.	1,133.32	1,083.37
Lingcod	South of 40°10' N. lat.	447.71	421.61
Longspine thornyhead	North of 34°27' N. lat.	2,962.33	2,815.08
Minor Shelf Rockfish complex	North of 40°10' N. lat.	1,091.70	1,096.52
Minor Shelf Rockfish complex	South of 40°10' N. lat.	192.20	192.32
Minor Slope Rockfish complex	North of 40°10' N. lat.	1,219.41	1,229.94
Minor Slope Rockfish complex	South of 40°10' N. lat.	423.99	425.25
Other Flatfish complex		7,670.50	6,315.10
Pacific cod		1,031.41	1,031.41
PACIFIC OCEAN PERCH	North of 40°10' N. lat.	118.45	124.15
Pacific Whiting		–	–
PETRALE SOLE		2,539.40	2,633.40
Sablefish	North of 36° N. lat.	2,199.37	2,411.24
Sablefish	South of 36° N. lat.	719.88	787.50
Shortspine thornyhead	North of 34°27' N. lat.	1,581.49	1,563.44
Shortspine thornyhead	South of 34°27' N. lat.	50.00	50.00
Splitnose rockfish	South of 40°10' N. lat.	1,619.28	1,648.73
Starry flounder		756.85	759.35
Widow rockfish		1,420.62	1,420.62
YELLOWEYE ROCKFISH		1.00	1.08
Yellowtail rockfish	North of 40°10' N. lat.	4,593.15	4,376.67

* * * * *

■ 13. Table 1 (North) and 1 (South) to 660, subpart D, are revised to read as follows:

BILLING CODE 3510–22–P

Table 1 (North) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting North of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table

3/1/15

TABLE 1 (NORTH)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)1/:						
1	North of 48°10' N. lat.	shore - modified2/ 200 fm line1/	shore - 200 fm line 1/	shore - 150 fm line1/		shore - 200 fm line1/	shore - modified2/ 200 fm line1/
2	48°10' N. lat. - 45°46' N. lat.	100 fm line1/ - 150 fm line1/					
3	45°46' N. lat. - 40°10' N. lat.	100 fm line1/ - modified2/ 200 fm line1/					

Selective flatfish trawl gear is required shoreward of the RCA; all bottom trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 2 (North) and 2 (South) to Part 660, Subpart E.**

See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

4	**Minor Nearshore Rockfish & Black rockfish**	300 lb/month
5	**Whiting3/**	
6	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.
7	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.
8	**Cabezon4/**	
9	North of 46°16' N. lat.	Unlimited
10	46°16' N. lat. - 40°10' N. lat.	50 lb/ month
11	**Shortbelly**	Unlimited
12	**Spiny dogfish**	60,000 lb/month
13	**Longnose skate**	Unlimited
14	**Other Fish 4/**	Unlimited

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.

3/ As specificed at §660.131(d), when fishing in the Eureka Area, no more than 10,000 lb of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during the fishing trip, fished in the fishery management area shoreward of 100 fm contour.

4/ "Other Fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 1 (South) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting South of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 3/1/15

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)1/:						
1	South of 40°10' N. lat.	100 fm line[1/] - 150 fm line [1/ 2/]					
	Small footrope trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 2 (North) and 2 (South) to Part 660, Subpart E.**						
	See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
2	**Longspine thornyhead**						
3	South of 34°27' N. lat.	24,000 lb/ 2 months					
4	**Minor Nearshore Rockfish & Black rockfish**	300 lb/ month					
5	**Whiting**						
6	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
7	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
8	**Cabezon**	50 lb/ month					
9	**Shortbelly**	Unlimited					
10	**Spiny dogfish**	60,000 lb/ month					
11	**Longnose skate**	Unlimited					
12	**California scorpionfish**	Unlimited					
13	**Other Fish** [3/]	Unlimited					

TABLE 1 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.

3/ "Other Fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

■ 14. In § 660.230, paragraph (c)(2)(i) is revised to read as follows:

§ 660.230 Fixed gear fishery—management measures.

* * * * *

(c) * * *

(2) * * *

(i) *Coastwide*—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortraker rockfish, rougheye/blackspotted rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, other fish, longnose skate, and Pacific whiting;

* * * * *

■ 15. In § 660.231 paragraph (b)(3)(i) is revised to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(3) * * *

(i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel (*i.e.,* stacked permits). If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232. In 2015, the following annual limits are in effect: Tier 1 at 41,175 (18,677 kg), Tier 2 at 18,716 lb (8,489 kg), and Tier 3 at 10,695 lb (4,851 kg). For 2016 and beyond, the following annual limits are in effect: Tier 1 at 45,053 lb (20,436 kg), Tier 2 at 20,479 lb (9,289 kg), and Tier 3 at 11,702 lb (5,308 kg).

* * * * *

■ 16. Tables 2 (North) and 2 (South) to part 660, subpart E, are revised to read as follows:

BILLING CODE 3510–22–P

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 3/1/15

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
5	**Pacific ocean perch**	1,800 lb/ 2 months					
6	**Sablefish[7/]**	1,025 lb/ week, not to exceed 3,075 lb/ 2 months					
7	**Longspine thornyhead**	10,000 lb/ 2 months					
8	**Shortspine thornyhead**	2,000 lb/ 2 months			2,500 lb/ 2 months		
9, 10, 11, 12, 13, 14	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
15	**Whiting**	10,000 lb/ trip					
16	**Minor Shelf Rockfish[2/], Shortbelly, Widow & Yellowtail rockfish**	200 lb/ month					
17	**Canary rockfish**	CLOSED					
18	**Yelloweye rockfish**	CLOSED					
19	**Minor Nearshore Rockfish & Black rockfish**						
20	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue rockfish[4/]					
21	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb of which may be species other than black rockfish					
22	**Lingcod[5/]**	200 lb/2 months		1,200 lb/ 2 months		600 lb/ month	200 lb/ month
23	**Pacific cod**	1,000 lb/ 2 months					
24	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
25	**Longnose skate**	Unlimited					
26	**Other Fish[6/]& Cabezon in Oregon and California**	Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish and splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington.

7/ Beginning on January 1, 2016, the following trip limits are in effect for sablefish north of 36° N. lat. from January through December 1,275 lb/week, not to exceed 3,375 lb/ 2 months

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 3/1/15

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N. lat. - 34°27' N. lat.	30 fm line[1/] - 150 fm line[1/]					
2	South of 34°27' N. lat.	60 fm line[1/] - 150 fm line[1/] (also applies around islands)					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
3	**Minor Slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months, of which no more than 1,375 lb may be blackgill rockfish					
4	**Splitnose rockfish**	40,000 lb/ 2 months					
5	**Sablefish[6/]**						
6	40°10' N. lat. - 36°00' N. lat.	1,025 lb/ week, not to exceed 3,075 lb/ 2 months					
7	South of 36°00' N. lat.	2,000 lb/ week					
8	**Longspine thornyhead**	10,000 lb/ 2 months					
9	**Shortspine thornyhead**						
10	40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
13							
14							
15							
16							
17							
18	**Whiting**	10,000 lb/ trip					
19	**Minor Shelf Rockfish[2/], Shortbelly, Widow rockfish (including Bocaccio and Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' N. lat. - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb may be any species other than chilipepper.					
21	South of 34°27' N. lat.	4,000 lb/ 2 months	CLOSED	4,000 lb/ 2 months			
22	**Chilipepper**						
23	40°10' N. lat. - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow rockfish and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the non-trawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' N. lat. - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow rockfish & chilipepper limits - - See above					
31	South of 34°27' N. lat.	750 lb/ 2 months	CLOSED	750 lb/ 2 months			

TABLE 2 (South)

Table 2 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
32	**Minor Nearshore Rockfish & Black rockfish**							
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months	
34	Deeper nearshore							
35	40°10' N. lat. - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months		1,000 lb/ 2 months	
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
37	California scorpionfish	1,200 lb/ 2 months[6/]	CLOSED	1,200 lb/ 2 months	1,200 lb/ 2 months			
38	**Lingcod[4/]**	200 lb/ 2 mo	CLOSED	800 lb/ 2 months			400 lb/mo	200 lb/mo
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
41	**Longnose skate**	Unlimited						
42	**Other Fish[5/] & Cabezon**	Unlimited						

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other Fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington.

6/ Beginning on January 1, 2016, the following trip limits are in effect for sablefish north of 36° N. lat. from January through December 1,275 lb/week, not to exceed 3,375 lb/ 2 months

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 17. In § 660.330, paragraphs (c)(2)(i) and (d)(13)(iii) are revised to read as follows:

§ 660.330 Open access fishery—management measures.

* * * * *

(c) * * *

(2) * * *

(i) *Coastwide*—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortraker rockfish, rougheye/blackspotted rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, longnose skate, other fish, Pacific whiting, and Pacific sanddabs;

* * * * *

(d) * * *

(13) * * *

(iii) The non-groundfish trawl RCA restrictions in this section apply to vessels taking and retaining or possessing groundfish in the EEZ, or landing groundfish taken in the EEZ. Unless otherwise authorized by Part 660, it is unlawful for a vessel to retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the non-groundfish trawl RCA. If a vessel fishes in a non-groundfish fishery in the non-groundfish trawl RCA, it may not participate in any fishing on that trip that is prohibited within the non-groundfish trawl RCA. Nothing in these Federal regulations supersedes any state regulations that may prohibit trawling shoreward of the fishery management area (3–200 nm).

* * * * *

■ 18. Tables 3 (North) and 3 (South) to part 660, subpart F, are revised to read as follows:

BILLING CODE 3510–22–P

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table — 3/1/15

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
5	**Pacific ocean perch**	100 lb/ month					
6	**Sablefish[7/]**	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 1,800 lb/ 2 months					
7	**Shortpine thornyheads and longspine thornyheads**	CLOSED					
8	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.					
9							
10		South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11							
12							
13							
14	**Whiting**	300 lb/ month					
15	**Minor Shelf Rockfish[2/], Shortbelly, Widow & Yellowtail rockfish**	200 lb/ month					
16	**Canary rockfish**	CLOSED					
17	**Yelloweye rockfish**	CLOSED					
18	**Minor Nearshore Rockfish & Black rockfish**						
19	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish					
20	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb may be species other than black rockfish					
21	**Lingcod[5/]**	100 lb/ month		600 lb/ month			100 lb/month
22	**Pacific cod**	1,000 lb/ 2 months					
23	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
24	**Longnose skate**	Unlimited					
25	**Other Fish[6/] & Cabezon in Oregon and California**	Unlimited					

TABLE 3 (North)

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
26	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*						
27	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
28	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
29	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North) cont'd

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington.

7/ Beginning on January 1, 2016, the following trip limts are in effect for sablefish north of 36° N. lat. 300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 2,000 lb/ 2 months.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 3/1/15

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N. lat. - 34°27' N. lat.	30 fm line[1/] - 150 fm line[1/]					
2	South of 34°27' N. lat.	60 fm line[1/] - 150 fm line[1/] (also applies around islands)					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 475 lb may be blackgill rockfish					
4	**Splitnose rockfish**	200 lb/ month					
5	**Sablefish[6/]**						
6	40°10' N. lat. - 36°00' N. lat.	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 1,800 lb/ 2 months					
7	South of 36°00' N. lat.	300 lb/ day, or 1 landing per week of up to 1,600 lb, not to exceed 3,200 lb/ 2 months					
8	**Shortpine thornyheads and longspine thornyheads**						
9	40°10' N. lat. - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.					
12							
13		South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14							
15							
16							
17	**Whiting**	300 lb/ month					
18	**Minor Shelf Rockfish[2/], Shortbelly, Widow rockfish and Chilipepper**						
19	40°10' N. lat. - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
20	South of 34°27' N. lat.	1500 lb/ 2 months		1500 lb/ 2 months			
21	**Canary rockfish**	CLOSED					
22	**Yelloweye rockfish**	CLOSED					
23	**Cowcod**	CLOSED					
24	**Bronzespotted rockfish**	CLOSED					
25	**Bocaccio**						
26	40°10' N. lat. - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
27	South of 34°27' N. lat.	250 lb/ 2 months		250 lb/ 2 months			

TABLE 3 (South)

Table 3 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
28	**Minor Nearshore Rockfish & Black rockfish**						
29	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months
30	Deeper nearshore						
31	40°10' N. lat. - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months		1,000 lb/ 2 months
32	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
33	California scorpionfish	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
34	**Lingcod**[4/]	100 lb/month	CLOSED	400 lb/ month			100 lb/month
35	**Pacific cod**	1,000 lb/ 2 months					
36	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
37	**Longnose skate**	Unlimited					
38	**Other Fish**[5/] **& Cabezon**	Unlimited					
39	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
40	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
41	*40°10' N. lat. - 38°00' N. lat.*	*100 fm line*[1/] *- 200 fm line*[1/]	*100 fm line*[1/] *- 150 fm line*[1/]				*100 fm line*[1/] *- 200 fm line*[1/]
42	*38°00' N. lat. - 34°27' N. lat.*	*100 fm line*[1/] *- 150 fm line*[1/]					
43	*South of 34°27' N. lat.*	*100 fm line*[1/] *- 150 fm line*[1/] *along the mainland coast; shoreline - 150 fm line*[1/] *around islands*					
44		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
45	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
46	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (South) cont'd

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.11 and includes kelp greenling, leopard shark, and cabezon in Washington.

6/ Beginning on January 1, 2016, the following trip limts are in effect for sablefish north of 36° N. lat. 300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 2,000 lb/ 2 months

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 19. In § 660.360, paragraphs (c)(1)(i)(D)(*1*) through (*3*), (c)(1)(iii)(B), (c)(1)(iv)(A) and (B), (c)(2)(iii)(A), (D) and (E), (c)(3)(i)(A)(*2*) through (*5*), (c)(3)(ii)(A)(*2*) through (*4*), (c)(3)(iii)(A)(*2*) through (*4*), (c)(3)(iii)(B), and (c)(3)(v)(A)(*1*) through (*4*) are revised to read as follows:

§ 660.360 Recreational fishery-management measures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(D) * * *

(*1*) West of the Bonilla-Tatoosh line Between the U.S. border with Canada and the Queets River (Washington state Marine Area 3 and 4), recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 20 fm (37 m) depth contour from May 9 through Labor Day, except on days when the Pacific halibut fishery is open in this area it is lawful to retain, lingcod, Pacific cod and sablefish seaward of the 20 fm (37 m) boundary. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Coordinates for the boundary line approximating the 20 fm (37 m) depth contour are listed in § 660.71, subpart C.

(*2*) Between the Queets River (47°31.70′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.) (Washington state Marine Area 2), recreational fishing for groundfish, is prohibited seaward of a boundary line approximating the 30 fm (55 m) depth contour from March 15 through June 15 with the following exceptions: Recreational fishing for lingcod is permitted within the RCA on days that the primary halibut fishery is open; recreational fishing for rockfish is permitted within the RCA from March 15 through June 15; recreational fishing for sablefish and Pacific cod is permitted within the recreational RCA from May 1 through June 15. In addition to the RCA described above, between the Queets River (47°31.70′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.) (Washington state Marine Area 2), recreational fishing for lingcod is prohibited year round seaward of a

straight line connecting all of the following points in the order stated: 47°31.70′ N. lat., 124°45.00′ W. long.; 46°38.17′ N. lat., 124°30.00′ W. long. with the following exceptions: On days that the primary halibut fishery is open lingcod may be taken, retained and possessed within the lingcod area closure. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. For additional regulations regarding the Washington recreational lingcod fishery, see paragraph (c)(1)(iv) of this section. Coordinates for the boundary line approximating the 30 fm (55 m) depth contour are listed in § 660.71.

(*3*) Between Leadbetter Point (46°38.17′ N. lat.) and the Columbia River (Marine Area 1), when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod from May 1 through September 30. Except that taking, retaining, possessing or landing incidental halibut with groundfish on board is allowed in the nearshore area on days not open to all-depth Pacific halibut fisheries in the area shoreward of the boundary line approximating the 30 fathom (55 m) depth contour extending from Leadbetter Point, WA (46°38.17′ N. lat., 124°15.88′ W. long.) to the Columbia River (46°16.00′ N. lat., 124°15.88′ W. long.) and from there, connecting to the boundary line approximating the 40 fathom (73 m) depth contour in Oregon. Nearshore season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS halibut hotline, 1–800–662–9825. Between Leadbetter Point (46°38.17′ N. lat.) and 46°28.00′ N. lat., recreational fishing for lingcod is prohibited year round seaward of a straight line connecting all of the following points in the order stated: 46°38.17′ N. lat., 124°21.00′ W. long.; and 46°28.00′ N. lat., 124°21.00′ W. long.

* * * * *

(iii) * * *

(B) Between 48°10′ N. lat. (Cape Alava) and 46°16′ N. lat. (Columbia River) (Washington Marine Areas 1–3), there is a 2 cabezon per day bag limit.

* * * * *

(iv) * * *

(A) Between the U.S./Canada border and 48°10′ N. lat. (Cape Alava) (Washington Marine Area 4), recreational fishing for lingcod is open, for 2015, from April 16 through October 15, and for 2016, from April 16 through October 15. Lingcod may be no smaller than 22 inches (61 cm) total length.

(B) Between 48°10′ N. lat. (Cape Alava) and 46°16′ N. lat. (Columbia River) (Washington Marine Areas 1–3), recreational fishing for lingcod is open for 2015, from March 14 through October 17, and for 2016, from March 12 through October 15. Lingcod may be no smaller than 22 inches (56 cm) total length.

* * * * *

(2) * * *

(iii) * * *

(A) *Marine fish.* The bag limit is 10 marine fish per day, which includes rockfish, kelp greenling, cabezon and other groundfish species. There is a 1 fish sub-bag limit per day for canary rockfish (of the total marine bag limit, no more than 1 fish may be canary) from January 1 through December 31. The bag limit of marine fish excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, flatfish, lingcod, striped bass, hybrid bass, offshore pelagic species and baitfish (herring, smelt, anchovies and sardines). The minimum size for cabezon retained in the Oregon recreational fishery is 16 in (41 cm) total length. The minimum size for kelp greenling retained in the Oregon recreational fishery is 10 in (25 cm).

* * * * *

(D) *In the Pacific halibut fisheries.* Retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. Between the Columbia River and Humbug Mountain, during days open to the ''all-depth'' sport halibut fisheries, when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod. ''All-depth'' season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS Pacific halibut hotline, 1–800–662–9825.

(E) Taking and retaining yelloweye rockfish is prohibited at all times and in all areas.

* * * * *

(3) * * *

(i) * * *

(A) * * *

* * * * *

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (Mendocino Management Area), recreational fishing for all groundfish (except ''other flatfish'' as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 20 fm (37 m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through October 31 (shoreward of 20 fm is open), and is closed entirely from January 1 through May 14 and from November 1 through December 31.

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (San Francisco Management Area), recreational fishing for all groundfish (except ''other flatfish'' as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the boundary line approximating the 30 fm (55 m) depth contour along the mainland coast and along islands and offshore seamounts from April 15 through December 31; and is closed entirely from January 1 through April 14. Closures around Cordell Banks (see paragraph (c)(3)(i)(C) of this section) also apply in this area. Coordinates for the boundary line approximating the 30 fm (55 m) depth contour are listed in § 660.71.

(*4*) Between 37°11′ N. lat. and 34°27′ N. lat. (Central Management Area), recreational fishing for all groundfish (except ''other flatfish'' as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 40 fm (73 m) depth contour along the mainland coast and along islands and offshore seamounts from April 1 through December 31; and is closed entirely from January 1 through March 31 (*i.e.* prohibited seaward of the shoreline). Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are specified in § 660.71.

(*5*) South of 34°27′ N. lat. (Southern Management Area), recreational fishing for all groundfish (except California scorpionfish as specified below in this paragraph and in paragraph (c)(3)(v) of this section and ''other flatfish'' as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 60 fm (109.7 m) depth contour from March 1 through December 31 along the mainland coast and along islands and offshore seamounts, except in the CCAs where fishing is prohibited seaward of the 20 fm (37 m) depth contour when the fishing season is open (see paragraph (c)(3)(i)(B) of this section). Recreational fishing for all groundfish (except California scorpionfish and ''other flatfish'') is closed entirely from January 1 through February 28 (*i.e.,* prohibited seaward of the shoreline). Recreational fishing for California scorpionfish south of 34°27′ N. lat. is prohibited seaward of a boundary line approximating the 60 fm (109.7 m) depth contour from January 1 through December 31, except in the CCAs where

fishing is prohibited seaward of the 20 fm (37 m) depth contour when the fishing season is open.

* * * * *

(ii) * * *

(A) * * *

* * * * *

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (Mendocino Management Area), recreational fishing for the RCG Complex is open from May 15 through October 31 (*i.e.,* it's closed from January 1 through May 14 and November 1 through December 31).

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (San Francisco Management Area), recreational fishing for the RCG complex is open from April 15 through December 31 (*i.e.* it's closed from January 1 through April 14).

(*4*) Between 37°11′ N. lat. and 34°27′ N. lat. (Central Management Area), recreational fishing for the RCG complex is open from April 1 through December 31 (*i.e.* it's closed from January 1 through March 31).

* * * * *

(iii) * * *

(A) * * *

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (Mendocino Management Area), recreational fishing for lingcod is open from May 15 through October 31 (*i.e.,* it's closed from January 1 through May 14 and November 1 through December 31).

(*3*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (San Francisco Management Area), recreational fishing for lingcod is open from April 15 through December 31 (*i.e.* it's closed from January 1 through April 14).

(*4*) Between 37°11′ N. lat. and 34°27′ N. lat. (Central Management Area), recreational fishing for lingcod is open from April 1 through December 31 (*i.e.* it's closed from January 1 through March 31).

* * * * *

(B) *Bag limits, hook limits.* In times and areas when the recreational season for lingcod is open, there is a limit of 2 hooks and 1 line when fishing for lingcod. The bag limit is 3 lingcod per day. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

* * * * *

(v) * * *

(A) * * *

(*1*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (Mendocino Management Area), recreational fishing for California scorpionfish is open from May 15 through October 31 (*i.e.,* it's closed from January 1 through May 14 and from November 1 through December 31).

(*2*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (San Francisco Management Area), recreational fishing for California scorpionfish is open from April 15 through December 31 (*i.e.,* it's closed from January 1 through April 14).

(*3*) Between 37°11′ N. lat. and 34°27′ N. lat. (Central Management Area), recreational fishing for California scorpionfish is open from April 1 through December 31 (*i.e.,* it's closed from January 1 through March 31).

(4) South of 34°27′ N. lat. (Southern Management Area), recreational fishing for California scorpionfish is open from January 1 through December 31.

* * * * *

[FR Doc. 2014–30114 Filed 1–5–15; 8:45 am]

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Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Part 234

National Highway-Rail Crossing Inventory Reporting Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[Docket No. FRA–2011–0007, Notice No. 4]

RIN 2130–AC26

National Highway-Rail Crossing Inventory Reporting Requirements

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule requires railroads that operate one or more trains through highway-rail or pathway crossings to submit information to the U.S. DOT National Highway-Rail Crossing Inventory about the crossings through which they operate. These amendments, mandated by section 204 of the Rail Safety Improvement Act of 2008, require railroads to submit information about previously unreported and new highway-rail and pathway crossings to the U.S. DOT National Highway-Rail Crossing Inventory and to periodically update existing crossing data.

DATES: This final rule is effective March 9, 2015. Petitions for reconsideration must be received on or before February 25, 2015. Petitions for reconsideration will be posted in the docket for this proceeding. Comments on any submitted petition for reconsideration must be received on or before April 13, 2015.

ADDRESSES: Petitions for reconsideration and any comments to petitions for reconsideration must be identified by docket number FRA–2011–0007 and may be submitted by any of the following methods:

- *Online:* Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, U.S. Department of Transportation, Docket Management Facility, 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, docket name and docket number or Regulatory Identifier Number (RIN) for this rulemaking (2130–AC26). 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 in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or visit the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ronald Ries, Staff Director, Highway-Rail Crossing and Trespasser Prevention Programs Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6299), *ronald.ries@dot.gov*; or Kathryn Shelton Gresham, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Mail Stop 13, Washington, DC 20590 (telephone: 202–493–6063), *kathryn.gresham@dot.gov*.

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I. Executive Summary

On October 18, 2012, consistent with the statutory mandate of Section 204(a) of the Rail Safety Improvement Act of 2008 (RSIA) (codified at 49 U.S.C. 20160), FRA published a notice of proposed rulemaking (NPRM) proposing to require railroads to submit certain information to the existing U.S. DOT National Highway-Rail Crossing Inventory (Crossing Inventory). 77 FR 64077. After careful consideration of comments received in response to the NPRM and testimony received at a February 19, 2013 public hearing on FRA's proposal, FRA is amending 49 CFR part 234 to require railroads that operate one or more trains through highway-rail or pathway crossings (*i.e.,* ''operating railroads'') to submit certain information to the Crossing Inventory about the highway-rail and pathway crossings through which they operate. This rule furthers FRA's efforts to improve existing data on the characteristics of the Nation's highway-rail and pathway crossings and implements the statutory mandate. Consistent with the statute, this rule requires operating railroads to submit initial reports to the Crossing Inventory, including current information about warning devices and signs, for previously unreported and new highway-rail and pathway crossings. This rule also requires operating railroads to periodically update data in the Crossing Inventory, including the prompt reporting of a crossing sale, crossing closure, or changes in certain crossing characteristics.

In the NPRM, FRA estimated the costs of the proposed rule to be $2.1 million over a 20-year period. Using a 7-percent discount rate, the cost estimate would have been $1.5 million. The final rule's estimated cost is $2.8 million, discounted to $2.0 million (7%). The base cost estimates increased in the final rule due to adjustment of the Congressional Budget Office (CBO) real wage forecasts for each year of the analysis. FRA also updated wage inputs using the Surface Transportation Board's newest wage rates for 2012, which impacted the overall cost estimate. FRA also assumed that the implementation year will be 2014 and adjusted all wages accordingly. While the final rule will not take effect until 2015, FRA does not believe this will materially impact the findings of its analysis. FRA conducted a break-even analysis of the rule and believes that potential benefits from the rule will equal or exceed total costs.

FRA analyzed the industry costs associated with requiring railroads to establish and maintain an inventory for all public and private highway-rail crossings and pathway crossings. Many railroads have already implemented components of the final rule prior to publication of this rulemaking. FRA estimates that as many as 50 percent of all highway-rail crossings have up-to-date information in the current Crossing Inventory. For more details on the costs, see the Regulatory Evaluation contained

in the public docket. The burdens of the rule relate to the collection of recent information and to the periodic update of the Crossing Inventory. The table below presents the estimated costs associated with the rule.

20-YEAR COST FOR FINAL RULE

Initial Update of Inventory	$1,178,701
Periodic Update of Inventory	819,473
Total	1,998,174

Future costs are discounted to present value using a 7-percent discount rate.

In the Regulatory Evaluation, FRA has explained what the likely benefits are for the final rule and provided a break-even analysis. The main benefit of the rule is improved Crossing Inventory data. This more precise information will better enable FRA, railroads, and any other entity, to accurately analyze pertinent data, detect trends, and if needed, initiate crossing-related safety initiatives. In this analysis, FRA determined that if there were a decrease of 0.015 percent in crossing accidents over the twenty-year period, the costs of the rule will break-even with the benefits. In the last decade there were over 26,000 collisions at grade crossings. This break-even analysis indicates that preventing at least three incidents over the next twenty years would justify the rule. FRA anticipates that this rulemaking will increase the precision, completeness, and utility of railroad records and will improve the Crossing Inventory and safety. This will allow FRA to identify certain highway-rail crossings and pathway crossings that are not currently recorded in the existing voluntary crossing inventory and analyze the data to identify safety trends and issues. FRA believes that these benefits will offset costs associated with the rulemaking by simplifying the reporting process and decreasing crossing accidents. FRA also believes the value of the anticipated benefits justifies the cost of implementing the final rule.

II. Statutory Background

This final rule implements section 204(a) of RSIA, Public Law 110–432, Division A (Oct. 16, 2008) (codified at 49 U.S.C. 20160 and titled ''National crossing inventory''). Consistent with Section 20160, this rule is intended to improve existing data on highway-rail and pathway crossings in the Crossing Inventory. Section 20160 requires the Secretary to establish reporting requirements for railroad carriers for highway-rail and pathway crossings. As stated above, the Secretary delegated this responsibility to the FRA Administrator. 49 CFR 1.89(b).

Section 20160 mandates that the Secretary issue regulations requiring railroad carriers to report certain information, including current information about warning devices and signage, for new and previously unreported highway-rail and pathway crossings to the Crossing Inventory. Section 20160 also requires the Secretary to issue regulations that require railroad carriers to periodically update existing information in the Crossing Inventory about highway-rail and pathway crossings through which they operate. Under Section 20160, whenever a railroad carrier sells all, or a portion of, a highway-rail or pathway crossing it must submit updates. However, in the interim, Section 20160 provides that the Secretary may enforce the Crossing Inventory policy, procedures, and instructions in effect at the time of Section 20160's enactment (October 16, 2008). The policy, procedures, and instructions in effect at the time of Section 20160's enactment are the guidance we issued in August 2007 titled, ''U.S. DOT National Highway-Rail Crossing Inventory Policy, Procedures and Instructions for States and Railroads.''

III. The U.S. DOT National Highway-Rail Crossing Inventory Program

A. History

As detailed in the preamble to the NPRM, in August 1972, DOT submitted a Report to Congress titled ''Railroad-Highway Safety Part II: Recommendations for Resolving the Problem'' (Report). DOT intended for the Report to provide recommendations to Congress for actions that would lead to a significant reduction in accidents, fatalities, personal injuries, and property damage at highway-rail crossings. In the Report, DOT recommended the establishment of an information system consisting of a national database of all highway-rail crossings in the Nation.

Following the submission to and acceptance of the Report by Congress, FHWA, FRA, AAR, certain States and railroads cooperatively developed the Crossing Inventory. Based on an instruction manual that was issued in the early 1970s, railroads and States surveyed each highway-rail crossing —public and private, grade-separated and at-grade—and recorded the data on an inventory form railroads submitted to FRA. This instruction manual evolved into the ''Highway-Rail Crossing Inventory Instructions and Procedures Manual,'' dated December 1996. A revised policy and set of instructions, ''U.S. DOT National Highway-Rail Crossing Inventory Policy, Procedures and Instructions for States and Railroads,'' were subsequently issued in August 2007.

As a result of these efforts, the Crossing Inventory has become a national database of highway-rail crossings, both at-grade and grade-separated, that railroads, States, and others use to obtain information about the physical and operating characteristics of individual crossings. The Crossing Inventory is intended to provide a uniform inventory database which public and private agencies responsible for highway-rail crossing safety, as well as the railroad industry and academia, can merge with highway-rail crossing collision files and use to analyze information for planning and implementation of crossing improvement programs.

The Crossing Inventory receives information from individual railroads and States to form a composite record for each crossing. This composite record has many purposes because it can be used to predict the likelihood of an accident at a specific crossing. Armed with this information, States, law enforcement organizations, the Federal Government, and others can focus their efforts on crossings that have a high risk of collisions and implement measures such as improved warning systems, enhanced enforcement, and community awareness.

B. Overview of the Reporting Process

As previously explained, the Crossing Inventory is a national database that contains data on highway-rail crossings, which States and railroads have voluntarily submitted. Because the crossing data has been submitted to the Crossing Inventory voluntarily, FRA estimates the Crossing Inventory contains up-to-date information for approximately 50 percent of the highway-rail crossings reported.

To improve the accuracy of existing data in the Crossing Inventory and implement the statutory mandate contained in Section 20160, this final rule requires primary operating railroads (*i.e.,* generally, the railroads that either own or maintain the track through the highway-rail or pathway crossing, or operate the most trains through the crossing) to assign Inventory Numbers to previously unreported and new highway-rail and pathway crossings and, in most cases, to provide the assigned Inventory Number to the other railroads that operate through the crossing. In addition, the rule will require primary operating

railroads to submit completed Inventory Forms (or the electronic equivalent) for previously unreported and new highway-rail and pathway crossings to the Crossing Inventory.

FRA recognizes that as related to new and previously unreported highway-rail and pathway crossings, this rule requires primary operating railroads to submit some crossing data State agencies have traditionally maintained. Therefore, FRA strongly encourages primary operating railroads to work with the appropriate State agencies to obtain this information. However, in the event the primary operating railroad requests crossing data from a State agency that the State has traditionally maintained (*e.g.,* highway system class, highway speed limit, estimated percent of truck traffic, and the average number of school buses per day), but does not timely receive the requested data, the primary operating railroad may notify FRA of the State's lack of response. In such a case, FRA will not hold the primary operating railroad responsible for failing to submit the requested data to the Crossing Inventory. (See the Section-by-Section Analysis of §§ 234.405(d) and 234.407(d) for more information.)

This final rule also requires primary operating railroads to submit periodic updates to the Crossing Inventory every three years. To minimize the burden of submitting periodic updates, the final rule only requires the primary operating railroad to submit updated crossing data for specific data fields on the Inventory Form. Railroads have traditionally completed these data fields, identified in Appendix B to the Inventory Guide, which consist of information that railroads can identify and supply on their own (*e.g.,* the total number of daily train movements and the speed of the trains at the crossing).

This final rule also will require primary operating railroads to submit updates to the Crossing Inventory to report the closure of a highway-rail or pathway crossing within three months of the closure. In addition, the rule will require primary operating railroads to report changes in crossing surface or changes in warning devices at public highway-rail grade crossings within three months of the change. Also, any railroad that sells all, or part, of a highway-rail or pathway crossing must report the crossing sale to the Crossing Inventory within three months of the sale.

As further explained below, this final rule implements the statutory mandate in Section 20160 to issue regulations requiring railroads to submit crossing data to the Crossing Inventory. Although this final rule does not require States to report crossing data to or update data in the Crossing Inventory, DOT, and FRA in particular, will continue to evaluate whether additional regulations are needed to address State reporting to the Crossing Inventory to maintain the accuracy of crossing records contained in the Crossing Inventory. DOT may issue regulations in the future that would address State reporting of public highway-rail and pathway crossing data to the Crossing Inventory. However, as stated above, FRA strongly encourages railroads to work with appropriate State agencies to obtain crossing data the State maintains. Similarly, FRA encourages State agencies responsible for maintaining crossing data to promptly release State-maintained data to railroads, upon request, and to submit timely updates to existing crossing records in the Crossing Inventory. As reflected by the detailed and thoughtful comments our State partners submitted during the course of this rulemaking, State agencies generally share FRA's interest in ensuring that Crossing Inventory records are up-to-date and accurate to the extent permitted by existing resources.

C. Use of Crossing Inventory Data in Private Litigation

FRA received comments on the proposed rule from Orion's Angels, a non-profit organization located in Chattanooga, Tennessee, which recommended that this final rule should allow all crossing data to be discoverable in private litigation so courts can determine whether there has been compliance with railroad safety regulations. However, this recommendation falls outside the scope of FRA's statutory authority. The current prohibition against the use of crossing data in private litigation can be found in 23 U.S.C. 409. RSIA did not amend this statute. Therefore, in the absence of specific statutory authority to revise the current Federal prohibition against the use of crossing data in private litigation, FRA cannot adopt this recommendation in this final rule.

IV. Section-by-Section Analysis

In response to the NPRM, FRA received comments from several State agencies, AAR, the Brotherhood of Railroad Signalmen (BRS), and other individual stakeholders. Although commenters generally expressed support for FRA's goal of improving the accuracy and completeness of Crossing Inventory data, commenters did make several recommendations about the practicalities of implementing the proposed reporting scheme. Accordingly, in developing this final rule, FRA carefully considered each of the comments received, as well as the testimony presented at the February 19, 2013 public hearing on the NPRM. Within the constraints imposed by the specific statutory mandate, FRA has, as appropriate, modified its original proposals in response to the comments received and those modifications are discussed in detail in the relevant section-by-section analyses below.

Section 234.1 Scope

To reflect the proposed expansion of part 234 to include a new subpart F titled, Highway-Rail and Pathway Crossing Inventory Reporting, in the NPRM, FRA proposed to revise paragraph (a) of this section to include a reference to new proposed subpart F. FRA received no substantive comments in response to this specific proposal. Accordingly, with the slight modifications to the proposed language discussed below, FRA is adopting its proposed revisions to this section substantially as proposed.

We are changing references to ''public, private, and pathway crossings'' in § 234.1 and throughout subpart F to ''highway-rail and pathway crossings,'' to accurately reflect the proper classification of crossings in the Crossing Inventory. Pathway crossings are not included in the definition of the term ''highway-rail crossing.'' Thus, pathway crossings (like highway-rail crossings) can be classified as either ''public'' or ''private'', depending on the nature of the pathway.

Subpart F—Highway-Rail and Pathway Crossing Inventory Reporting

Section 234.401 Definitions

This section contains definitions of terms used in this subpart, listed alphabetically. We provide additional explanation for some of these definitions below.

FRA received comments from the Illinois Commerce Commission (ICC) recommending that the definitions of all terms used in the Inventory Guide should be included in the Definitions section of the final rule. However, this section is intended to define terms that are used in the text of the final rule. Therefore, while FRA has reviewed the definitions provided in the Inventory Guide to ensure consistency with the definitions provided in this section, we have not added the definitions of terms used exclusively in the Inventory Guide to this section.

Class I

In the NPRM, FRA proposed to define the term ''Class I'', the same as Surface

Transportation Board (STB) regulations. (*See* 49 CFR part 1201, General Instructions 1–1, Classification of carriers). As explained in the NPRM, this definition would include any revision to the definition the STB makes after the publication of this subpart, including any modifications in the class threshold based on revenue deflator adjustments. FRA received one comment in response to this proposed definition. Denver Regional Transportation District (Denver RTD), a transit agency that provides passenger rail service, asserted that it seems inappropriate to classify rail transit agencies as Class I, II, or III railroads since rail transit agencies are essentially subsidized public transportation operations. In response to Denver RTD's comment, FRA notes that it does not consider urban rapid transit operators as Class I rail carriers for purposes of this subpart. While the electronic submission requirement set forth in § 234.403(c) applies to Class I railroads, urban rapid transit operators may submit hard copy Inventory Forms to the Crossing Inventory or submit their crossing data electronically.

Closed Crossing

Although not proposed in the NPRM, we added a definition of the term ''closed crossing'' in this final rule. As discussed below in the Section-by-Section Analysis of § 234.409(a), we added an exception to the requirement to submit periodic updates to the Crossing Inventory for closed crossings. To clarify the crossings to which this exception applies, we defined the term ''closed crossing'' as a location where a previous crossing no longer exists because either the railroad tracks have been physically removed, or each pathway or roadway approach to the crossing has been physically removed, leaving behind no intersection of railroad tracks with either a pathway or roadway. A grade-separated highway-rail or pathway crossing that has been physically removed is also considered a closed crossing.

Highway-Rail Crossing

In the NPRM, FRA proposed to define ''highway-rail crossing'' as ''the location where one or more railroad tracks intersect with a public highway, road, street, or private roadway, including associated sidewalks and pathways, either at-grade or grade-separated.'' In response to this proposed definition, in its comments, Denver RTD asked whether a pathway crossing is essentially a type of highway-rail crossing. A pathway crossing is not a type of highway-rail crossing. As reflected in the current version of FHWA's Manual on Uniform Traffic Control Devices (MUTCD), pathways are public ways that are physically separated from the roadway by an open space or barrier. Therefore, in order to draw a clear distinction between highway-rail and pathway crossings in this final rule, FRA has revised the proposed definition of ''highway-rail crossing'' by removing the reference to pathways. For purposes of this subpart, the term ''highway-rail crossing'' is defined as ''the location where one or more railroad tracks intersect with a public highway, road, street, or private roadway, either at grade or grade-separated, including associated sidewalks.'' This revised definition of ''highway-rail crossing'' is consistent with generally accepted use of this term.

As explained in the NPRM, for purposes of the Crossing Inventory, railroad tracks that lie within the same pair of crossing warning devices are considered a single highway-rail or pathway crossing. For example, an intersection of a roadway with three tracks (*e.g.*, two mainline and one spur) where the mainline tracks are equipped with flashing lights and the spur track is equipped with crossbucks would be considered two crossings with two separate Inventory Numbers for purposes of the Crossing Inventory. One highway-rail crossing would consist of the mainline tracks that lie between the flashing lights, while the other highway-rail crossing would consist of the spur track which is equipped with crossbucks.

Operating Railroad

In the NPRM, FRA proposed to define the term ''operating railroad'' as any railroad that operates one or more trains through a highway-rail crossing or pathway crossing. FRA received three comments about this proposed definition. First, noting that the Inventory Form contemplates the submission of information related to ''transit operations,'' AAR asserted that it would be inconsistent with FRA's existing statement of agency policy on its safety jurisdiction to require submission of information related to transit operations to the Crossing Inventory. See 49 CFR part 209, appendix A (Appendix A). Despite this assertion, AAR suggested that if FRA were to require rail transit operations to be reported on the Crossing Inventory Form, transit operators, as opposed to general system railroads, should be required to submit the relevant information about those operations. The California Public Utilities Commission (CPUC) and Denver RTD, submitted comments seeking clearer guidance as to the applicability of the reporting and updating requirements contained in this subpart to transit agencies. In its comments, Denver RTD noted that rapid transit operations within an urban area that are not connected to the general railroad system of transportation are generally not considered to be ''railroads'' subject to FRA regulation. The CPUC submitted comments questioning whether transit agencies may submit crossing data for crossings which are not subject to train movements by railroads that are part of the general railroad system of transportation.

In response to these comments, FRA first notes that AAR's assertion that FRA's policy on jurisdiction over passenger operations ''categorically excludes rapid transit operations from [the agency's safety] jurisdiction'' is incorrect. Instead, FRA's policy statement (published at 49 CFR part 209, appendix A and titled ''FRA's Policy on Jurisdiction Over Passenger Operations''), specifically notes that the agency's statutory authority extends to all railroads except ''rapid transit operations in an urban area that are not connected to the general system of transportation.'' 49 U.S.C. 20102.

As explained in more detail in Appendix A, the ''general railroad system of transportation'' is generally defined as the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas. Further, as explained in Appendix A, FRA can exercise its jurisdiction over a rapid transit operation if it is connected to the general railroad system and the agency does so depending upon the nature of the connection(s). For example, as noted in Appendix A, a connection that involves operation of transit equipment as part of, or over the lines of, the general system will trigger FRA's exercise of jurisdiction. Similarly, as also noted in Appendix A, another connection to the general system sufficient to warrant FRA's exercise of jurisdiction is a railroad crossing at grade where the rapid transit operation and other railroad cross each other's tracks. Further, Appendix A notes that FRA will also exercise jurisdiction to a limited extent over a rapid transit operation that, while not operated on the same tracks as a conventional railroad, is connected to the general system by virtue of operating in a shared right-of-way involving joint control of trains and in situations where transit

operations share highway-rail grade crossings with conventional railroads.

Thus, consistent with Appendix A and after careful consideration of the comments received, in this final rule FRA is revising the definition of ''operating railroad'' to include urban rapid transit operators that operate ''one or more trains through a highway-rail or pathway crossing on, or connected to, the general railroad system of transportation.''

In other words, the term ''operating railroad'' as defined in this final rule includes urban rapid transit operators that operate trains through highway-rail and pathway crossings which are located on the same track used by railroads that are part of the general railroad system of transportation. Examples of these types of operations include (1) urban rapid transit operations that, even though conducted on the same track used by a general system railroad, are temporally separate from those general system operations, and (2) urban rapid transit operations that constitute simultaneous joint use with train movements by general system railroads. Please see FRA's policy statement (published at 49 CFR part 211, appendix A and titled ''Statement of Agency Policy Concerning Waivers Related to Shared Use of Trackage or Rights-of-Way by Light Rail and Conventional Operations'') for a definition of the term, ''simultaneous joint use.''

The term ''operating railroad'' also includes urban rapid transit operators that operate trains through highway-rail and pathway crossings located within a common corridor or right-of-way with railroads that are part of the general railroad system of transportation. For example, an urban rapid transit operator that operates trains on separate tracks through highway-rail and pathway crossings, which are located within a common corridor or right-of-way with railroads that are part of the general railroad system of transportation and are served by the same set of crossing warning devices, is considered an operating railroad.

However, this final rule does not require urban rapid transit operators that operate through highway-rail and pathway crossings which are not on, or connected to, the general system of railroad transportation to submit crossing data to the Crossing Inventory for those crossings. Nevertheless, we encourage urban rapid transit operators to voluntarily submit (and update) crossing data to the Crossing Inventory for highway-rail and pathway crossings that are not on, or connected to, the general system of railroad transportation, in order to improve the accuracy of crossing data reflected in the Crossing Inventory.

It should be noted that urban rapid transit operators are distinguished from commuter railroads that serve an urban area, its suburbs, and more distant outlying communities in the greater metropolitan area. FRA considers commuter railroads, whose primary function is moving passengers back and forth between their places of employment in the city and their homes within the greater metropolitan area, to be part of the general railroad system of transportation and are therefore required to comply with the requirements of this subpart.

In its comments, Denver RTD also requested guidance on whether FRA would consider an entity that has a long-term contract with a public transit agency to operate and maintain that agency's rail network the operating railroad, independent of the transit agency. CPUC submitted similar comments requesting guidance on whether a railroad that contracts out its train operations, such as commuter railroads, should identify itself as the primary operating railroad. The CPUC recommended that, in this instance, the commuter railroad should be identified as the primary operating railroad on the Inventory Form, as opposed to the short-term contracted railroad operator. FRA agrees. In situations where a railroad or public transit agency contracts with a third-party to conduct train operations or maintain the track that runs through the highway-rail or pathway crossing at issue, FRA will consider the railroad or public transit agency (not the third-party contractor) to be the operating railroad for purposes of this subpart to ensure long-term continuity in reporting to the Crossing Inventory.

Pathway Crossing

Denver RTD submitted comments seeking clarification as to whether FRA considers pedestrian station crossings to be pathway crossings and whether pathway crossings are considered to be a type of highway-rail crossing.

As discussed above, a pathway crossing is separate and distinct from a highway-rail crossing. While highway-rail crossings may include associated sidewalks, pathway crossings are physically separated from a nearby roadway by an open space or barrier. As explained in the preamble to the NPRM, consistent with Section 20160, for purposes of the Crossing Inventory, a pathway crossing must have all of the following characteristics: (1) Explicit authorization by a public authority or an operating railroad; (2) dedicated use by non-vehicular traffic, including pedestrians, bicyclists, and others; (3) no association with a public highway, road, or street, or a private roadway; and (4) cross one or more railroad tracks either at grade or grade-separated. Since pedestrian station crossings generally have all of these characteristics, we consider them pathway crossings. However, as also noted in the NPRM, we do not consider an area where pedestrians trespass, even routinely, a pathway crossing.

Denver RTD also submitted comments recommending that we revise the definition of ''pathway crossing'' to require explicit authorization by both the relevant public authority and the railroad that owns or operates over the crossing rather than one or the other. In this final rule, FRA is not adopting this recommendation because it would be inconsistent with the specific criteria for a pathway crossing paragraph (d)(1) of Section 20160 establishes.

Primary Operating Railroad

In the NPRM, FRA proposed to define the term ''primary operating railroad'' as ''the operating railroad responsible for submitting and/or updating data in the Crossing Inventory for a highway-rail crossing or pathway crossing.'' Denver RTD objected to this proposed definition and asserted that the proposed criterion for determining what entity is a primary operating railroad over a particular grade crossing was confusing and conflicting, especially with respect to rail transit operators. Therefore, in this final rule, FRA is revising the definition of ''primary operating railroad'' to include specific criteria that will determine primary operating railroad status. Under this definition, an operating railroad will qualify for primary operating railroad status if the operating railroad either owns or maintains the track through the highway-rail or pathway crossing, unless the crossing is located within a private company, port or dock area. If there is more than one operating railroad that qualifies for primary operating railroad status on the basis of this criterion, then the operating railroad that operates the most trains over the crossing is the primary operating railroad. If there is only one operating railroad that operates one or more trains through a highway-rail or pathway crossing, that operating railroad is the primary operating railroad.

A different method is used to determine primary operating railroad status for crossings located within a private company, port, or dock area. In recognition of the existing practice of

general system railroads to assign Inventory Numbers to these crossings, the definition of ''primary operating railroad'' provides that each railroad that owns track leading to the private company, port, or dock area is considered a primary operating railroad for the crossings within the private company, port, or dock area—even if the operating railroad does not own or maintain track through the crossings.

Private Crossing

In the NPRM, FRA proposed to define the term ''private crossing'' as ''a highway-rail crossing that is not a public crossing.'' In the interest of clarity, in this final rule FRA is revising this proposed definition to include a specific reference to pathway crossings in addition to highway-rail crossings. As explained in the NPRM, the term ''private crossing'' includes intersections of railroad tracks and roadways that are not open to public travel or maintained by a public authority. This explanation in the NPRM, however, failed to recognize that just as railroad tracks may cross roadways that are not open to the public or maintained by a public authority, railroad tracks also may cross private pathways that are not open to the public or maintained by a public authority. Typical types of private crossings include farm crossings, industrial plant crossings, and residential access crossings.

Public Crossing

In the NPRM, FRA proposed to define the term ''public crossing'' as follows: ''a highway-rail crossing where the roadway is under the jurisdiction of and maintained by a public authority and open to public travel. All roadway approaches must be under the jurisdiction of the public roadway authority and no roadway approach may be on private property.'' FRA received several comments in response to this proposed definition. In response to those comments, which are discussed below, FRA is revising the definition of the term ''public crossing'' in this final rule to include a specific reference to pathway crossings (in addition to highway-rail crossings) and to replace references to ''roadway approaches'' in the proposed definition with the more generic term ''approaches'' because pathway crossings generally do not have roadway approaches. FRA also revised the definition to specify that all approaches to a public crossing must be under the jurisdiction of the public authority and no approach may be on private property, ''unless State law or regulation provides otherwise.'' Further, FRA notes that for purposes of this definition, ''open to public travel'' means that the road or pathway section is available (except during scheduled periods, extreme weather, or emergency conditions) and open to the general public for use without restrictive gates, prohibitive signs, or regulation.

As noted in the NPRM, FRA recognizes this definition of ''public crossing'' contains different criteria for determining the public nature of a highway-rail crossing than the existing definition of ''public highway-rail grade crossing'', contained in 49 CFR 222.9 related to the use of locomotive horns and quiet zones. However, as also noted in the NPRM, these criteria are intended to make the definition of the term ''public crossing'' in this final rule more consistent with the definition of the term ''public grade crossing'' contained in 23 CFR 924.3, which is widely used by States for Highway Safety Improvement Program planning and funding purposes.

FRA received comments on the definition of ''public crossing'' from the ICC, which asserted the definition in the proposed rule failed to address situations in which a public authority, such as a forest preserve, owns and maintains the roadway or pathway approaches on both sides of the crossing. In addition, the Louisiana Department of Transportation and Development (LaDOTD) submitted comments recommending that pathway crossings should be classified as public or private, based upon the entity that maintains the approaches to the crossing.

As explained above, if the highway-rail or pathway crossing is open to public travel and each approach to the crossing is under the jurisdiction of and maintained by a public authority, we will generally consider the highway-rail or pathway crossing to be a public crossing for purposes of this subpart. Therefore, a highway-rail or pathway crossing is considered a public crossing for purposes of this subpart, if each approach to the crossing is under the jurisdiction of and maintained by a governmental entity and the crossing is open to the general public for use without restrictive gates, prohibitive signs, or regulation. If only one approach is under the jurisdiction of and maintained by a governmental entity, the crossing will be considered a private crossing unless otherwise provided by State law.

Denver RTD also submitted comments requesting guidance on how to determine the proper classification of a highway-rail or pathway crossing. In its comments, Denver RTD noted that, in many instances, the railroad owns the land on which the highway-rail or pathway crossing is located. While FRA acknowledges that highway-rail and pathway crossings are generally located on privately-owned railroad rights-of-way, the public/private nature of a highway-rail or pathway crossing has traditionally been determined by ownership of the approaches that lead up to the railroad's right-of-way. FRA intends its definition of the term ''public crossing'' in this final rule to be consistent with this practice.

As noted in the NPRM, with respect to crossings in States where a State agency (such as a State department of transportation, State highway department, public utility commission, or State commerce commission) has been empowered to make determinations as to whether individual crossings are public or private, the determinations of that State agency will govern the public/private classification of highway-rail and pathway crossings in the State for purposes of the Crossing Inventory. To clarify this point in the final rule and in response to comments received from LaDOTD and Tavla Solutions noting that some States have classified high-way rail grade crossings as public crossings despite the fact that there is only one roadway approach to the crossing on public property, in this final rule, we revised the definition of ''public crossing'' to include an exception to the requirement that all approaches to the crossing must be on public property ''unless State law or regulation provides otherwise.''

Temporary Crossing

In the NPRM, FRA proposed to define ''temporary crossing'' to mean ''a highway-rail crossing created to serve a specific activity for a temporary time period not to exceed six months.'' We revised this definition in the final rule to include a specific reference to pathway crossings, which we inadvertently omitted from the definition proposed in the NPRM.

As explained in the NPRM, given the short-term nature of temporary crossings, Inventory Numbers have not historically been assigned to such crossings. FRA intends to maintain this practice and therefore, the reporting and updating requirements contained in this final rule do not apply to any crossing that meets the definition of ''temporary crossing.''

AAR's comments recommend that the definition of ''temporary crossing'' be revised to include crossings that are in existence for a period ''not to exceed 12 months.'' In support of this recommendation, the AAR asserted that

railroads are often faced with circumstances, such as construction, that necessitate use of a crossing on a temporary basis, but for periods exceeding six months. In its comments, Denver RTD concurred with AAR's recommendation.

Although FRA recognizes the potential for certain non-permanent circumstances, including construction activities, to take longer than six-months, FRA does not believe that it is appropriate for purposes of this rule to define a ''temporary crossing'' as a crossing that exists more than six months. Moreover, FRA notes that the Crossing Inventory procedure in place for at least 18 years uses a six-month period for classifying highway-rail and pathway crossings as temporary crossings. Consistent with this existing practice, FRA is not revising the proposed definition to increase the temporary time from six months to 12 months. Therefore, if a highway-rail or pathway crossing is reasonably expected to be in use for more than six months, or if it becomes apparent that the highway-rail or pathway crossing will need to remain in use for longer than a six-month period, the primary operating railroad must assign an Inventory Number to the crossing and report the crossing to the Crossing Inventory. When the crossing is no longer needed, the primary operating railroad is required to close the crossing and, under § 234.411(b), provide notification of the crossing closure to the Crossing Inventory.

Section 234.403 Submission of Data to the Crossing Inventory, Generally

As proposed in the NPRM, paragraph (a) of this section requires use of the Inventory Form, or its electronic equivalent, to submit highway-rail and pathway crossing data to the Crossing Inventory. Although we are adopting this paragraph substantially as proposed, in the final rule FRA modified the language slightly to include specific references to both highway-rail and pathway crossings to reflect the two basic categories of grade crossings for which data will be collected. As also proposed in the NPRM, paragraph (a) generally allows submission of the Inventory Form in both hard copy format or electronically.

Consistent with the proposal in the NPRM, paragraph (b) requires completion of the Inventory Form in accordance with the Inventory Guide. In this final rule, FRA is adopting paragraph (b) substantially as proposed, but adding a reference to the ''electronic equivalent'' of the Inventory Form to make it clear the rule allows for submission of the Inventory Form electronically. As noted in the NPRM and explained in the Inventory Guide, with the exception of highway-rail and pathway crossings that are located in a railroad yard, a passenger station, or an area belonging to a private company, port, or dock, one Inventory Form (or its electronic equivalent) must be submitted to the Crossing Inventory for each highway-rail or pathway crossing. Where there is more than one crossing in a railroad yard, a passenger station, or an area belonging to a private company, port, or dock area, the primary operating railroad may choose to either submit an Inventory Form (or its electronic equivalent) to the Crossing Inventory for each individual crossing or to submit an Inventory Form (or its electronic equivalent) for all (or a group) of the crossings within the railroad yard, passenger station, or area belonging to a private company, port, or dock.

In the NPRM, FRA requested comments on whether it should retain its current practice of allowing railroads to assign a single Inventory Number to a group of crossings in a railroad yard, passenger station, or an area belonging to a private company, port, or a dock area should be retained. FRA received comments on this issue from a private citizen, the AAR, the CPUC, the ICC, Denver RTD, and BRS.

AAR recommended that FRA retain the current practice of allowing railroads to assign a single Inventory Number to a group of crossings in a railroad yard or an area belonging to a private company, a port, or a dock. While noting there are a number of private restricted access facilities that have railroad crossings, the AAR asserted that railroads are often granted limited access into these facilities due to security concerns. Therefore, the AAR argued that there continues to be a need for a flexible approach allowing the assignment of a single Inventory Number to multiple crossings located within such facilities. In addition, the AAR noted that assigning a single Inventory Number to a group of crossings in a railroad yard or area belonging to a private company, a port, or a dock would be consistent with FRA requirements to place and maintain only one Emergency Notification System sign at each vehicular entrance to a railroad yard or port or dock facility.

FRA also received comments from the CPUC, ICC, and the BRS asserting that the practice of assigning a single Inventory Number to a group of crossings should cease. The BRS expressed concern that the practice of assigning a single Inventory Number to multiple crossings could hinder accurate reporting of crossing malfunctions, stalled vehicles at crossing locations, and grade crossing accidents. While noting that large ports may have hundreds of crossings, the CPUC asserted that assigning a single DOT Inventory number to an entire port area would make it nearly impossible to identify the location of accidents and safety issues at a particular crossing within the facility. The CPUC recommended that each crossing should be assigned an individual DOT identification number because each crossing may have independent characteristics and accident history. In the alternative, the CPUC recommended that FRA should consider limiting the assignment of a single Inventory Number to multiple crossings located within a very small area, which is privately owned and subject to strictly limited access. The ICC recommended that each unique pathway crossing within a passenger station should be assigned an individual DOT identification number.

After careful consideration of these comments and because the commenters did not provide any specific safety data to support their concerns, FRA has decided to retain the current practice of allowing railroads to assign one Inventory Number to multiple crossings that are located within an area belonging to a private company, a port or a dock area. FRA notes that crossing malfunctions and other crossing incidents are often reported directly to the facility or to an authorized facility representative who has knowledge of, or is otherwise familiar with, the location of crossings on the property. Section 204(a) of the RSIA directs the Secretary of Transportation to issue regulations that require railroads to submit crossing data to the Crossing Inventory. Consistent with that authority, while it might otherwise be reasonable and appropriate to require private property owners to obtain an individual Inventory Number for each highway-rail and pathway crossing on their property, we have determined that the responsibility for obtaining an Inventory Number for crossings located on private property or in a port or dock area should continue to be placed on the railroads who operate through the crossings. Therefore, FRA is retaining the current practice of assigning a single Inventory Number to a group of crossings located on private property, or in a dock or port area, which does not appear to have a negative impact on emergency response to crossing malfunctions or other types of crossing incidents.

As for crossings within passenger stations, Denver RTD recommended that

the Inventory Guide be revised to specifically state that one Inventory Number can be assigned to multiple crossings within a passenger station. As noted above, in these types of locations crossing malfunctions and other crossing incidents are typically reported directly to the facility or to an authorized representative of the facility who has knowledge of, or is otherwise familiar with, the location of the crossings on the property. In addition, the current practice of assigning a single Inventory Number to a group of crossings located in a railroad yard or passenger station does not appear to have a negative impact on emergency response to crossing malfunctions or other types of crossing incidents. Therefore, FRA also has decided to retain the current practice of allowing railroads to assign one Inventory Number to multiple crossings that are located in a railroad yard or passenger station.

Paragraph (c) of this section requires Class I railroads to submit all crossing data to the Crossing Inventory electronically. The net effect of this provision is that Class II and Class III railroads, as well as urban rapid transit operators and State agencies, may submit their crossing data to the Crossing Inventory on a hard-copy Inventory Form or its electronic equivalent, while Class I railroads must submit the data electronically.

In the proposed rule, FRA requested comments on whether it should require additional railroads to submit crossing data electronically to the Crossing Inventory. FRA received comments from the BRS recommending that all parties who are required to submit data to the Crossing Inventory should be required to submit their data electronically. By applying this requirement to all parties, the BRS asserted that FRA would be better able to track crossing data and there would be no issues with the legibility of the data entered on the hard copy Inventory Form. FRA also received comments from the ICC recommending that the scope of the electronic submission requirement should be expanded to require all primary operating railroads and States with more than 5,000 crossings to submit their crossing data electronically to the Crossing Inventory. Denver RTD submitted comments recommending that all crossing data be electronically submitted to the Crossing Inventory, whether submitted by a State agency or an operating railroad. On the other hand, the North Carolina Department of Transportation (NCDOT) submitted comments asserting it would be impractical and cost burdensome to require all railroads to submit crossing data electronically to the Crossing Inventory because some Class III railroads do not have electronic databases for their crossing records.

FRA encourages Class II and Class III railroads, as well as urban rapid transit operators and State agencies, to submit their data electronically to the Crossing Inventory. However, in order to minimize the burdens associated with the reporting and updating of this subpart, the final rule does not require Class II or Class III railroads or urban rapid transit operators to submit crossing data electronically to the Crossing Inventory (unless they are a parent corporation submitting crossing data to the Crossing Inventory on behalf of a subsidiary railroad under paragraph (e) of this section). As for voluntary reporting by State agencies, State agencies may elect to either submit crossing data electronically to the Crossing Inventory or through submission of hard-copy Inventory Forms.

Currently, some States and railroads use a PC-based software product (GX 32) to update the existing Grade Crossing Inventory System (GCIS) that contains the Crossing Inventory database. However, GX 32 will be replaced with a new secure Web-based application on the final rule effective date. This new Web-based application will allow railroads and States to either upload their crossing data to the Crossing Inventory as an electronic file or to complete an online version of the Inventory Form. The new Web-based application will also have the capability to support bulk crossing data submissions. Railroads and States that previously used the GX 32 software product to update the Crossing Inventory will need to adjust their existing electronic data systems to ensure their systems work with the new Web-based application. Please refer to the Electronic Submission Instructions that have been placed in the public docket for more information. FRA also intends to conduct outreach and training on the new Web-based application. More information about these upcoming FRA outreach and training sessions will be provided on FRA's Web site.

Paragraph (d) of this section specifically addresses reporting by State agencies on behalf of operating railroads. In the proposed rule, FRA noted that it intended to allow State agencies with jurisdiction over highway-rail and pathway crossings to submit crossing data to the Crossing Inventory on behalf of primary operating railroads. These provisions were proposed in §§ 234.405(a)(3), 234.405(b)(4), and 234.405(c)(4). However, as proposed, the rule might have allowed a wide range of third parties to submit crossing data to the Crossing Inventory on behalf of the primary operating railroad, which would have inadvertently expanded the intended scope of this provision. Therefore, in this final rule, FRA has redrafted these provisions and included them in paragraph (d) of this section, to specifically address the submission of data to the Crossing Inventory by a State agency on behalf of an operating railroad.

Paragraph (d) is intended to minimize any potential burden the requirements of this subpart may impose on Class III railroads and to accommodate existing arrangements between shortline railroads and State agencies, where State agencies have agreed to submit crossing data to the Crossing Inventory on the railroads' behalf. To take advantage of this provision, the State agency and the operating railroad are required to provide written notice to the FRA Associate Administrator that the State agency has agreed to report and update crossing data in the Crossing Inventory on behalf of the operating railroad for all of the operating railroad's highway-rail and pathway crossings within the state. Unlike FRA's proposal in the NPRM, the operating railroad and State agency are not required to provide positive identification of each individual crossing for which the State agency has agreed to submit and update crossing data in the Crossing Inventory.

NCDOT submitted comments seeking clarification as to the types of sanctions and/or consequences FRA might use to enforce the reporting and updating requirements contained in this subpart against State agencies that have agreed to report and update crossing data in the Crossing Inventory for operating railroads, yet fail to do so. FRA expects State agencies that agree to report and update crossing data on behalf of operating railroads will share FRA's interest in ensuring that Crossing Inventory records for highway-rail and pathway crossings within the State are kept up-to-date and accurate to the extent possible. FRA anticipates there will be few instances in which State agencies fail to timely report and/or update crossing data in the Crossing Inventory, per their agreement with the operating railroad. Nevertheless, FRA does reserve the right to take enforcement action (*e.g.,* in the form of civil penalties or otherwise) against the operating railroad, when appropriate, if a State does not timely comply with the

reporting and updating requirements contained in this subpart on behalf of the operating railroad.

The ICC also submitted comments recommending that the primary operating railroad be allowed to assign responsibility for updating crossing data to a contractor, but not be allowed to assign responsibility for updating crossing data to the appropriate State agency. FRA is not adopting this recommendation with respect to State agency reporting. Operating railroads (including the primary operating railroad) may choose to enter into separate contractual arrangements with third-party contractors for the submission of crossing data to the Crossing Inventory on their behalf without regulatory authority. However, the operating railroad will remain fully responsible to FRA for any errors or omissions in crossing data the third-party contractor submits on its behalf.

We added a new paragraph (e) to this section of the final rule to provide an option for reporting and updating of crossing data to the Crossing Inventory by the parent corporation of certain integrated railroad systems. Specifically, paragraph (e) provides that a parent corporation, and one or more subsidiary railroads, may provide written notification to the FRA Associate Administrator that the parent corporation will assume the reporting and updating responsibilities of its subsidiary railroad for purposes of complying with this subpart. Any written notification provided under paragraph (e) of this section must contain a list of all subsidiary railroads for which the parent corporation will assume reporting and updating responsibility and an explanation of how the parent corporation and the subsidiary railroads operate as a single, seamless, integrated United States railroad system. In addition, any written notification provided under paragraph (e) of this section must include a statement signed by the chief executive officer of the parent corporation, that the parent corporation consents to guarantee any monetary penalty assessments or other liabilities owed to the United States government the named subsidiaries incur for violating the reporting and updating requirements of this subpart. The parent corporation also must agree to provide immediate written notification to the FRA Associate Administrator of any change in the list of subsidiary railroads for which the parent corporation has assumed reporting and updating responsibility. Finally, the parent corporation must agree to submit crossing data for all of the subsidiary railroad's highway-rail and pathway crossings to the Crossing Inventory electronically.

Section 234.405 Submission of Initial Data to the Crossing Inventory for Previously Unreported Crossings

As proposed, this section would have included requirements that primary operating railroads submit data to the Crossing Inventory for previously unreported crossings (proposed paragraph (a)) and new crossings (*i.e.,* crossings not in existence as of effective date of final rule) (proposed paragraph (b)), as well as periodic update requirements (proposed paragraph (c)), and update requirements related to crossing sales, closures and changes in crossing characteristics (proposed paragraph (d)). In this final rule, FRA is revising this section by moving the provisions that address the reporting of new crossings and the periodic updating of existing crossing data, and the provisions that address the reporting of crossing sales, crossing closures, and changes in crossing characteristics, to separate sections. The reporting of new highway-rail and pathway crossings is now under § 234.407, while the periodic updating of existing crossing data is under § 234.409. In addition, the reporting of a crossing sale, crossing closure, or change in crossing characteristics is now under § 234.411.

As proposed in the NPRM, this section made primary operating railroads responsible for submitting completed Inventory Forms or their electronic equivalents, to the Crossing Inventory for previously unreported crossings through which the railroads operate. FRA received a number of comments relating to FRA's proposal to make railroads responsible for submitting completed Inventory Forms, as opposed to limiting railroads' duty to report to only railroad-maintained crossing data. In its comments, AAR recommended that the final rule require railroads to report only railroad-maintained crossing data (*e.g.,* the total number of daily train movements and the speed of the train at the crossing) to the Crossing Inventory and should leave State agencies responsible for reporting State-maintained crossing data (such as highway system class, highway speed limit, estimated percent of truck traffic, and the average number of school buses per day). NCDOT submitted similar comments. In its comments, the Virginia Department of Transportation (VDOT) recommended that State agencies be responsible for updating crossing data because railroads do not have staff in every state. The Florida Department of Transportation (FDOT) recommended that primary operating railroads be required to coordinate with State agencies to obtain State-maintained crossing data before they submit this data to the Crossing Inventory for previously unreported highway-rail and pathway crossings. The ICC submitted comments recommending that State agencies be permitted to submit crossing data to the Crossing Inventory for previously unreported crossings, if the primary operating railroad fails to do so in a timely fashion.

After careful consideration of all comments submitted on this issue, FRA has retained the requirement that primary operating railroads must submit completed Inventory Forms (or the electronic equivalent) to the Crossing Inventory for previously unreported highway-rail and pathway crossings in the final rule. This final rule implements the statutory mandate in Section 20160 to issue regulations requiring railroads to submit crossing data to the Crossing Inventory for previously unreported crossings. While DOT may issue regulations in the future that would address State reporting of public highway-rail and pathway crossings to the Crossing Inventory, this final rule does not require State agencies to report or update the Crossing Inventory. However, FRA strongly encourages primary operating railroads to work with State agencies to obtain crossing data the State maintains.

In response to commenters expressed concerns, and in recognition of the fact that even a primary operating railroad may not have access to all the data necessary to complete an Inventory Form, FRA added a new paragraph (d) to this section. This paragraph establishes a procedure for primary operating railroads to provide official notification to FRA if the primary operating railroad is unable to timely submit a complete Inventory Form (or its electronic equivalent) to the Crossing Inventory because it requested State-maintained crossing data from the State agency that has not yet been received.

This section implements the statutory mandate contained in paragraph (a)(1) of Section 20160, which requires railroad carriers to report current information to the Secretary about warning devices and signs at each previously unreported crossing through which they operate. With respect to the reporting to the Crossing Inventory of previously unreported highway-rail and pathway crossings (which, for purposes of this subpart, are highway-rail and pathway crossings (both at-grade and grade-separated) that were not reported to the Crossing Inventory as of the effective date of this final rule), we

revised paragraph (a) of this section. Paragraph (a) has been revised to include a provision, in paragraph (a)(1)(i), requiring the primary operating railroad to assign an Inventory Number to each previously unreported highway-rail and pathway crossing through which it operates, unless the crossing is located in a railroad yard, passenger station, or within a private company, port, or dock area. If the previously unreported crossings are located in a railroad yard, passenger station, or within a private company, port, or dock area, paragraph (a)(1)(ii) requires the primary operating railroad(s) to assign one or more Inventory Numbers to the previously unreported crossings. In these instances, each railroad that owns track leading to the private company, port, or dock area is considered the primary operating railroad for the crossings within the facility (see definition of ''primary operating railroad'' in § 234.401). Thus, if more than one railroad owns track leading into a private company, port, or dock area, it is possible that a single crossing could have more than one unique Inventory Number assigned to it. If a primary operating railroad does not already have an Inventory Number it can assign to the previously unreported highway-rail or pathway crossing, then the railroad must obtain an Inventory Number. Instructions for obtaining an Inventory Number are found in the Inventory Guide.

As proposed in the NPRM, paragraph (a)(1)(iii) specifically provides that the requirements to assign Inventory Numbers to crossings and to submit Inventory Forms to the Crossing Inventory do not apply to any crossing meeting the definition of a ''temporary crossing.''

We also revised paragraph (a)(2) in the final rule to require the primary operating railroad to provide the assigned Inventory Number to each operating railroad that operates through the previously unreported highway-rail or pathway crossing within ten months of the final rule's effective date. FRA added this requirement because each operating railroad will need to know the Inventory Number assigned to the previously unreported crossing. (For example, the operating railroad will need to be able to verify whether the primary operating railroad has timely reported the previously unreported crossing to the Crossing Inventory.) However, this requirement does not apply to the Inventory Numbers assigned to highway-rail and pathway crossings that are located within a private company, port, or dock area. As stated above, if more than one railroad owns track that leads into a private company, port, or dock area, each railroad that owns track leading to the private company, port, or dock area must assign its own Inventory Number to the highway-rail and pathway crossings that are located within the facility.

As proposed in the NPRM, primary operating railroads would have had six months after the effective date of a final rule to report any previously unreported highway-rail and/or pathway crossings to the Crossing Inventory. NCDOT submitted comments recommending that the reporting requirements contained in the final rule should allow for a 12-month transition period to accommodate changes to database code and validation rules, while FDOT submitted comments recommending that the final rule should allow for a six- to 12-month transition period. On the other hand, the ICC submitted comments recommending that the final rule should allow for a 24-month period after the final rule's effective date before the electronic submission of crossing data to the Crossing Inventory is required, in order to provide sufficient time within which to modify existing crossing database systems or to develop new systems to retain crossing data.

After consideration of these comments, we revised paragraph (a)(3) of this section to extend the proposed six month initial reporting period to allow primary operating railroads to submit completed Inventory Forms (or their electronic equivalent) to the Crossing Inventory for the previously unreported highway-rail and pathway crossings through which they operate within 12 months of the final rule effective date. This will provide additional time for railroads, as well as State agencies, to modify existing systems or to develop new systems. FRA believes 12 months is ample time for railroads to modify their existing systems of reporting or to develop new systems. This 12-month reporting period is applicable, regardless of whether the crossing data is submitted electronically or by hard-copy. FRA recognizes that some Class II and Class III railroads may elect to retain their crossing data on an electronic database, yet submit their crossing data to the Crossing Inventory on hard-copy Inventory Forms. FRA has no objection to this non-Class I railroad practice.

FRA added paragraph (b) of this section to the final rule to address the situation when multiple operating railroads operate trains on separate tracks through the same highway-rail or pathway crossing. As discussed in the Section-by-Section Analysis of the definition of the term ''highway-rail crossing,'' railroad tracks that lie within the same pair of crossing warning devices are considered a single highway-rail or pathway crossing for purposes of the Crossing Inventory.

AAR's comments expressed agreement with FRA's proposal that when two or more railroads operate on the same track and through the same highway-rail or pathway crossing, the primary operating railroad should provide crossing data to the Crossing Inventory. However, when multiple railroads operate on separate tracks through the same crossing, AAR recommended that each operating railroad should submit separate reports to the Crossing Inventory for crossing data that is unique to its tracks. Denver RTD also submitted comments questioning whether any one railroad should be designated the primary operating railroad in the case of a shared crossing where each operating railroad owns, operates, and maintains its portion of the crossing.

On the other hand, FRA received comments from the ICC recommending that only two entities—the primary operating railroad and the State—be authorized to edit or update crossing data in the Crossing Inventory. In situations involving multiple operating railroads, the ICC recommended that FRA require other operating railroads to provide crossing data to the primary operating railroad for submission to the Crossing Inventory. The Minnesota Department of Transportation submitted similar comments recommending that the railroad responsible for the maintenance of the track at the crossing be the reporting railroad with the obligation to collect the required data, if any, from the other railroads that operate on its line. FDOT also submitted comments recommending that the primary operating railroad should not submit train count data to the Crossing Inventory until after it obtains a total count from all other railroads that operate through the crossing.

As reflected in paragraph (a) of this section, the primary operating railroad is required to submit an accurate and complete Inventory Form, or its electronic equivalent, to the Crossing Inventory for previously unreported highway-rail and pathway crossings. However, in situations involving multiple railroads that operate on separate tracks through the same crossing, it may not be practicable for the primary operating railroad to submit train count and train speed data to the Crossing Inventory on behalf of all of the operating railroads that operate trains through the crossing. The primary

operating railroad may not have sufficient information related to train movements for tracks over which it does not operate or dispatch trains. Therefore, paragraph (b) of this section requires multiple operating railroads that operate on separate tracks through the same highway-rail or pathway crossing to assume responsibility for reporting certain crossing data directly to the Crossing Inventory consistent with the Inventory Guide. This crossing data includes railroad-specific train count and train speed data, as well as railroad-specific location data such as the milepost location, railroad subdivision, and railroad division data. However, the primary operating railroad is still required to submit an accurate and complete Inventory Form, or its electronic equivalent, to the Crossing Inventory for the crossing, which includes train count and train speed data that is specifically related to the primary operating railroad's train operations.

We intend for paragraph (c) of this section to address the situation when the primary operating railroad has not submitted a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory for a previously unreported highway-rail or pathway crossing, under paragraph (a) of this section. Unless the primary operating railroad has provided a written certification statement to the FRA Associate Administrator under paragraph (d) of this section that it requested certain crossing data from the appropriate State agency which the State agency has not yet provided, other operating railroads that operate through the previously unreported crossing will need to monitor the Crossing Inventory to confirm that the primary operating railroad has timely submitted a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory for the crossing. If an operating railroad discovers that the primary operating railroad has not submitted a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory for a previously unreported highway-rail or pathway crossing (which is not a temporary crossing) by March 7, 2016, the operating railroad must provide written notification of this oversight to the FRA Associate Administrator. Otherwise, each operating railroad (including the primary operating railroad) that operates through the unreported highway-rail or pathway crossing may be subject to civil penalties for failure to timely report the crossing to the Crossing Inventory.

FRA received a number of comments that were critical of the requirement contained in paragraph (c) of this section that each operating railroad must notify the FRA Associate Administrator when the primary operating railroad has not submitted a completed Inventory Form, or its electronic equivalent, to the Crossing Inventory. The AAR and the ICC submitted comments asserting that this requirement is burdensome. The AAR further asserted that FRA could implement the statutory mandate in Section 20160, without imposing reporting requirements on secondary railroads, by giving entities other than the primary operating railroad the ability to submit crossing data to the Crossing Inventory. For example, the AAR noted that the proposed rule already contained provisions that would allow reporting by other entities on behalf of the primary operating railroad, which appear to be consistent with other assignment provisions that appear in the rail safety regulations.

Section 20160 contains specific language requiring that each railroad carrier ensure crossing data for previously unreported crossings has been reported to the Crossing Inventory by another railroad carrier that operates through the crossing. As discussed earlier, paragraph (a) of this section requires the primary operating railroad to submit an accurate and complete Inventory Form, or its electronic equivalent, for previously unreported highway-rail and pathway crossings. However, if the primary operating railroad fails to submit a completed Inventory Form in a timely manner, paragraph (c) of this section implements Section 20160's mandate to require each operating railroad to provide written notification to the FRA Associate Administrator that a previously unreported highway-rail or pathway crossing has not been timely reported to the Crossing Inventory. Therefore, we did not change this requirement in the final rule.

The AAR also submitted comments asserting that requiring operating railroads to notify the FRA Associate Administrator when the primary operating railroad has not timely submitted crossing data to the Crossing Inventory would require operating railroads to differentiate between crossings through which they operate trains and crossings through which they simply have trackage rights (but do not operate trains), in order to determine whether they must follow up on a primary railroad's reporting responsibility. FRA acknowledges that the final rule will require railroads to differentiate between crossings through which they operate trains and crossings for which they simply have trackage rights to determine the extent of their reporting and updating responsibilities under this final rule. If a railroad or urban rapid transit operator simply has trackage rights (but does not operate trains) over a highway-rail or pathway crossing that is on, or connected to, the general railroad system of transportation, the railroad or rail transit operator will not be considered an ''operating railroad'' with respect to that crossing. Therefore, the railroad or rail transit operator will not be required by this subpart to submit or update crossing data to the Crossing Inventory for the highway-rail or pathway crossing for which it simply has trackage rights but does not operate trains.

FRA added paragraph (d) of this section to the final rule to allow the primary operating railroad to provide written notification that it has requested, but not received, certain crossing data, from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data. We added this paragraph to the final rule in response to comments noting that under the proposed rule, the primary operating railroad and all other operating railroads could be held responsible for the timely submission of crossing data, which may only be obtainable from the State agency that maintains highway-rail and pathway crossing data. As noted earlier, the AAR submitted comments asserting that railroads should only be required to report railroad-maintained crossing data to the Crossing Inventory, thus leaving the responsibility for reporting State-maintained crossing data to State agencies. Denver RTD also submitted comments recommending that railroads only be responsible for failing to submit or update crossing information in the Crossing Inventory if the State timely provided the information requested and the railroad nevertheless failed to timely update the Crossing Inventory. The ICC submitted comments recommending that the final rule contain a mechanism for any party to inform the FRA Associate Administrator of the failure of the State agency (or the primary operating railroad) to submit data in a timely manner.

Paragraph (d) will allow the primary operating railroad to submit a written statement to the FRA Associate Administrator, by certified mail, return receipt requested, certifying it requested certain crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data at least 60 days earlier, which the State has not yet provided. If the primary operating railroad provides

this written statement to the FRA Associated Administrator, FRA will not hold the primary operating railroad responsible for failing to submit an accurate and complete Inventory Form (or its electronic equivalent) to the Crossing Inventory. In addition, the rule will not require other operating railroads that operate through the crossing to notify the FRA Associate Administrator that a completed Inventory Form (or its electronic equivalent) has not been submitted for the previously unreported crossing.

To take advantage of this provision, the primary operating railroad must limit the crossing data requested to one or more of the data fields that contain State-maintained crossing data, which the States are being asked to voluntarily update in the Crossing Inventory. We have identified these data fields in Appendix B in the Inventory Guide. The primary operating railroad must mail a written statement to the FRA Associate Administrator by certified mail, return receipt requested, which includes a list of each data field for which the primary operating railroad requested crossing information from the appropriate State agency and the date the crossing data was requested. The primary operating railroad also must mail copies of the written certification statement to each operating railroad that operates through the highway-rail or pathway crossing and to the State agency responsible for maintaining highway-rail and pathway crossing data. In addition, the primary operating railroad must submit the requested crossing data to the Crossing Inventory within 60 days of receipt from the appropriate State agency.

Section 234.407 Submission of Initial Data to the Crossing Inventory for New Crossings

Proposed § 234.407 set forth the recordkeeping requirements for this subpart that would apply to each railroad subject to this subpart. In this final rule, we moved these recordkeeping requirements to §§ 234.413 and 234.407 now addresses the reporting of new highway-rail and pathway crossings to the Crossing Inventory. This section implements paragraph (a)(1) of Section 20160, which requires railroad carriers to report current information to the Secretary about warning devices and signs at each new crossing through which they operate. Specifically, paragraph (a)(1)(i) of this section requires the primary operating railroad to assign an Inventory Number to each new highway-rail and pathway crossings through which it operates. Consistent with the reporting requirements in § 234.405 regarding previously unreported crossings, this requirement does not apply to new highway-rail and pathway crossings located in a railroad yard, passenger station, or within a private company, port, or dock area or to temporary crossings.

If new crossings are located in a railroad yard, passenger station, or within a private company, port or dock area, paragraph (a)(1)(ii) requires the primary operating railroad(s) to assign one or more Inventory Numbers to the crossings. The primary operating railroad(s) may assign an Inventory Number to a specific highway-rail or pathway crossing or to a group of highway-rail and pathway crossings located in a railroad yard, passenger station, or within a private company, port, or dock area.

For new highway-rail and pathway crossings located within a private company, port, or dock area, we will consider each railroad that owns track leading to the private company, port, or dock area the primary operating railroad for the crossings within the facility (see definition of ''primary operating railroad'' in § 234.401). Thus, if more than one railroad owns track leading into a private company, port or dock area, it is possible that a single crossing could have more than one unique Inventory Number assigned to it. If a primary operating railroad does not already have an Inventory Number that it can assign to the new highway-rail or pathway crossing, the railroad must obtain an Inventory Number. Instructions for obtaining an Inventory Number can be found in the Inventory Guide.

Paragraph (a)(1)(iii) of this section provides that the requirement to assign Inventory Numbers to crossings and report those crossings to the Crossing Inventory does not apply to any crossing meeting the definition of a ''temporary'' crossing. However, the primary operating railroad must report a highway-rail or pathway crossing that was deemed to be a ''temporary'' crossing to the Crossing Inventory as a new crossing if it becomes apparent the highway-rail or pathway crossing will remain in place for more than six months.

We also revised paragraph (a)(2) in the final rule to require the primary operating railroad to provide the assigned Inventory Number to each operating railroad that operates through the new highway-rail or pathway crossing no later than four months after the date the crossing becomes operational or ten months after the effective date of this rule, whichever occurs later. FRA added this requirement to the final rule because each operating railroad will need to know the Inventory Number assigned to the new highway-rail or pathway crossing. (For example, the operating railroad will need to verify whether the primary operating railroad timely reported the new crossing to the Crossing Inventory.) However, this requirement does not apply to the Inventory Numbers assigned to highway-rail and pathway crossings located within a private company, port, or dock area. As stated above, if more than one railroad owns track that leads into a private company, port, or area, each railroad that owns track leading to the private company, port, or dock area must assign its own Inventory Numbers to the highway-rail and pathway crossings that are located within the facility.

As proposed in the NPRM, primary operating railroads would have had six months after the effective date of the final rule to report any new highway-rail and/or pathway crossings to the Crossing Inventory. In this final rule, FRA is providing additional flexibility in the timeframe for reporting of new crossings to the Crossing Inventory. Specifically, paragraph (a)(3) of this section requires primary operating railroads to submit accurate and complete Inventory Forms (or their electronic equivalent) to the Crossing Inventory for new highway-rail and pathway crossings through which they operate no later than six months after the crossing becomes operational or within twelve months of the final rule's effective date, whichever occurs later.

FRA received comments from the ICC and the Brotherhood of Railroad Signalmen recommending that the timeframe for reporting new crossings to the Crossing Inventory should be changed to 90 days from the date on which a new crossing is established. In its comments, the ICC explained that this recommended change would standardize the time period for reporting new crossings and changes in crossing characteristics. However, we retained the requirement to report new crossings within six months of the date on which the crossing becomes operational in this final rule consistent with the mandate of Section 20160. We also extended the deadline for submitting crossing data for new highway-rail and pathway crossings to the Crossing Inventory in the final rule to provide additional time for railroads and State agencies to modify existing reporting systems or to develop new systems. This initial extended reporting period applies to the submission of all new crossing data to the Crossing

Inventory, regardless of whether the crossing data is submitted electronically or by hard-copy.

FRA also received comments from the Iowa Department of Transportation recommending not adding new crossings to the Crossing Inventory unless railroads and State agencies have submitted crossing data. However, this final rule implements the statutory mandate in Section 20160 to issue regulations requiring railroads to report current information about new crossings through which they operate. While DOT may issue regulations in the future that address State reporting of public highway-rail and pathway crossing data to the Crossing Inventory, this final rule does not require State agencies to submit crossing data to the Crossing Inventory for new crossings. Therefore, paragraph (a)(3) requires primary operating railroads to submit accurate and complete Inventory Forms (or their electronic equivalent) to the Crossing Inventory for new crossings through which they operate. However, FRA strongly encourages primary operating railroads to work with State agencies to obtain crossing data the State maintains.

Consistent with the addition of paragraph (b) to § 234.405 as applied to previously unreported crossings (discussed above), FRA added a new paragraph (b) to this section in the final rule to address the situation in which multiple operating railroads operate trains on separate tracks through the same highway-rail or pathway crossing. Paragraph (b) requires multiple operating railroads that operate on separate tracks through the same highway-rail or pathway crossing to assume responsibility for reporting certain crossing data directly to the Crossing Inventory consistent with the Inventory Guide. This crossing data includes railroad-specific train count and train speed data, as well as railroad-specific location data such as the milepost location, railroad subdivision, and railroad division data. However, the primary operating railroad is still required to submit an accurate and complete Inventory Form, or its electronic equivalent, to the Crossing Inventory for the crossing, which includes train count and train speed data that is specifically related to the primary operating railroad's train operations.

Consistent with paragraph (c) of § 234.405 as applied to previously unreported crossings, paragraph (c) of this section establishes a requirement that each operating railroad must provide written notification to the FRA Associate Administrator, if the primary operating railroad has not submitted a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory for a new highway-rail or pathway crossing. Again, this provision is intended to implement paragraph (a)(2) of Section 20160, which states that each railroad carrier must ensure another railroad carrier that operates through the crossing submits crossing data for new highway-rail and pathway crossings to the Crossing Inventory.

Unless the primary operating railroad has provided a written statement to the FRA Associate Administrator, in accordance with paragraph (d) of this section, certifying that it requested State-maintained crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data which the State agency has not yet provided, other operating railroads that operate through the new crossing will need to monitor the Crossing Inventory to confirm that the primary operating railroad has timely submitted a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory for the crossing. If an operating railroad discovers that the primary operating railroad has not submitted a completed Inventory Form (or its electronic equivalent) to the Crossing Inventory for a new highway-rail or pathway crossing (which is not a temporary crossing) within six months of the date on which the crossing became operational or March 7, 2016, whichever occurs later, the operating railroad must provide written notification of this oversight to the FRA Associate Administrator. This written notification must include, at a minimum, the latitudinal and longitudinal coordinates of the new highway-rail or pathway crossing. If the operating railroad fails to provide written notification of this oversight to the FRA Associate Administrator, FRA may assess civil penalties against each operating railroad (including the primary operating railroad) that operates through a new crossing, which was not timely reported to the Crossing Inventory.

The AAR submitted comments expressing concern that the written notification requirement in paragraph (c) of this section would create confusion. In its comments, the AAR further asserted that a secondary railroad would have no way of knowing when a primary operating railroad opens a crossing because the primary operating railroad is not required to share this information. However, the installation of new highway-rail and pathway crossings necessarily involves coordination between the primary operating railroad and all other operating railroads that operate trains through the crossing. At the very least, train crews for each operating railroad must be notified of changes in railroad operations that are necessary to accommodate construction work, such as slow orders. When the highway-rail or pathway crossing is complete, train crews will also need to be notified of required actions they must take upon approach to the crossing, such as sounding the locomotive horn to provide an audible warning for highway users. Therefore, it is reasonable to expect that each operating railroad will receive notification from the crossing owner whenever a new highway-rail or pathway crossing becomes operational. Upon receiving notification that a new highway-rail or pathway crossing has become operational, each operating railroad will need to monitor the Crossing Inventory to ensure that the new crossing is timely reported by the primary operating railroad.

Consistent with the addition of paragraph (d) to § 234.405 regarding the reporting of previously unreported crossings to the Crossing Inventory, FRA added a new paragraph (d) to this section allowing primary operating railroads to provide written notification that they have requested, and have not received, certain crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data. If written notification is provided under this provision, we will not hold the primary operating railroad responsible for failing to submit the crossing data it has requested from the appropriate State agency and not received. In addition, we will not require the other operating railroads that operate through the crossing to notify FRA that a completed Inventory Form (or its electronic equivalent) has not been submitted for the new crossing. However, the primary operating railroad must submit the requested crossing data to the Crossing Inventory within 60 days of receipt from the appropriate State agency.

Section 234.409 Submission of Periodic Updates to the Crossing Inventory

As proposed, provisions related to the periodic updating of information submitted to the Crossing Inventory were contained in paragraph (c) of proposed § 234.405. FRA moved these provisions to § 234.409 in this final rule and revised them to reflect consideration of comments received. We also made minor revisions to this section to include specific references to highway-rail and pathway crossings to reflect the two basic categories of

crossings for which data will be collected in the Crossing Inventory. This section is intended to implement paragraph (b)(1) of Section 20160, which requires railroad carriers to periodically report current information, including information about warning devices and signage as specified by the Secretary, to the Crossing Inventory concerning crossings through which they operate.

As proposed in § 234.405(c)(1), § 234.409(a) of this final rule requires each primary operating railroad to periodically update existing crossing data in the Crossing Inventory for each highway-rail and pathway crossing through which it operates consistent with the Inventory Guide. However, we do not require submission of these periodic updates for closed or grade-separated highway-rail and pathway crossings. FRA has determined that changes in crossing characteristics do not appear to have a significant impact on existing risk levels at closed or grade-separated crossings. Once the highway-rail or pathway crossing has been closed or grade-separated, there will not be any changes at the crossing (other than re-opening the crossing) that have a significant impact on crossing safety.

Paragraph (a) requires each primary operating railroad to submit up-to-date and accurate crossing data on a periodic basis to the Crossing Inventory for each highway-rail and pathway crossing (except grade-separated or closed crossings) through which it operates consistent with the Inventory Guide. The primary operating railroad must submit updated crossing data at least every three years from the date of the most recent submission of data by the primary operating railroad (or on behalf of the primary operating railroad) for the crossing or March 7, 2016, whichever occurs later. For hard-copy submissions to the Crossing Inventory, this three-year period is measured from the date on which the most recent submission of data for the crossing was mailed to the Crossing Inventory by the primary operating railroad (or on behalf of the primary operating railroad). However, FRA recommends that the primary operating railroad submit an update to the Crossing Inventory as soon as practicable, if there is any significant change in train count or train speed data, as opposed to waiting for the next required three-year periodic update to report the change.

FRA extended the deadline for submitting initial periodic updates for existing highway-rail and pathway crossings to the Crossing Inventory in this final rule to three years from the last submittal or 12 months after the final rule effective date, whichever is later (the NPRM provided for updates within three years from the last submittal or six months after effective date of final rule) to provide additional time for primary operating railroads to implement necessary changes to their crossing databases to ensure compatibility with FRA's new Web-based application for the Grade Crossing Inventory System (GCIS) system. We made this revision in response to comments requesting additional time within which to comply with the final rule. FDOT submitted comments recommending that the final rule should allow for at least a six-month period for State agencies and railroads to address issues that will result from subjecting existing records to new validation rules. On the other hand, the AAR submitted comments recommending that the final rule effective date should be at least three years from the date on which the final rule is published to accommodate modifications that railroads and State agencies will need to make to crossing databases they maintain to comply with the reporting and updating requirements of this rule.

FRA notes that primary operating railroads will have at least 14 months from the publication date of this final rule to prepare for the submission of their initial required periodic updates to the Crossing Inventory. Moreover, the deadline for submitting required periodic updates is directly related to the date on which the primary operating railroad last submitted data for the crossing to the Crossing Inventory. Therefore, railroads that have recently submitted updates to their crossing data in the Crossing Inventory will have close to three years to prepare for the submission of their initial required periodic updates.

FRA received comments from LaDOTD recommending that the final rule require submission of periodic updates on a five-year cycle, as opposed to every three years. However, LaDOTD did not submit any evidence to support the longer reporting period. On the other hand, the CPUC submitted comments recommending that we should encourage railroads to provide updates to train counts and train speed when they make significant operational changes. In making this recommendation, the CPUC noted that errors in the average count or maximum speed of trains can result in significant inaccuracies, especially when used in conjunction with the DOT Accident Prediction Formula.

In the absence of evidence that a three-year cycle for the submission of periodic updates to the Crossing Inventory will pose an undue burden on primary operating railroads, FRA retained the requirement to submit periodic updates at least every three years. Section 20160 directs the Secretary to establish requirements for the periodic updating of the Crossing Inventory on either an annual basis or as otherwise specified by the Secretary. The three-year cycle for submitting periodic updates to the Crossing Inventory, which paragraph (a) of this section established, is intended to balance the updating burden imposed on primary operating railroads with the benefits derived from having up-to-date and accurate crossing data in the Crossing Inventory, such as improved grade crossing safety analyses.

FRA also received comments from NCDOT recommending that the final rule be revised to require submission of periodic updates to the Crossing Inventory for grade-separated crossings at least every six years (or possibly every 12 years) to coincide with the three-year periodic updates that must be submitted for highway-rail and pathway grade crossings. Because FRA has found that changes in crossing characteristics do not appear to have a significant impact on existing risk levels at grade-separated crossings, we did not adopt this recommendation.

FRA received a number of comments recommending who FRA should consider the appropriate party required to submit periodic updates of crossing data to the Crossing Inventory. The BRS submitted comments expressing strong support for requiring the primary operating railroad to submit updated crossing data to the Crossing Inventory, especially because FRA has noted its lack of oversight authority with regard to the reporting of crossing data by State agencies. FDOT submitted comments recommending that railroads be required to coordinate with State agencies to obtain State-maintained crossing information for data fields that States are being asked to update on a voluntary basis, as reflected in Appendix B to the Inventory Guide. NCDOT submitted comments recommending that FRA ask State agencies to voluntarily submit crossing data to the Crossing Inventory for data fields on the Inventory Form historically completed by State agencies within three to six months after the primary operating railroad submits crossing data to the Crossing Inventory. Tavla Solutions submitted comments recommending that the GCIS system be designed to facilitate electronic communication with State agencies, especially with respect to data fields on the Inventory Form that have

traditionally completed by State agencies.

The ICC submitted comments recommending that FRA require railroads to continue to provide crossing data updates to the appropriate State agencies for incorporation into the Crossing Inventory. In the alternative, the ICC noted that a mechanism could be developed to provide notice to the appropriate State agency that the primary operating railroad has submitted an update to the Crossing Inventory. While noting that a similar mechanism could be developed to notify the primary operating railroad whenever State agencies submit updated crossing data to the Crossing Inventory, the ICC asserted that this process would be preferable to that outlined in the proposed rule because the appropriate State agency will know whenever a new crossing is added to the Crossing Inventory.

FRA also received comments from the CPUC recommending sending notifications to the appropriate State agency with jurisdiction over grade crossing safety and the operating railroad(s) responsible for submitting crossing data to the Crossing Inventory whenever updated data is posted to the Crossing Inventory. In the alternative, the CPUC recommended that the GCIS system should allow Crossing Inventory users to generate reports that show all changes made during a specified time period, such as the last month, quarter, or year.

After consideration of these comments, FRA has decided to retain the process in the proposed rule wherein the primary operating railroad (and, as further discussed below, other operating railroads) submit updated crossing data directly to the Crossing Inventory. In response to comments the BRS submitted, although FRA previously stated it did not have authority to require States to report, upon further consideration FRA believes that Section 20160 does give the Secretary authority to require States to report and update highway-rail and pathway crossing information in the Crossing Inventory. Therefore, DOT may issue regulations in the future that address State reporting to the Crossing Inventory, which are based upon this existing statutory mandate. However, in the interim, FRA encourages primary operating railroads to send copies of their crossing data to the appropriate State agency responsible for grade crossing safety when they submit crossing data to the Crossing Inventory. As reflected in Appendix B to the Inventory Guide, data fields on the Inventory Form that State agencies have historically completed have generally been assigned to State agencies for updating on a voluntary basis. Therefore, State agencies are encouraged to submit updates to these data fields at least every three years.

We have not designed the current version of the GCIS system to provide email notification or to facilitate electronic communication between State agencies and the primary operating railroad whenever crossing data related to a highway-rail or pathway crossing is submitted to the Crossing Inventory. However, we have configured the GCIS system to allow Crossing Inventory users to download crossing data for multiple crossings or individual crossings. This functionality will allow State agencies and operating railroads to verify that new or previously unreported crossings have been reported to the Crossing Inventory and that required updates have been submitted by the primary operating railroad. In addition, the GCIS system has been designed to allow Crossing Inventory users to generate reports showing all changes that have been made in the Crossing Inventory during a specified time period.

The CPUC submitted comments recommending that there be a process for resolving conflicts that may arise due to State agencies and railroads providing conflicting data for the same data field. To address this potential concern, a private citizen submitted comments proposing that the Crossing Inventory be designed to reflect two entries for data fields for which conflicting data was submitted—one entry for data the primary operating railroad submits and the other entry for data the State submits. The commenter believes that by adopting this approach, the Crossing Inventory could flag conflicting data and record the date on which the data was submitted to the Crossing Inventory, but not allow the crossing data to be overridden by another entity.

The AAR submitted comments recommending that FRA address the possibility that one entity could incorrectly modify or nullify a data field assigned to another entity for updating purposes. FRA also received comments from a private citizen, the Iowa Department of Transportation, the Minnesota Department of Transportation, and NCDOT recommending that railroads be prohibited from overwriting existing highway data and State agencies be prohibited from overwriting existing railroad data in the Crossing Inventory. In addition, LaDOTD recommended that there be a process in place for resolving discrepancies between States and railroads.

In response to these comments, we revised Appendix B to the Inventory Guide to identify which data fields on the Inventory Form must be updated by the primary operating railroad for purposes of the three-year periodic update and which data fields State agencies are being asked to update on a voluntary basis. As a result, there should be fewer potential conflicts between the State agency and the primary operating railroad regarding the appropriate data for a specific data field since the entity responsible for updating the data field is ultimately responsible for ensuring the accuracy of the data submitted for that field. While the historical records associated with each highway-rail and pathway crossing will reflect changes in data that are submitted to the Crossing Inventory by the State agency and the primary operating railroad (and, in some cases, each operating railroad), the GCIS system has not been designed to reflect separate entries for an individual data field on the Inventory Form. Nor has the GCIS system been designed to prohibit entities that are authorized to submit crossing data to the Crossing Inventory from submitting revised data for existing crossing records. However, in the event that disputes arise over the accuracy of crossing data submitted to the Crossing Inventory, FRA will provide assistance upon request.

Consistent with FRA's addition of paragraph (b) to §§ 234.405 and 234.407, we added paragraph (b) to this section to address submission of periodic updates by multiple operating railroads that operate trains on separate tracks through the same highway-rail or pathway crossing. For highway-rail and pathway crossings where multiple operating railroads operate trains on separate tracks through the crossing, paragraph (b) requires each operating railroad to periodically submit up-to-date and accurate crossing data for certain specified data fields on the Inventory Form to the Crossing Inventory consistent with the Inventory Guide. These data fields include railroad-specific train count and train speed data fields, as well as the milepost location, railroad subdivision, and railroad division data fields. Each operating railroad must submit these periodic updates at least every three years from the date of the most recent submission of data for the crossing by that operating railroad, or by March 7, 2016, whichever occurs later. For hard-copy submissions to Crossing Inventory, this three-year period will be measured from mailing date of the most recent

submission of data by the operating railroad (or on behalf of the operating railroad). However, if there is a significant change in train count or train speed data, FRA recommends that the operating railroad submit an update to the Crossing Inventory, as opposed to waiting for the next required three-year periodic update.

Consistent with paragraph (c) of §§ 234.405 and 234.407, paragraph (c) of this section establishes a requirement that each operating railroad must provide written notification to the FRA Associate Administrator if the primary operating railroad fails to timely submit up-to-date crossing data to the Crossing Inventory for a highway-rail or pathway crossing (other than a grade-separated crossing) through which it operates. This provision is intended to implement paragraph (b)(1)(B) of Section 20160, which states that each railroad carrier must ensure updated crossing information is periodically submitted to the Crossing Inventory by another railroad carrier that operates through the crossing.

If the primary operating railroad fails to submit up-to-date crossing data to the Crossing Inventory for a highway-rail grade crossing or pathway grade crossing within three years from the date of its last submission of crossing data to the Crossing Inventory for that crossing or March 7, 2016, whichever occurs later, each operating railroad that operates through the crossing must provide written notification of this oversight to the FRA Associate Administrator. This written notification must include, at a minimum, the Inventory Number for each highway-rail and pathway crossing through which it operates that was not timely updated by the primary operating railroad.

Section 234.411 Changes Requiring Submission of Updated Information to the Crossing Inventory

Paragraph (d) of proposed § 234.405 addressed changes requiring submission of updated information to the Crossing Inventory. In this final rule, FRA moved those provisions to § 234.411. Specifically, proposed § 234.405(d) is now § 234.411(a) and proposed § 234.405(e) is now paragraphs (b) and (c) of this section.

Paragraph (a) contains updating requirements for the sale of a highway-rail or pathway crossing. This provision implements paragraph (b)(2) of Section 20160, which requires each railroad carrier that sells a crossing or any part of a crossing to report to the Secretary current information concerning the change in ownership of the crossing within three months of the date of sale, or as otherwise specified in regulations.

Paragraph (a) requires any railroad that sells all, or part, of a highway-rail or pathway crossing to submit updated ownership data to the Crossing Inventory within three months of the date of sale or March 7, 2016, whichever occurs later, in accordance with § 234.403. In this final rule, FRA has provided additional flexibility in the reporting of crossing sales by extending the reporting deadline to the latter of three months after the date of sale or 12 months after the final rule effective date. This will provide additional time for operating railroads to implement necessary changes to their crossing databases prior to the submission of updated crossing ownership data to the Crossing Inventory.

FRA received comments from Denver RTD recommending that the final rule confirm that the ''date of sale'' referenced in paragraph (a) of this section refers to the date title passes, not the date a purchase and sale agreement has been executed. In response to this comment, FRA confirms that the ''date of sale'' in paragraph (a) of this section means the date title is transferred.

A railroad that sells all, or part, of a highway-rail or pathway crossing should consult the Inventory Guide for guidance on reporting the crossing sale to the Crossing Inventory. In addition, FRA strongly recommends that the primary operating railroad submit updated crossing data for all of the data fields Appendix B to the Inventory Guide assigns to railroads within six months of the date on which the crossing was sold.

The rule requires the primary operating railroad to submit a periodic update to the Crossing Inventory for the recently acquired highway-rail or pathway crossing to the Crossing Inventory under § 234.409 within three years of the date on which the last periodic update for the crossing was submitted to the Crossing Inventory. The report of crossing sale by the previous owner does not constitute a periodic update and therefore cannot be used for purposes of determining the date on which the next periodic update required by § 234.409 will become due for the recently acquired highway-rail or pathway crossing.

Paragraph (b) of this section contains the reporting requirements applicable to the closure of a crossing (these requirements were included in proposed § 234.405(e) of the NPRM). When a highway-rail or pathway crossing is closed, the primary operating railroad is required to submit an Inventory Form (or its electronic equivalent) to the Crossing Inventory that reflects the closure of the crossing within three months of the date on which the crossing is closed or March 7, 2016, whichever occurs later. We extended this deadline from the NPRM proposed three month deadline to allow reporting up to 12 months after the final rule's effective date. This will provide additional time for primary operating railroads to implement necessary changes to their crossings databases prior to the submission of updated crossing data to the Crossing Inventory. The primary operating railroad should consult the Inventory Guide for guidance on reporting the closure of a highway-rail or pathway crossing to the Crossing Inventory.

Paragraph (c) in the final rule requires the primary operating railroad to submit an Inventory Form (or its electronic equivalent) to the Crossing Inventory which reflects updated crossing information consistent with the Inventory Guide and § 234.403, when there is a change in crossing surface or a change in warning device at a public highway-rail grade crossing within three months of the date the change was implemented. This is a change from the NPRM proposed requirement which would have required the reporting of a change in crossing surface or change in warning device at any public or private highway-rail or pathway crossing to the Crossing Inventory. The scope of this proposed requirement has been limited in the final rule because railroads are not required to submit data on crossing surface or crossing warning devices for private highway-rail grade crossings, pathway crossings, or grade-separated crossings. However, FRA strongly encourages railroads to voluntarily report data on train-activated warning devices, crossing signs, and crossing surface at private highway-rail grade crossings and pathway crossings to the Crossing Inventory. The National Transportation Safety Board (NTSB) recently issued Safety Recommendation R–14–48 that FRA should require equivalent levels of reporting for both public and private highway-rail grade crossings. FRA also received comments in support of requiring railroads to complete the entire Inventory Form for private highway-rail grade and pathway crossings. Therefore, FRA may issue regulations in the future that would require railroads to provide additional data on private highway-rail and pathway crossings to the Crossing Inventory.

Paragraph (c)(2) defines a ''change in warning device'' as ''the addition or removal of a crossbuck, yield or stop sign, flashing lights, or gates at a public

highway-rail grade crossing.'' Consistent with the NPRM, a ''change in warning device'' means a change in the type of warning device installed at the crossing as opposed to a modification of an existing crossing device or replacement of a damaged or missing warning device. For example, the addition of cantilevered lights to a crossing that is already equipped with post-mounted flashing lights would be considered a ''change in warning device'' for the purpose of this provision. The installation of two-quadrant, three-quadrant, or four-quadrant gate systems where none were previously installed, or where existing warning systems are upgraded, would also be considered a ''change in warning device'' for the purpose of this provision. However, a change from incandescent to LED flashing lights would not be considered a ''change in warning device'' for the purpose of this provision.

Prior to the submission of updated information concerning a change in crossing surface or change in warning device, the primary operating railroad should consult the Inventory Guide for guidance. FRA revised the Inventory Guide to clarify that, when there has been a change in crossing surface (such as replacing an asphalt crossing surface with a concrete crossing surface) or a change in warning device at a public highway-rail grade crossing, the primary operating railroad must update all data fields in Parts II and III of the Inventory Form. However, as stated in paragraph (c)(2), primary operating railroads are not required to report changes in warning devices to the Crossing Inventory that will be in place for a period not to exceed six months.

In the preamble to the proposed rule, FRA solicited comments on the proposed requirement to report changes in crossing surface and changes in warning devices to the Crossing Inventory. The AAR submitted comments in support of the proposed requirement to report changes in crossing surface and changes in warning devices, as well as crossing closures, to the Crossing Inventory within three months of the date on which either the change is made or the crossing is closed. The CPUC submitted comments recommending that the proposed requirement to report changes in crossing surface and changes in warning devices be revised to require the primary operating railroad to report these changes to the appropriate State agency within 30 days. The CPUC then recommended that the State agency should be given 60 days within which to report the change to the Crossing Inventory. FRA also received comments from the ICC recommending that the reporting of changes to crossing characteristics be expanded to include changes to any data field element that feeds into the national risk assessment tool (PCAPS) utilized by FRA.

On the other hand, FRA received comments from NCDOT recommending that the final rule be revised to provide a six-month timeframe for the reporting of crossing closures, changes in crossing surface, and changes in warning device at highway-rail and pathway crossings. In making this recommendation, NCDOT asserted that the proposed three-month timeframe will not provide sufficient time to generate the required reports for the Crossing Inventory and may result in an undue financial burden, especially for State agencies that agree to submit crossing data to the Crossing Inventory on behalf of operating railroads. In addition, Denver RTD submitted comments recommending that the final rule be revised so that FRA will not hold the primary operating railroad responsible for failing to timely report changes in crossing characteristics if the appropriate State agency fails to notify the primary operating railroad of a change that has been made to the crossing.

After considering these comments, FRA decided to retain the requirement that the primary operating railroad must report changes in crossing surface and changes in warning devices directly to the Crossing Inventory within three months. We retained the three-month period for reporting changes in crossing surface and changes in warning devices by the primary operating railroad in the final rule to be consistent with the requirement in paragraph (a) of this section to report the sale of all, or part, of a highway-rail or pathway crossing to the Crossing Inventory within three months. FRA notes that changes in crossing surface and changes in warning devices are generally planned well in advance and require coordination between the crossing owner and the State agency during the planning process. Therefore, we recommend that State agencies which agree to submit crossing data on behalf of operating railroads include an additional step in their planning processes for the reporting of changes in crossing surface and changes in warning devices to the Crossing Inventory to ensure the timely reporting of these changes.

With regard to the concern expressed by Denver RTD related to FRA enforcement activity in situations in which a State or local government has installed or removed a yield or stop sign at a public highway-rail grade crossing without notifying the primary operating railroad, FRA has prosecutorial discretion to forgo enforcement if the primary operating railroad fails to submit updated crossing data to the Crossing Inventory within three months of the installation or removal of a yield or stop sign because the State or local entity installed or removed the sign without notifying the primary operating railroad. However, the primary operating railroad must submit up-to-date and accurate crossing data to the Crossing Inventory for each data field Appendix B to the Inventory Guide assigns to railroads for updating within three months of the date on which the primary operating railroad becomes aware that the State or local government has installed (or removed) a yield or stop sign at the crossing.

Section 234.413 Recordkeeping

Denver RTD submitted comments on the provisions contained within this section in the proposed rule recommending that FRA defer to State laws governing the public's right of inspection of public records, with respect to the accessibility, format, and timeframes for retaining railroad records of compliance with the requirements of this subpart. However, the recordkeeping requirements contained in this section reflect the exercise of FRA's longstanding statutory authority to require railroads to produce, and make available for FRA inspection, relevant records of compliance with Federal safety regulations. Therefore, because we intend this section to require operating railroads to make their records of compliance reasonably available to FRA inspectors for inspection and enforcement purposes, we did not revise this section in the final rule.

Section 234.415 Electronic Recordkeeping

We did not revise this section in the final rule. FRA received comments on the electronic recordkeeping provision in the proposed rule from Denver RTD recommending that electronic records be retained solely in non-native format so crossing data submitted to FRA cannot be changed. FRA agrees that electronic records of crossing data submitted to the Crossing Inventory must be retained in a manner that will not allow subsequent changes to be made to the original electronic record. However, FRA believes that paragraph (a) of this section, requiring the railroad to adequately limit and control accessibility to electronic records of crossing data they have submitted to the Crossing Inventory adequately addresses

this concern. In addition, FRA notes that the GCIS system will maintain independent records of crossing data that was submitted electronically to the Crossing Inventory, which FRA can use for verification purposes if necessary.

Denver RTD also submitted comments asserting that the requirements contained in paragraph (a) of this section may discourage electronic recordkeeping by requiring access, safety, and other control provisions that are not required for paper recordkeeping and do not appear to be consistent with current technology. For example, Denver RTD stated it did not understand the purpose of the dedicated terminal paragraph (a)(2) of this section requires. In addition, Denver RTD suggested that FRA consider email capability as relevant as fax and printer connections for purposes of paragraph (a)(3) of this section. FRA acknowledges that the electronic recordkeeping requirements in this section are not identical to the recordkeeping requirements in § 234.413, which generally apply to the retention of hard-copy records. However, the electronic recordkeeping requirements in this section are consistent with requirements in other FRA regulations that also permit electronic recordkeeping, such as § 234.315 of this part.

With respect to Denver RTD's specific comment asking about the purpose of the dedicated terminal required by paragraph (a)(2) of this section, we retained the requirement in the proposed rule that requires railroads to make a computer available at the office where the railroad reporting officer conducts his/her official business and at each location the railroad designates as having a copy of any required crossing records to ensure FRA inspectors are granted access the electronic records stored at these locations. FRA agrees that it would be helpful if the computer made available to FRA inspectors also has email capability so the operating railroad could also email any requested documents to FRA inspectors upon request. However, to reduce the burden on operating railroads that may wish to retain electronic records under this section, we did not revise the final rule to include an additional regulatory provision requiring an operating railroad to provide a computer with email capability. The operating railroad can provide its electronic records to FRA inspectors by email without the need for an additional regulatory provision/requirement.

Appendix A to Part 234—Schedule of Civil Penalties

FRA revised this appendix by adding recommended civil penalties for specific violations of the reporting and updating requirements contained in subpart F of this part. For example, we added recommended civil penalties for failure of a Class I railroad to submit crossing data to the Crossing Inventory electronically, as well as failure by the primary operating railroad to timely submit accurate and complete Inventory Forms (or their electronic equivalent) to the Crossing Inventory for new and previously unreported crossings.

Denver RTD responded to FRA's invitation to submit recommendations on appropriate civil penalty amounts it should issue for non-compliance with the requirements of this subpart. In its comments, Denver RTD stated the civil penalties established for non-compliance with the reporting and updating requirements contained in this subpart should not be excessive since they will be applied equally to Class I railroads and publicly operated transit agencies. Thus, Denver RTD recommended that failure to timely submit Inventory Forms (or their electronic equivalent) to the Crossing Inventory be treated as recordkeeping violations with associated civil penalties in the range of $1,000–$2,000.

While FRA agrees that we should not establish excessive civil penalty amounts for violations of the reporting and updating requirements in this subpart, we believe it is reasonable to establish standard civil penalties for violations of this subpart which are consistent with civil penalties FRA established for failure to comply with the reporting requirements in 49 CFR parts 225 and 234. Therefore, primary operating railroads and other operating railroads that fail to timely submit Inventory Forms (or their electronic equivalent) to the Crossing Inventory may be subject to a $2,500 standard civil penalty per crossing per day. However, after FRA issues a civil penalty, FRA may adjust or compromise the initial penalty claim(s) based on a wide variety of mitigating factors, which include the severity of the safety or health risk presented, the entity's compliance history, the entity's ability to pay the assessed civil penalty, and evidence that the entity acted in good faith.

FRA Guide for Preparing U.S. DOT Crossing Inventory Forms

The ICC submitted comments recommending that the Inventory Form should be submitted to an independent third party that specializes in data and asset management inventory systems so that current best practices may be incorporated. Then, once the desired data elements have been identified, defined, and responsibility assigned, several alternative versions of a new and improved inventory form which is consistent with modern asset management information systems could be created for approval. In the alternative, the ICC recommended that FRA delete all data fields on the Inventory Form it proposed as ''optional,'' unless it can make a business case justifying the time and expense to retain the data field.

FRA appreciates the recommendation to recreate the Inventory Form by evaluating each proposed data field for its continued usefulness and incorporating current best practices. However, FRA has decided to instead make revisions to the Inventory Form consistent with other comments the general public and all affected parties who have reviewed and evaluated it submitted. FRA notes that the Inventory Form was extensively vetted with State agencies and railroads prior to the issuance of the NPRM in this rulemaking.

We retained most of the optional data fields on the Inventory Form. Railroads and States are not required to submit data for these data fields. Therefore, railroads and States are free to determine whether the safety benefits associated with the collection and evaluation of additional crossing information railroads and States voluntarily provide is justified by the time and expense associated with the collection and retention of this data.

Instructions for Completing the U.S. DOT Crossing Inventory Form

In the proposed rule, FRA requested comments on whether we should retain the proposed Instructions in the Header of the Inventory Form. While the majority of commenters generally supported retaining Instructions in the Header of the Inventory Form, several commenters stated the proposed Instructions in the Header of the Inventory Form conflicted with the instructions in the Inventory Guide for submission of the Inventory Form.

FRA agrees the proposed Instructions at the top of the Inventory Form were inconsistent with the guidance the Inventory Guide provided on the submission of Crossing Inventory Forms. Therefore, we revised the Instructions at the top of the Inventory Form to be consistent with the guidance in the Inventory Guide.

The CPUC submitted comments recommending that FRA also revise the

Instructions at the top of the Inventory Form to direct Crossing Inventory users to complete the Submission Information section at the end of the form. However, NCDOT recommended that FRA remove the Submission Information section from the Inventory Form and require Crossing Inventory users to submit hard-copy Inventory Forms with a cover letter that provides the identity and contact information for the Crossing Inventory user.

While FRA agrees that revising the Instructions at the top of the Inventory Form would be beneficial, we decline to require Crossing Inventory users to submit cover letters with their hard-copy Inventory Forms in this final rule. We believe it is more burdensome to require Crossing Inventory users to prepare and submit a cover letter than to require Crossing Inventory users to complete four data fields at the bottom of the hard-copy Inventory Form. Therefore, we revised the Instructions to direct Crossing Inventory users to complete the Submission Information section at the end of the Inventory Form when submitting crossing data by hard copy. However, Crossing Inventory users will not be required to complete the Submission Information section when they submit crossing data electronically to the Crossing Inventory. The GCIS system has been designed to retain a record of the identity of the Crossing Inventory user, along with the date on which data is electronically submitted to the Crossing Inventory.

AAR also submitted comments recommending that FRA explain which data fields on the Inventory Form railroads must complete and which data fields State agencies must complete. In response to this recommendation, the Introduction to the Inventory Guide explains which Parts of the Inventory Form need to be completed for the initial reporting of crossing data for new and previously unreported highway-rail and pathway crossings. Appendix B to the Inventory Guide also contains a Responsibility Table which shows the data fields that primary operating railroads must update, as well as the data fields that State agencies are assigned for voluntary updating in the Crossing Inventory.

Header Information

Revision Date

We retained the Revision Date data field (Item A in the Header of the Inventory Form) as proposed. Since the date the Inventory Form is submitted to the Crossing Inventory will often differ from the date changes took effect at the crossing, NCDOT and the ICC submitted comments recommending that we revise the Revision Date data field to show the date the changes in the Inventory Form took effect. However, the Revision Date data field is intended to show the date the Crossing Inventory was updated to reflect changes at the crossing. By requesting that reporting entities provide the date on which the Crossing Inventory Form was mailed or electronically submitted, the Crossing Inventory should contain a reasonably accurate record of the dates on which the Crossing Inventory was updated. This will assist operating railroads in determining when future periodic updates will become due.

NCDOT also recommended that the Crossing Inventory should reflect separate submission dates for crossing data railroads supply and crossing data State agencies supply. As explained above, we designed the GCIS system to record the date crossing updates are electronically submitted to the Crossing Inventory, as well as the identity of the reporting entity who submitted the update. With respect to hard copy submissions, the Crossing Inventory will reflect the date contained provided in the Revision Date data field for each update.

Reporting Agency

FRA retained the Reporting Agency data field (Item B in the Header of the Inventory Form) as proposed.

The CPUC submitted comments recommending that we eliminate the ''Other'' box from the ''Reporting Agency'' data field on the Inventory Form. Instead of allowing local agencies to submit crossing data directly to FRA, the CPUC stated that the local agency should be instructed to provide updated crossing data to the State agency and/or the railroad for submission to the DOT Crossing Inventory.

FRA regulations in 49 CFR part 222 (49 CFR 222.49(a)), allow local governments that meet the definition of a ''public authority'' to file Inventory Forms with FRA if the State agency and railroad fail to timely do so. Therefore, we retained the ''Other'' box in the Reporting Agency data field to reflect FRA entry of updated crossing data for quiet zone-related purposes. The ''Other'' box is only intended for FRA use. Accordingly, to avoid improper use of the ''Other'' box, the GCIS system will not permit non-FRA users to check the ''Other'' box when submitting crossing data electronically.

The CPUC expressed strong support for retaining the ''Transit'' box in the ''Reporting Agency'' data field due to the large number of crossings in California that also have urban rapid transit tracks and/or urban rapid transit operations through the same crossing. However, the CPUC and Denver RTD encouraged FRA to include a discussion in the Inventory Guide on whether (and how) transit agencies are required to submit data for crossings subject to urban rail transit operations. NCDOT also requested clarification on the application of the proposed crossing reporting requirements to transit agencies.

We retained the ''Transit'' box in the ''Reporting Agency'' data field. However, we added a discussion in the Inventory Guide on urban rapid transit operators who are subject to the reporting and updating requirements in the Crossing Inventory final rule. (The Section-by-Section Analysis of the definition of ''operating railroad'' in § 234.401 also contains a detailed discussion on the application of the reporting and updating requirements of this subpart to urban rapid transit operators.) Urban rapid transit operators who submit crossing data to the Crossing Inventory (whether voluntarily or otherwise) should therefore check the ''Transit'' box in the ''Reporting Agency'' data field.

Reason for Update

In the proposed rule, FRA requested comments on whether the rule should give railroads and States the option to select more than one reason for submitting data to the Crossing Inventory. FRA received comments from four State transportation agencies and the AAR expressing support for allowing railroads and States to select more than one reason for submitting crossing data to the DOT Crossing Inventory. The AAR reasoned that allowing States and railroads to select more than one reason for submitting crossing data to the DOT Crossing Inventory would allow them to capture more than one change in a single submittal.

However, FRA also received comments from the ICC and FDOT recommending that FRA limit railroad and State users to selection of one reason for update. After considering the comments submitted, FRA decided to continue to require railroad and State users to select only one reason for update per submission. This will ensure historical records in the Crossing Inventory continue to reflect the primary reason for each data submission.

FRA also received comments from LaDOTD and Tavla Solutions recommending that the Inventory Guide should indicate which entities have authority to submit the various types of

updates in the ''Reason for Update'' data field. In response to this recommendation, we revised the Inventory Guide to state that only operating railroads should check the ''New Crossing'', ''No Train Traffic'', ''Re-Open'', and ''Change in Primary Operating RR'' boxes. However, all reporting entities may check the ''Change in Data'', ''Date Change Only'', ''Closed'', and ''Admin. Correction'' boxes.

New Crossing: The CPUC submitted comments recommending that the Inventory Guide description of the ''New Crossing'' box in the ''Reason for Update'' data field reference ''open'' crossings as opposed to ''active'' crossings. The CPUC noted that the term ''active crossing'' is often used to refer to crossings equipped with automatic warning devices such as flashing light signals and gates. Thus, use of this term could limit the intended scope of the ''New Crossing'' box in the ''Reason for Update'' data field. FRA agrees and adopted this recommendation.

Closed: LaDOTD and Tavla Solutions submitted comments stating that the removal of track, or otherwise disconnecting crossings from the main line, should cause all crossings on that segment of rail line to be classified as closed crossings. NCDOT submitted comments stating removal of the crossing surface or other situations that make it impossible to use the crossing (such as fencing) should qualify as closing the crossing. For purposes of the ''Reason for Update'' data field, the ''Closed Crossing'' box should be checked when the railroad tracks have been physically removed or each pathway or roadway approach to the crossing have been physically removed. However, the ''Closed Crossing'' box only should be checked in situations involving the permanent closure of a highway-rail or pathway crossing. The use of fencing to deter or otherwise prevent access to the crossing does not constitute closure of a crossing for purposes of the Crossing Inventory.

No Train Traffic: The CPUC submitted comments recommending that the ''Abandoned'' box be eliminated from the ''Reason for Update'' data field. In support of this recommendation, the CPUC stated that abandonment of the segment of track on which a crossing is located under the authority of the Surface Transportation Board, merely means the railroad is no longer required to provide railroad service on that track segment. It does not necessarily indicate that the crossing is no longer used or maintained.

However, FRA also received comments in support of retaining the ''Abandoned'' box in the ''Reason for Update'' data field. NCDOT submitted comments recommending that the ''Abandoned'' box be retained to capture data on highway-rail and pathway crossings that are located on abandoned track yet are still used by hi-rail and other authorized vehicles that access the railroad right-of-way.

FRA also received comments recommending that the ''Out-of-Service/Inactive'' box be removed from the ''Reason for Update'' data field. The AAR stated that FRA should remove the ''Out-of-Service/Inactive'' box because there are no fixed definitions of ''out-of-service'' or ''inactive.'' The CPUC stated that the data collected would be unlikely to accurately reflect the physical or operational status of the crossing since rail lines are often placed back into service with little or no notification to authorities.

After considering the comments received, we removed the Abandoned and Out-of-Service/Inactive boxes from the ''Reason for Update'' data field on the final Inventory Form. However, FRA intends to continue to collect data regarding the operational status of crossings, as it may be useful to filter out crossings that are not subject to train traffic when conducting statistical analyses. Therefore, we added a new box titled, ''No Train Traffic'' to the ''Reason for Update'' data field on the Inventory Form to continue FRA's efforts to identify crossings that no longer have train traffic.

We strongly encourage railroads to update the Crossing Inventory to reflect changes to ''No Train Traffic'' status as soon as possible. However, it is important to note the ''No Train Traffic'' box/category is separate and distinct from the ''Closed'' box/category. The ''Closed'' box/category applies to crossings where the roadway approaches or railroad tracks have been physically removed, leaving behind no intersection of railroad tracks with either a pathway or roadway. Also, as discussed in more detail in the Section-by-Section Analysis of § 234.411(b), the primary operating railroad must report the closure of a highway-rail or pathway crossing to the Crossing Inventory within three months.

Re-Open: The ICC submitted comments recommending that the ''Re-Open'' box be removed from the ''Reason for Update'' data field because the re-opening of crossings can be reported by checking the ''Change in Data'' box. However, FRA has decided to retain the ''Re-Open'' box in the ''Reason for Update'' data field to continue FRA's efforts to capture accurate data on the status of formerly closed crossings or crossings that are placed back into active service.

The ICC also recommended that the final rule only allow State agencies to submit updates to the Crossing Inventory that reflect the re-opening of a formerly closed public crossing or a public crossing that was previously not subject to train traffic. However, as the Inventory Guide states, the primary operating railroad is responsible for providing updates to the Crossing Inventory showing the re-opening of a highway-rail or pathway crossing and that railroad should have ready access to up-to-date train traffic data for the crossing. While the primary operating railroad must report this change in operating status in the periodic update § 234.409(a) requires, we also strongly encourage the primary operating railroad to update the Crossing Inventory as soon as possible after a highway-rail or pathway crossing is placed back in service.

Date Change Only: While expressing concern that FRA should consider renaming the ''Date Change Only'' box in the ''Reason for Update'' data field, LaDOTD and Tavla Solutions stated the Inventory Guide fails to provide sufficient guidance for when this box should be checked. While we retained the title of this box as proposed, we changed the Inventory Guide to state the ''Date Change Only'' box should be checked to indicate the crossing data has not changed since the last update to the Crossing Inventory.

Change in Primary Operating RR: The CPUC submitted comments recommending that the ''Operating RR Transfer'' box in the ''Reason for Update'' data field be removed because the new primary operating railroad can check the ''Change in Data'' box and provide updated information. While we removed the ''Operating RR Transfer'' box from the Inventory Form in the final rule, we added a new box titled, ''Change in Primary Operating RR''. We added the ''Change in Primary Operating RR'' box to the Inventory Form to facilitate official notification of a change in primary operating railroad status that may result from the sale of a highway-rail or pathway crossing. The ''Change in Primary Operating RR'' box should also be checked as part of the periodic updating process, if there has been a change in the primary operating railroad since the last railroad submission to the Crossing Inventory.

Admin. Correction: FRA has decided to retain the ''Admin. Correction'' box in the ''Reason for Update'' data field despite comments from the ICC and

CPUC recommending that the ''Admin. Correction'' box either be eliminated or combined with the ''Change in Data'' box. The ''Admin. Correction'' and ''Change in Data'' boxes have separate and distinct purposes. The ''Admin. Correction'' box should be checked when a railroad or State user intends to correct crossing data that was previously submitted in error. However, a railroad or State user should check the ''Change in Data'' box when it intends to submit crossing data associated with an actual change in crossing characteristics that is not reflected by any other box in the ''Reason for Update'' data field.

LaDOTD and Tavla Solutions also submitted comments recommending that FRA allow railroads to check the ''Admin Correction'' box when reporting previously unreported crossings. However, previously unreported crossings are ''new'' to the Crossing Inventory. Therefore, the ''New Crossing'' box must be checked when reporting previously unreported crossings to the Crossing Inventory.

Quiet Zone Update: The ICC submitted comments recommending that the ''Quiet Zone Update'' box be removed from the ''Reason for Update'' data field because the ''Change in Data'' box could be checked when submitting quiet zone updates. However, FRA retained the ''Quiet Zone Update'' box to reflect FRA entry of Crossing Inventory data that has been submitted for quiet zone-related purposes. The ''Quiet Zone Update'' box is only intended for FRA use. Accordingly, the GCIS system will not allow users to check the ''Quiet Zone Update'' box when crossing data is submitted or updated electronically.

Part I, Location and Classification Information

The ICC submitted comments recommending that the maximum character limits reflected in various boxes on the Inventory Form be increased. In response to these comments, FRA designed the GCIS database to contain generally accepted database standards for maximum character limitations. In addition, we revised the Inventory Form by removing most of the maximum character limits that were specified for individual data fields.

City/Municipality

The ICC submitted comments recommending that the Inventory Guide advise Crossing Inventory users that they should provide the name of the city or municipality that is located closest to the crossing on the railroad line segment in the ''City/Municipality'' data field for crossings that are not located within a city or municipality. We agree and have revised the Inventory Guide to instruct Crossing Inventory users to enter the name of the city or municipality along the rail line that is closest to the crossing if the crossing is not located within the boundaries of a city or municipality.

Street/Road Name & Block Number

A private citizen submitted comments recommending that Crossing Inventory users be allowed to provide a specific address for the ''Street/Road Name & Block Number'' data field, especially for private crossings, as opposed to a block number. The commenter stated that because first responders are generally dispatched to an address, the private citizen believes retention of specific addresses in the Crossing Inventory could improve response time to problems at grade crossing locations until dispatchers have access to the latitude and longitude coordinates that will be submitted in the next required periodic update. While we designed the GCIS system designed to accept a specific street address in this data field, we did not revise the Inventory Guide to advise Crossing Inventory users to provide a specific street address in this data field because highway-rail and pathway crossings do not have specific street addresses.

The ICC submitted comments recommending that the Street/Road Name data field be revised to include a subfield for the street name alias, such as the common name used locally or the name used by 911 system operators. Although we did not adopt this recommendation, State agencies may use the State Use data fields to record street name aliases associated with individual highway-rail crossings.

NCDOT submitted comments recommending that the Block Number subfield in the Street/Road Name data field be classified as optional. We agree and revised the Inventory Form based on this recommendation.

Highway Type & No.

NCDOT and the CPUC submitted comments recommending that FRA revise the Inventory Guide to include a reference to highways and roadways that are classified as ''SR'' in the list of highway types. FRA agrees that this revision would be beneficial and revised the Inventory Guide accordingly. In addition, since States generally determine highway type by using established criteria, we revised the Inventory Guide discussion of this data field to defer to methods States use to designate highway type.

Do other railroads operate a separate track at crossing?

The CPUC submitted comments recommending that the Inventory Guide address submission of crossing data by operating railroads other than the primary operating railroad. Therefore, we have revised the final rule to specifically address this issue. Unless the ''Yes'' box has been checked in the ''Do Other Railroads Operate a Separate Track at Crossing'' data field, the primary operating railroad is the only operating railroad that is required to submit initial and updated crossing data for highway-rail and pathway crossings to the Crossing Inventory.

If the ''Yes'' box is checked in the ''Do Other Railroads Operate a Separate Track at Crossing'' data field and the primary operating railroad has submitted one or more railroad codes to identify the operating railroads that operate over separate tracks at the crossing, each operating railroad that operates through the highway-rail or pathway crossing must submit certain crossing data directly to the Crossing Inventory and then submit updates to that data every three years. (However, the primary operating railroad is still required to submit an accurate and complete Inventory Form, or its electronic equivalent, to the Crossing Inventory for the crossing, which includes train count and train speed data that is specifically related to the primary operating railroad's train operations.) Please refer to the Inventory Guide for an explanation of the individual data fields that each operating railroad must complete.

RR Milepost

The CPUC submitted comments recommending that the Inventory Guide advise Crossing Inventory users to measure the milepost location from the center of the highway-rail crossing. We did not adopt this recommendation. As long as the operating railroad adopts a consistent method for designating milepost locations, the milepost location the operating railroad submits should be sufficient.

The CPUC also recommended that FRA eliminate the ''prefix'' and ''suffix'' data subfields because this information appears to be intended for railroad use. In the alternative, the CPUC recommended that the ''prefix'' and ''suffix'' data subfields be put in a separate data field and not combined with milepost information. We decline to adopt this recommendation and retained the RR Milepost data field as

proposed. The prefix or suffix an operating railroad uses is relevant and useful information that can be used to distinguish between milepost locations on different territories or lines.

The ICC submitted comments recommending that the Inventory Form only capture milepost data to the hundredths of a mile, as opposed to the thousandths of a mile on the Inventory Form. Although we retained the RR Milepost data field as proposed, we modified the Inventory Guide to state that milepost data provided to the hundredths of a mile will be accepted.

Line Segment

The ICC submitted comments recommending that the Line Segment data field be a required data field rather than an optional data field. In addition, the ICC recommended that FRA add a Line Segment data field for State use. Although we retained the Line Segment data field as an optional data field, we revised the Inventory Guide to advise railroads to provide line segment information, if applicable. Railroads and States are also encouraged to use the Railroad Use and State Use data fields on the Inventory Form to record additional line segment data for individual highway-rail and pathway crossings.

Crossing Type

In the proposed rule, FRA requested comments on the proposed revision to the Inventory Form that would remove pedestrian crossings from the list of crossing types, yet allow railroads to select ''Pathway, Ped.'' or ''Station, Ped.'' as the crossing purpose. FRA received comments in support of these revisions from a number of State agencies, such as the CPUC, the Delaware Department of Transportation (DelDOT), and the Nevada Department of Transportation (NDOT). However, FRA also received comments from Denver RTD and the AAR expressing concern that the Inventory Guide failed to provide sufficient guidance on the appropriate classification of crossings previously classified as pedestrian crossings.

In its comments, the AAR stated the Inventory Guide fails to explain how crossings currently designated as ''pedestrian'' should be classified, for purposes of determining crossing type. Denver RTD requested guidance on whether FRA intended to collect data on the public/private status of pathway crossings. In response to these comments, we revised the Inventory Guide to provide definitions of public and private pathway crossings and public pedestrian station crossings to provide assistance to railroads and State agencies on the proper classification of crossings that were formerly classified as ''pedestrian crossings'' for the Crossing Inventory.

FRA also received comments on the appropriate entity (State agency or railroad) it should hold responsible for submitting updates to the ''Crossing Type'' data field. LaDOTD recommended that FRA hold State agencies responsible for submitting crossing data for this data field because railroads are unable to determine crossing type for crossings are located on the State/county/municipal system. Similarly, the AAR submitted comments recommending that State agencies have the exclusive authority to determine whether a highway-rail or pathway crossing should be classified as a public or private crossing. However, the ICC submitted comments recommending that State agencies have exclusive responsibility for submitting crossing type and crossing purpose updates for public crossings and the primary operating railroad have the exclusive responsibility to submit crossing type updates for private crossings.

As stated in the preamble to the proposed rule, FRA will defer to the determination of the relevant State agency for the public/private classification of highway-rail (and pathway) crossings. Accordingly, we are asking State agencies to submit voluntary updates to the Crossing Type data field in Part I of the Inventory Form, as stated in Appendix B to the Inventory Guide. In addition, as the Inventory Guide states, when Crossing Type is changed from Private to Public for a highway-rail grade crossing, we are asking the State agency to complete the remainder of the Inventory Form (or its electronic equivalent) for the affected crossing. The remainder of the Inventory Form reflects State-maintained public crossing information, including highway or pathway traffic control device data and public highway information.

Crossing Purpose

In the proposed rule, FRA requested comments on the newly added ''Crossing Purpose'' data field on the Inventory Form, which is intended to allow railroads and States to identify highway-rail crossings, pedestrian crossings located within railway stations, and other pedestrian/pathway crossings. Denver RTD submitted comments recommending that FRA change the title of the ''Highway Vehicle'' box in the ''Crossing Purpose'' data field to ''Highway'' since highway-rail crossings are, by definition, subject to vehicular use. The CPUC submitted comments recommending that the Inventory Guide advise Crossing Inventory users to check the ''Highway Vehicle'' box if the highway-rail crossing is equipped with both vehicular and pedestrian warning devices.

In the final rule we changed the title of the ''Highway Vehicle'' box in the ''Crossing Purpose'' data field to ''Highway'' on the Inventory Form. In addition, we added a description of the crossings that should be classified as having a ''Highway'' crossing purpose to the Inventory Guide. (While crossings classified as having a ''Highway'' crossing purpose may be equipped with vehicular and pedestrian warning devices, a crossing that is dedicated for the use of non-vehicular traffic should not be classified as having a ''Highway'' crossing purpose).

As for the ''Pathway, Ped., Other'' box in the ''Crossing Purpose'' data field, Denver RTD submitted comments recommending that the title of the box be changed to ''Pathway'' since pathway crossings are, by definition, subject to pedestrian use. Denver RTD also asserted that use of the term ''Other'' in the title was confusing. We agree and changed the title of the ''Pathway, Ped., Other'' box to ''Pathway, Ped.'' on the Inventory Form to assist Crossing Inventory users seeking guidance on the appropriate classification of crossings that were formerly classified as pedestrian crossings and are not located within a railway station.

While stating there is no need to distinguish between pedestrian crossings located within a station versus pedestrian crossings located outside of a station, the ICC submitted comments recommending that FRA eliminate the ''Station, Ped.'' box from the ''Crossing Purpose'' data field. However, Denver RTD submitted comments recommending the ''station crossing'' box be retained, yet defined, so that it can be used to collect passenger transit data. (For example, Denver RTD requested guidance on whether FRA would classify a station crossing that is to be utilized only by fare-paying passengers and thus not otherwise open to or available for general public use as a private or public crossing).

FRA retained the ''Station, Ped.'' box on the Inventory Form to capture crossing data related to passenger stations. However, we revised the Inventory Guide to include a definition of the type of pathway crossing that should be classified as ''Station, Ped.'' on the Inventory Form. We also revised the Inventory Guide to advise Crossing Users to classify pedestrian station

crossings as public crossings on the Crossing Type data field discussed above.

Public Access

NCDOT and the AAR submitted comments requesting additional guidance on what would constitute a private crossing with public access for purposes of the Crossing Inventory.

NCDOT recommended that the Inventory Guide include a privately maintained road that serves a housing development of multiple property owners as an example of a private crossing with public access. Otherwise, NCDOT believes there may be inconsistent classification of these private crossings by reporting entities. FRA agrees that additional guidance would be helpful, so we revised the definition of public access in the Inventory Guide and added a privately-owned road that serves a residential housing development (of at least five dwellings) as another example of a private crossing with public access.

The AAR stated that access for expected guests, including utilities and public services on private property, should not constitute public access for purposes of this data field. Instead, the AAR recommended that ''public access'' designations be restricted to situations where the public has an easement across a private crossing. However, the Public Access data field is intended to capture data for private highway-rail and pathway crossings where the railroad tracks intersect with a private road open to public travel. If we limited the definition of ''public access'' to situations involving public access easements, this data field would fail to capture private crossings where the public has a reasonable expectation of being able to travel through the private crossing without restrictions.

Tavla Solutions also submitted comments asserting that the Inventory Guide has a different definition for the term ''public access'' than the standard definition of this term used in the real estate context. Tavla Solutions further asserted that the definition in the Inventory Guide may differ from State law definitions of this term. After considering these comments, FRA revised the Inventory Guide to make the definition of ''public access'' consistent with the definition in the Federal Highway Administration's MUTCD.

The ICC submitted comments recommending that the Inventory Guide require completion of Parts I through V of the Inventory Form if the ''Yes'' box in the Public Access data field is checked. While we did not adopt this recommendation in this final rule, FRA strongly encourages railroads to voluntarily report data on train-activated warning devices, crossing signs, and crossing surface at private highway-rail grade crossings and pathway crossings to the Crossing Inventory. The NTSB recently issued Safety Recommendation R–14–48 that FRA should require equivalent levels of reporting for both public and private highway-rail grade crossings. Therefore, FRA may issue regulations in the future that would require railroads to provide additional data on private highway-rail and pathway crossings to the Crossing Inventory.

Type of Train

The AAR recommended that urban rapid transit operations should not be reported in the ''Type of Train'' data field because FRA's statement of jurisdiction published at appendix A to 49 CFR part 209 excludes rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

However, the ''Transit'' subfield has been retained in the ''Type of Train'' data field in Part I of the Inventory Form. As explained in the Section-by-Section Analysis of § 234.401, urban rapid transit operators that operate one or more trains through highway-rail and pathway crossings that are on or connected to the general railroad system of transportation are considered to be operating railroads subject to the reporting and updating requirements in the final rule.

Average Passenger Train Count Per Day

The CPUC submitted comments recommending that we add an additional line to the ''Average Passenger Train Count Per Day'' data field in Part I of the Inventory Form to capture data on the number of daily urban rapid transit movements through the highway-rail or pathway crossing. The CPUC believes the number of urban rapid transit movements should not be combined with the number of passenger/commuter rail train movements with significantly different safety concerns.

Even though we retained this data field as proposed, FRA agrees that it will be useful to capture data on the number of rail transit movements through highway-rail and pathway crossings. Therefore, as explained in more detail in the discussion of Part II of the Inventory Form, we revised Part II of the Inventory Form by adding a data field dedicated to the total number of transit train movements per day.

The ICC submitted comments recommending that we change the title of the ''Average Passenger Train Count Per Day'' data field to ''Average Passenger Train Count Per Weekday'' and instruct the primary operating railroad to submit data on the total number of trains operated Monday through Friday, divided by five. We decided to retain the title of this data field as proposed in the Inventory Form. While many commuter railroads operate a higher number of trains during the workweek as compared to week-end operations, other passenger railroads (such as Amtrak) may have a more consistent number of train movements throughout the week. Since the primary purpose of this data field is to collect data on passenger train movements on a typical operating day, the Inventory Guide gives operating railroads the flexibility to determine which day of the week best represents a typical operating day for their passenger train operations.

Type of Land Use

The ICC submitted comments recommending that FRA change the title of the ''Type of Development—Primary Purpose of Crossing'' data field in Part I of the Inventory Form to ''Type of Land Use'' since this data field will capture data on the type of land use around the highway-rail or pathway crossing. To more accurately reflect the intended use of this data field, we changed the title to ''Type of Land Use''.

The ICC also recommended that we change the title of the ''Farm (Field to Field)'' box in the ''Type of Development—Primary Purpose of Crossing'' data field to ''Farm'' since there are some Farm crossings that are not Field to Field crossings. The ICC also submitted comments recommending that the Inventory Guide discussion of the ''Farm (Field to Field)'' box refer to wineries and other types of non-traditional agricultural enterprises. We agree and revised the Inventory Guide based on these recommendations.

DelDOT submitted comments recommending that the primary operating railroad be assigned the responsibility for submitting three-year periodic updates to this data field under § 234.409(a). However, LaDOTD submitted comments recommending that State agencies be responsible for submitting crossing data for this data field since States routinely use demographic information for analysis purposes and, therefore, should have the requisite information.

After considering these comments, FRA is asking State agencies to voluntarily submit updates for this data field for public highway-rail and pathway crossings, as reflected in

Appendix B of the Inventory Guide. As noted by LaDOTD, the State agency with jurisdiction over public highway-rail and pathway crossings will likely have information related to the type of land use in the vicinity of the crossing. However, primary operating railroads are required to submit three-year periodic updates for this data field for private highway-rail grade crossings and private pathway grade crossings.

Is there an adjacent crossing with a separate number?

NCDOT submitted comments recommending that we revise the Inventory Guide to define the term ''adjacent crossing'' as another set of tracks crossing the same highway with 25 feet or less between centerlines of tracks and where the tracks have different crossing numbers. However, we are defining adjacent crossings as having a distance of 100 feet or less between the centerlines of the tracks because queuing issues can occur at 100 feet. Therefore, FRA did not adopt this recommendation.

Quiet Zone

The ICC, LaDOTD, and Tavla Solutions submitted comments recommending that we remove the ''Quiet Zone'' data field from the Inventory Form because FRA is the only entity that will have permission to submit data for this data field. However, FRA retained the Quiet Zone data field as proposed in the Inventory Form. To avoid confusion about whether this data field should be completed, we revised the Inventory Guide to add specific instructions to leave this data field blank.

HSR Corridor ID

We revised the Inventory Guide to make this data field a required data field and to correct a typographical error in the reference to Appendix F, which contains a list of the High-Speed Rail Corridor Designations and Codes.

Latitude in Decimal Degrees/Longitude in Decimal Degrees

FRA made technical corrections to the title of the Latitude and Longitude data fields to reflect the correct decimal format required for this data.

Lat/Long Source

The ICC submitted comments recommending that we should define the ''Actual'' box in the ''Lat/Long Source'' data field in the Inventory Guide to mean coordinates taken in the field centerline of the roadway or pathway to the centerline of the railroad tracks with a horizontal accuracy of one meter or better. The ICC recommended that coordinates which fail to meet this standard should be classified as estimates. However, Tavla Solutions submitted comments asserting that a requirement to conduct field measurements from the center of a highway-rail grade crossing to meet the criteria for ''Actual'' latitude and longitude coordinates would create a safety hazard for the data collection team.

We revised the Inventory Guide to advise Crossing Inventory users that they should measure latitude and longitude coordinates taken in the field at the intersection of the centerline of the roadway or pathway with the centerline of the railroad track, with a horizontal accuracy of one meter or better. However, the Crossing Inventory will continue to classify latitude and longitude coordinates taken using global positioning system equipment as ''Actual'' latitude and longitude coordinates. The Crossing Inventory also will continue to classify latitude and longitude coordinates obtained using free online technology as ''Actual'' latitude and longitude coordinates for purposes of the Crossing Inventory. The ''Estimated'' box in the ''Lat/Long Source'' data field will therefore be largely populated by existing latitude and longitude coordinates that generated by early computer models that may have been somewhat inaccurate.

Railroad Use/State Use

The AAR submitted comments recommending that the Railroad Use boxes be expanded to allow for crossings that have more than four operators. However, the number of Railroad Use boxes is not intended to directly correlate with the number of railroads that may operate through a highway-rail or pathway crossing because the Railroad Use boxes are optional. After reviewing current usage patterns associated with the Railroad Use boxes, we did not change the number of Railroad Use boxes on the Inventory Form.

Narrative

We revised the Narrative box on the Inventory Form by dividing it into two separate boxes, with one Narrative box for railroad use and another Narrative box for State use. FRA made this change in response to ICC comments recommending this change to the Inventory Form. This change also should alleviate concerns expressed in comments NCDOT submitted that a Narrative box shared by Railroads and State agencies may lead to over-writing of data in the event of inconsistent information.

Emergency Notification Telephone No.

FRA revised the Inventory Guide to provide clarification that ''911'' cannot be used as an emergency notification telephone number in the Crossing Inventory. As stated in the Inventory Guide, the Emergency Notification System (ENS) telephone number the railroad publicized for use in reporting emergencies, malfunctions, and problems at the highway-rail or pathway crossing under subpart E to 49 CFR part 234, must be reported in this data field.

Part II, Railroad Information

Estimated Number of Daily Train Movements

We changed the title of Item One in Part II of the Inventory Form from ''Estimated Average Number of Daily Train Movements'' to ''Estimated Number of Daily Train Movements'' to clarify that this data field is intended to collect data on the estimated number of daily train movements not the average number of daily train movements.

The CPUC submitted comments seeking clarification on whether local freight train movements, as well as passenger, commuter rail, and urban rapid transit train movements, should be included in the train counts reflected in the ''Estimated Number of Daily Train Movements'' data field. The CPUC recommended that urban rapid transit train movements not be reported in the ''Total Day Thru Trains'' data field, if the data captured in this data field is used for the DOT Accident Prediction Formula.

In response to these comments, FRA revised the Inventory Guide to state that local freight through train movements, as well as passenger and commuter rail train movements, should be reported as ''Thru Train'' movements for purposes of the Crossing Inventory. We also revised the Inventory Form to include a separate subfield titled ''Total Transit Trains'' to capture data on urban rapid transit train movements through highway-rail and pathway crossings.

FRA also provided additional guidance in the Inventory Guide on the train movement data the primary operating railroad must report. The primary operating railroad is responsible for reporting train movement data for all railroads that operate through the crossing, unless Item Seven in Part I of the Inventory Form (''Do Other Railroads Operate a Separate Track at Crossing?'') shows there are other operating railroads that operate over a separate track at the

crossing. (If Item Seven in Part I of the Inventory Form shows there are other operating railroads that operate over a separate track at the crossing, each operating railroad is responsible for submitting their own train count and train speed data directly to the Crossing Inventory.) We provided this guidance in response to CPUC comments requesting clarification as to whether the primary operating railroad is responsible for reporting the number of train movements by other railroads through the crossing.

FRA received comments recommending that the five proposed data fields dedicated to train counts be consolidated into fewer data fields. The ICC submitted comments recommending that four of the proposed data fields be consolidated into two data fields—one data field for all daytime train movements and another for all nighttime train movements. Under this scenario, the Crossing Inventory would not differentiate between train counts for through trains and switching train movements. We did not adopt this recommendation because the DOT Accident Prediction Formula relies upon the number of through train movements shown in the Crossing Inventory. (Many States use the DOT Accident Prediction Formula to determine the appropriate allocation of funding for needed crossing safety improvements.) Since the number of daily switching movements is not used in the DOT Accident Prediction Formula, we retained separate data fields on the Inventory Form for train counts of through train movements and switching train movements.

The AAR recommended that the Inventory Form be revised to reflect the train count data fields contained in the 1999 version of the Inventory Form. In the 1999 version of the Inventory Form, there was one data field for total through train movements and another data field for total switching train movements. In support of this recommendation, the AAR noted that a previously published FRA guidance document related to data file structure and field input specifications contained language stating that distinctions between daytime train movements and nighttime train movements are no longer maintained in the Crossing Inventory. While asserting that train counts are not constant throughout the year for many reasons, including changes in operating plans and changes in shipping/delivery requests from local industries, the AAR stated that it will be difficult for railroads to break down their train counts into the requested 12-hour blocks.

FRA agrees that train counts for daytime and nighttime switching movements should remain combined. However, we note that the 1999 version of the Inventory Form also contained a third data field for total daylight through train movements during the 12-hour period between 6 a.m. to 6 p.m. As discussed above, a distinction was drawn between daytime through train movements and nighttime through train movements so daily through train movements could be used in the DOT Accident Prediction Formula. Therefore, while FRA understands it may be difficult to provide an accurate count of daily through train movements due to variations in operating plans and business arrangements, railroads should be accustomed to submitting data on estimated ''daylight'' through train counts to the Crossing Inventory. Accordingly, we retained the separate data fields for daytime and nighttime through train movements on the Inventory Form as proposed.

Year of Train Count Data

FRA did not revise the ''Year of Train Count Data'' data field in Part II of the Inventory Form. The CPUC submitted comments recommending expansion of this data field to collect data on the month, as well as the year, of the train count data submitted to the Crossing Inventory. However, we designed the GCIS system to capture the date on which any update to the Crossing Inventory is submitted, which includes any update to the train count data fields. Therefore, we retained this data field as proposed.

Speed of Train at Crossing

FRA provided additional guidance in the Inventory Guide to clarify that the highest maximum timetable speed for any type of train movement through the crossing should be entered in the ''Speed of Train at Crossing'' data field in Part II of the Inventory Form. Therefore, if a highway-rail or pathway crossing is subject to freight and passenger train movements, the highest maximum authorized speed (which will generally apply to passenger train movements) should be entered in this data field. We provided this guidance in response to ICC comments recommending that the ''Speed of Train at Crossing'' data field should show the highest maximum authorized timetable speed for any type of train movement through the crossing.

Type and Count of Tracks

In the proposed rule, FRA solicited comments on the definitions we provided in the Inventory Guide for the various types of track listed in the ''Type and Count of Tracks'' data field. FRA received comments from the AAR and the CPUC recommending that FRA reduce the proposed list of track types and define each track type consistent with definitions FRA and the Surface Transportation Board currently use. NCDOT submitted comments noting that the ''Spur/Lead'' and the ''Storage'' track types appear to be repetitive. The ICC also submitted comments recommending that the ''Type and Count of Tracks'' data field be revised to capture data on the number of each type of track at the crossing. FRA generally agrees with these recommendations and has therefore reduced the number of track types. For example, we merged the ''Spur/Lead'' and the ''Storage'' track types into the ''Yard'' track type. In addition, we removed the proposed ''Wye'' track type from the Inventory Form because there does not appear to be sufficient need to capture this data.

In addition, we revised the definitions of the ''Main'', ''Industry'', ''Siding'', and ''Yard'' track types in the Inventory Guide to make them consistent with the FRA Guide for Preparing Accident/Incident Reports. We also revised the ''Type and Count of Tracks'' data field to collect data on the number of each type of track at the crossing.

Train Detection

In the NPRM, FRA solicited comments on whether we should collect data on the number of tracks at a crossing equipped with train detection technology. Noting the absence of information explaining FRA's purpose in collecting this data, AAR submitted comments asserting it could not support the proposed collection of data. However, if FRA decides to collect this data, AAR recommended elimination of the ''PTC'' category because the Inventory Guide failed to identify which Positive Train Control characteristics must be present in the crossing circuitry to qualify as ''PTC'' for purposes of the Crossing Inventory.

The CPUC, Denver RTD, and the ICC submitted comments in support of collecting data on the tracks at a crossing equipped with train detection technology. However, the CPUC and ICC believe FRA should only collect data on the train detection technology installed on mainline tracks through the crossing. The BRS submitted comments in support of reporting the various types of train detection equipment installed at a crossing so that FRA and railroad personnel can confirm the presence (or absence) of such equipment when performing inspections. The BRS also

stated that collection of data on the various types or brands of train detection equipment installed at a crossing will make it easier for FRA and railroad personnel to confirm that proper prints are available at each crossing location. Similarly, Denver RTD stated that reporting the types of train detection equipment installed at a crossing will create a more accurate record for determining the root cause of accidents and ensure proper inspection and repairs of train detection equipment.

We retained the ''Train Detection'' data field in Part II of the Inventory Form as proposed. Although FRA agrees that collection of data on train detection technology installed at highway-rail and pathway crossings is beneficial, FRA is not requiring the submission of data on individual brands of train detection equipment installed in the field. However, railroads that wish to record this information may use the ''Railroad Use'' data fields in Part I of the Inventory Form for this purpose. We did revise the Inventory Guide discussion of the ''PTC'' box in the ''Train Detection'' data field to include a reference to FRA's Positive Train Control System regulations in 49 CFR 236.1005, which contains a list of the required functionalities for positive train control systems.

Is track signaled?

The ICC submitted comments recommending that FRA add a subfield for PTC to the ''Is Track Signaled?'' data field in Part II of the Inventory Form. In support of this recommendation, the ICC explained that if the primary operating railroad submits data indicating that the highway-rail or pathway crossing is located on track equipped with a block signal, cab signal, or train control system to govern train operations, the Inventory Guide could direct the primary operating railroad to specify whether the track is equipped with a PTC system by checking an additional ''Yes/No'' box.

We retained this data field as proposed. Since the type of train detection technology present on mainline tracks through the crossing must be reported in the ''Train Detection'' data field discussed above, there is not sufficient need to add a PTC subfield in this data field.

Event Recorder/Remote Health Monitoring

NCDOT submitted comments asserting that the proposed title of the ''Event Recorder Monitoring Device'' data field on the Inventory Form was too similar to the title of the ''Monitoring Devices'' data field in Part III of the Inventory Form and should therefore be changed. The ICC also submitted comments recommending that FRA divide the ''Event Recorder Monitoring Device'' data field on the Inventory Form into two separate data fields, with one data field for Event Recorders and another data field for Remote Health Monitors. In making this recommendation, the ICC noted that many crossings have remote health monitors, whereas far fewer have event recorders. FRA agrees it would be beneficial to revise this data field and has therefore revised the Inventory Form by dividing the former ''Event Recorder Monitoring Device'' data field into two separate data fields, with one data field for Event Recorders and another for Remote Health Monitoring devices.

Part III, Highway or Pathway Traffic Control Device Information

FRA changed the title of Part III of the Inventory Form from ''Highway Traffic Control Device Information'' to ''Highway or Pathway Traffic Control Device Information.'' We made this change in response to ICC comments to show that Part III of the Inventory Form is intended to collect traffic control device data for both highway-rail and pathway crossings.

Are there signs or signals?

The ICC submitted comments recommending that FRA change the title of the ''No Signs or Signals'' data field in Part III of the Inventory Form to ''Are There Warning Signs or Signals in Place?'' and replace the ''Check if this applies'' box with Yes/No boxes. Consistent with this recommendation, FRA changed the title of the ''No Signs or Signals'' data field in Part III of the Inventory Form to ''Are there Signs or Signals?'' and added Yes/No boxes to replace the proposed ''Check if this applies'' box.

Types of Passive Traffic Control Devices Associated With the Crossing

The ICC submitted comments recommending that we rename the heading ''Type of Passive Traffic Control Devices at Crossing—Signs'' for item two in Part III of the Inventory Form to ''Type of Passive Traffic Control Sign at and/or near the Crossing'' since many advance warning signs are not actually posted at the crossing, but are often located nearby on adjacent or intersecting roadways. Consistent with this recommendation, we changed the title for item two in Part III of the Inventory Form to ''Types of Passive Traffic Control Devices associated with the Crossing''.

LaDOTD and Tavla Solutions also submitted comments recommending that the Inventory Guide include pictures or drawings of the MUTCD signs referenced in the data fields that make up item two of Part III of the Inventory Form. FRA agrees and added pictures of warning devices and signs to the Inventory Guide to provide additional clarification. However, FRA did not add pictures and drawings of all MUTCD-compliant signs referenced in the data fields in item two of Part III of the Inventory Form because the MUTCD is frequently revised. Instead, Crossing Inventory users are advised to consult the current edition of the MUTCD for additional information regarding MUTCD-compliant sign and warning device specifications.

Crossbuck Assemblies

The ICC submitted comments recommending that the Inventory Guide advise Crossing Inventory users to submit data on the actual number of crossbuck signs associated with a crossing, rather than the number of crossbuck assemblies (which would be counted by the proposed method of reporting the number of masts or posts on which crossbuck signs have been installed). The ICC noted that, while unusual, there are situations in which there may be more than one crossbuck sign per assembly. The ICC also recommended that the Inventory Guide advise Crossing Inventory users to submit data on the number of all crossbucks signs present at the crossing, regardless of the presence of flashing lights or gates.

FRA retained the guidance contained in the Inventory Guide to provide data on the number of masts or posts with mounted crossbucks. By requiring a count of the number of masts or posts with mounted crossbucks, Crossing Inventory users can monitor compliance with an FHWA requirement that crossbuck assemblies must be installed by December 31, 2019, or when adjustments are made to the crossing, whichever comes first. FRA also retained the proposed instruction to refrain from reporting the number of crossbuck signs installed on train-activated warning devices, such as flashing light structures and gate masts, because the ''Crossbuck Assemblies'' data field is primarily intended to collect data on the number of crossbuck assemblies present at passive crossings.

Stop Signs/Yield Signs

Consistent with comments submitted on the ''Crossbuck Assemblies'' data

field, the ICC submitted comments recommending that the Inventory Guide advise Crossing Inventory users to report the actual number of MUTCD-compliant Stop signs and Yield signs at the crossing, rather than the number of posts or masts. The ICC also recommended that the Inventory Guide advise Crossing Inventory users to report the number of all Stop signs and Yield signs present at the crossing, regardless of the presence of flashing lights or gates. In addition, the ICC recommended that FRA add a new data field to the Inventory Form to capture data on crossings equipped with crossbucks and yield signs.

Consistent with the approach taken for the ''Crossbuck Assemblies'' data field above, FRA retained the proposed guidance contained in the Inventory Guide to collect data on the number of posts or masts with stop signs and the number of posts or masts with yield signs (as opposed to the number of stop signs and yield signs). However, with respect to the ''Stop Signs'' and ''Yield Signs'' data fields, the Inventory Guide advises Crossing Inventory users to provide data on the number of posts or masts with stop signs and yield signs, regardless of the presence of any other type of warning device at the crossing. FRA notes that Crossing Inventory users can identify crossings equipped with crossbucks and yield signs by reviewing the ''Yield Signs'' data field, in conjunction with the ''Crossbuck Assemblies'' data field. Therefore, there is no need to add a separate data field exclusively dedicated to capturing data on crossings equipped with both crossbucks and yield signs.

Advance Warning Signs

In the NPRM, FRA solicited comments on whether the Crossing Inventory should collect data on the actual number of advance warning signs posted at a crossing, as opposed to the number of posts or masts bearing the advance warning signs.

The BRS submitted comments asserting that the number of signs at a particular crossing is far more important than the number of posts or masts bearing signs at the crossing. The CPUC, FDOT, NDOT, ICC, Denver RTD, and NCDOT also submitted comments recommending that the Crossing Inventory collect data on the number of advance warning signs posted at the crossing, rather than the number of posts or mast assemblies. Since this data field, unlike the data fields for Stop Signs and Yield Signs, contains boxes that should be checked to indicate the specific type of advance warning signs present at the crossing, the Inventory Guide has been revised to instruct Crossing Inventory users to submit a count of each type of advance warning sign present at the crossing.

The ICC also submitted comments recommending that the Advance Warning Signs data field on the Inventory Form be replaced with a list of all warning signs provided in the current edition of the MUTCD. However, we would have to update the list of MUTCD-compliant signs on a continual basis to incorporate new signs that are added to the MUTCD, which would increase the reporting burden on railroads and may require railroads to continually update their crossing databases to keep up with changes that are made in future revisions of the MUTCD. Therefore, we retained the Advance Warning Signs data field as proposed.

Low Ground Clearance Sign

The ICC submitted comments recommending that the ''Low Ground Clearance Sign'' data field in Part III of the Inventory Form show the number of MUTCD-compliant signs present at the crossing. FRA agrees with this recommendation and revised the Inventory Form consistent with this recommendation.

Pavement Markings/Channelization Devices

The ICC submitted comments recommending that we add a box for Dynamic Envelope Markings to the Pavement Markings data field in Part III of the Inventory Form, a box for ''Other,'' and a text field of at least 40 characters to record the presence of any additional pavement markings. Although we did not add an ''Other'' box to the Pavement Markings data field, we revised the Pavement Markings data field in Part III of the Inventory Form to add a box for Dynamic Envelope markings. FRA encourages States to use the ''State Use'' data fields in Part I of the Inventory Form to record any additional pavement markings that may be present at the crossing.

The ICC also recommended that FRA change the title of the ''Channelization Devices'' data field in Part III of the Inventory Form to ''Medians and Channelization Devices.'' Consistent with this recommendation, we changed the title of this data field to ''Channelization Devices/Medians''.

The ICC submitted comments recommending that we move the Pavement Markings and Channelization Devices data fields to a location after the ''Types of Train-Activated Warning Devices at the Grade Crossing'' section in Part III of the Inventory Form, so all warning signs and then devices are inventoried sequentially. However, we retained these data fields in their proposed location on the Inventory Form. We believe it is appropriate to retain these data fields under the heading, ''Types of Passive Control Devices associated with the Crossing'' in Part III of the Inventory Form since pavement markings and channelization devices are considered to be passive traffic control devices associated with crossings.

Channelization Devices/Medians

NCDOT submitted comments recommending that FRA revise the Inventory Guide to clarify the proper classification of medians. Therefore, we revised the Inventory Guide to provide guidance on how to properly complete this data field when channelization devices or medians are present at the crossing.

EXEMPT Sign/ENS Sign Displayed

The ICC submitted comments recommending that we add the word ''Sign'' to the title of the ''Exempt'' data field in Part III of the Inventory Form to clarify that the presence (or absence) of Exempt signs at the crossing should be reported. FRA agrees and changed the title of this data field to ''EXEMPT Sign''.

The ICC also recommended that we revise the ''EXEMPT Sign'' and ''ENS Sign Displayed'' data fields in Part III of the Inventory Form to require submission of the number of MUTCD-compliant signs present at the crossing. However, we retained these data fields as proposed. FRA is primarily interested in obtaining data on the presence (or absence) of these signs, not the number of these signs present at the crossing.

Other Signs/Private Crossing Signs

The ICC submitted comments recommending that we revise the ''Other Signs'' data field to accept data on the presence of non-MUTCD compliant signs, including private crossing signs, at the crossing. However, given the wide variety of non-MUTCD compliant signs that may be in use at grade crossings, FRA does not perceive any significant benefit that would justify the additional burden associated with obtaining data on every type of non-MUTCD compliant sign currently in use. Therefore, we retained the ''Private Crossing Signs'' data field proposed on the Inventory Form to collect data on private crossing signs at private highway-rail and pathway crossings. In addition, the Inventory Guide continues to advise Crossing Inventory users to submit data on the presence of MUTCD-

compliant signs in the ''Other Signs'' data field in Part III of the Inventory Form.

The ICC also recommended that signs and warning devices at private crossings be inventoried and recorded in the same data fields used for reporting signs and warning devices at public highway-rail grade crossings. The ICC noted that this approach would eliminate the need for the ''Private Crossing Signs'' data field. While FRA has not adopted this recommendation, we may revisit this recommendation in a future rulemaking. As noted previously, the NTSB recently issued Safety Recommendation R–14–48 that FRA should require equivalent levels of reporting for both public and private highway-rail grade crossings. Therefore, FRA may issue regulations in the future that would require railroads to complete the data fields used for reporting signs and warning devices in Part III of the Inventory Form for private highway-rail and pathway crossings as well. However, in the meantime, FRA strongly encourages primary operating railroads to voluntarily report data on train-activated warning devices and crossing signs at private highway-rail grade crossings and pathway crossings to the Crossing Inventory.

The ICC also submitted comments recommending that we require submission of the number of signs that are present at the crossing in the data fields for ''Private Crossing Signs'' and ''LED Enhanced Signs'' in Part III of the Inventory Form. However, FRA is primarily interested in obtaining data on the presence (or absence) of these signs, as opposed to the number of these signs present at a crossing. Therefore, we retained the Private Crossing Signs and LED Enhanced Signs data fields in Part III of the Inventory Form as proposed.

The ICC recommended that FRA revise the ''Other Signs'' data field in Part III of the Inventory Form by adding a check box to denote whether any signs are ''LED enhanced.'' The ICC suggested that this check box could replace the ''LED Enhanced Signs'' data field in Part III of the Inventory Form. We retained the ''LED Enhanced Signs'' data field as proposed on the Inventory Form. However, we revised the Inventory Guide to advise Crossing Inventory users to include references to the applicable MUTCD code when reporting various types of LED enhanced signs present at a crossing.

Types of Train-Activated Warning Devices at the Crossing

The ICC submitted comments recommending that FRA change the heading for item three in Part III of the Inventory Form from ''Type of Active Warning Devices at Crossing—Train Activated Devices'' to ''Type of Train-Activated Warning Devices at the Crossing.'' The ICC also recommended that we arrange the data fields in item three in Part III of the Inventory Form covered by this heading in hierarchal order to address flashing light assemblies before gates. Consistent with the ICC's recommendation, we changed the title of the heading for item three in Part III of the Inventory Form to ''Types of Train Activated Warning Devices at the Grade Crossing.'' However, we retained the order of the data fields in item three in Part III of the Inventory Form as proposed to provide continuity between the current version of the Inventory Form and previous versions of this form. We hope this continuity will minimize the burden on entities that submit electronic data to the Crossing Inventory that may need to revise their existing databases to conform to changes made to the Inventory Form.

In the NPRM, FRA solicited comments on whether we should require the primary operating railroad to submit updates to the Crossing Inventory after implementation of one or more train-activated warning devices at a crossing. FDOT submitted comments recommending that all updates to the data fields in item three of Part III of the Inventory Form, under the heading (''Type of Train Activated Warning Devices at Crossing—Train Activated Devices'') be assigned to State agencies so any changes railroads make to train-activated warning devices at a crossing would have to be reported to the State agency. The State agency would then submit all updates to these data fields to the Crossing Inventory.

As stated in § 234.411(c), the primary operating railroad is required to submit updated data directly to the Crossing Inventory within three months of any change in warning device at a public highway-rail grade crossing. While we also encourage the primary operating railroad to submit a copy of this updated data to the appropriate State agency, it is not required to do so. However, as stated in Appendix B to the Inventory Guide, the data fields in item three of Part III of the Inventory Form (''Types of Train Activated Warning Devices at the Grade Crossing'') have been assigned to State agencies for voluntary updating.

Gate Arms

In the proposed rule, FRA solicited comments on whether we should assign the Gate Arms data field in Part III of the Inventory Form to State agencies for updating. FRA received comments from NCDOT, FDOT and the AAR recommending that State agencies be assigned the responsibility for updating this data field. However, FRA also received comments from the CPUC, DelDOT, NDOT, and the BRS recommending that the primary operating railroad be required to update this data field since the primary operating railroad should have information about the warning devices they install and maintain.

After considering these comments, FRA decided to retain the assignment of responsibility in Appendix B of the Inventory Guide. Therefore, it assigned the responsibility for submitting voluntary updates to the Gate Arms data field to State agencies. This assignment of responsibility roughly coincides with FHWA's annual reporting requirement for States for Highway Safety Improvement Plan purposes. However, the primary operating railroad must still submit updated data on the number of gate arms installed at a highway-rail or pathway crossing to Crossing Inventory within three months of any change, consistent with § 234.411(c).

The ICC submitted comments recommending that FRA revise the Inventory Guide to explain that the Gate Arms data field in Part III of the Inventory Form is only intended to collect data on the number of traditional red-white gate arms present at the crossing. The ICC believes the number of pedestrian swing gates or other types of pedestrian gates that may be present at the crossing should not be reported in this data field. FRA agrees the proposed revision is beneficial. Therefore, we revised the Inventory Guide to include a description of pedestrian gate arms, as well as specific guidance that this data field is not intended to collect data on the presence of any pedestrian swing gates at the crossing.

The ICC also recommended that we replace the word ''Count'' with ''Quantity'' in the Gate Arms data field. FRA notes that the term ''Count'' has been used in multiple places on the Inventory Form in order to denote that the Crossing Inventory user should provide data on the number of devices present at the crossing. Therefore, to be consistent, we retained the term ''Count'' as proposed in this data field.

Gate Configuration

The ICC submitted comments recommending that FRA revise the Inventory Guide to include illustrations of the various types of gate configurations that may be present at a crossing to help Crossing Inventory users identify them. However, the attributes associated with individual

gate configurations tend to vary greatly. Therefore, while the Inventory Guide contains detailed descriptions of each gate configuration listed on the Inventory Form, we did not add gate configuration illustrations.

The ICC also recommended that we use the terminology and definitions in the MUTCD for the various types of gate configurations in the Inventory Guide. In addition, the ICC noted that the proposed Inventory Guide discussion of four-quadrant gate systems included an incorrect reference to Section 8.D of the MUTCD. We removed the erroneous reference to Section 8.D of the MUTCD from Appendix D to the Inventory Guide. However, FRA notes that the MUTCD does not provide an official definition for the two-quadrant, three-quadrant, or four-quadrant gate systems listed on the Inventory Form. Moreover, the terms used in the Inventory Guide to describe the various types of highway-rail grade crossing gate configurations constitute standard terminology commonly used within the railroad industry. Therefore we did not change the definitions and terminology.

Finally, FRA revised the Gate Configuration data field by removing the ''Full Entrance Closure'' box. After further evaluation of the gate configuration options listed on the Inventory Form, FRA determined that the ''Full Entrance Closure'' box would likely result in collection of redundant data.

Cantilevered (or Bridged) Flashing Light Structures

The ICC submitted comments in support of the Inventory Guide instruction to report the number of posts that support the cantilevered flashing lights at a crossing, as opposed to the number of flashing-light pairs. FRA agrees that the number of flashing light pairs should not be reported to the Crossing Inventory in this data field. Therefore, the Inventory Guide continues to instruct Crossing Inventory users to provide a count of the flashing light structures that are present at the crossing in this data field.

NCDOT also submitted comments recommending that FRA either remove the LED boxes from the ''Cantilevered (or Bridged) Flashing Light Structures'' and the ''Post-Mounted Flashing Light Assemblies'' data fields in Part III of the Inventory Form or move the LED boxes to a new data field which the railroad would be responsible for updating. In support of this recommendation, NCDOT asserted that States will have a very difficult time verifying this data element since the only way to verify the presence of LED lights is to either open the lens or obtain access into the signal cabinet bungalow.

FRA notes that upgrades from incandescent to LED lights are typically financed, at least in part, by Federal funding, which requires State DOT involvement. In addition, the presence of certain LEDs can be detected through simple observation of the flashing light lens. The primary operating railroad is required to complete the ''Cantilevered (or Bridged) Flashing Light Structures'' and ''Mast Mounted Flashing Lights'' data fields in Part III of the Inventory Form (and check the ''LED'' boxes, if applicable) for previously unreported and new public highway-rail grade crossings. In addition, FRA strongly encourages primary operating railroads to complete the ''Cantilevered (or Bridged) Flashing Light Structures'' and ''Mast Mounted Flashing Lights'' data fields for previously unreported and new private highway-rail grade crossings. As noted previously, the NTSB recently issued Safety Recommendation R–14–48 that FRA should require equivalent levels of reporting for both public and private highway-rail grade crossings. Therefore, FRA may issue regulations in the future that would require railroads to provide additional data on private highway-rail and pathway crossings to the Crossing Inventory. However, the ''Cantilevered (or Bridged) Flashing Light Structures'' and ''Mast Mounted Flashing Lights'' data fields in Part III of the Inventory Form (and the ''LED'' boxes contained therein) should be voluntarily updated by State agencies for public highway-rail grade crossings. In addition, we retained the LED boxes as proposed.

Mast-Mounted Flashing Lights

In the proposed rule, FRA solicited comments on whether we should revise the Post-Mounted Flashing Light Assemblies data field in Part III of the Inventory Form to require reporting of side lights installed for the benefit of highway users on an approaching parallel roadway.

NCDOT, CPUC, DelDOT, FDOT, NDOT and the BRS submitted comments recommending that we revise the Inventory Form to require reporting of side lights installed on mast-mounted flashing light assemblies. The BRS asserted that side-mounted lights provide the same level of safety to individuals approaching the crossing from a parallel roadway as that provided to individuals approaching the crossing on the main road.

NCDOT and CPUC recommended adding a check box to this data field to indicate side lights have been installed on the flashing light structures. In making this recommendation, NCDOT asserted this information could prove helpful when conducting a diagnostic analysis of warning devices at a crossing. The BRS also believes revising the Inventory Form to collect this data will facilitate prompt replacement of side-mounted lights after a knock down or accident, if all parties involved in the inspection, testing, and maintenance of the crossing know that side lights have been installed at the crossing. FRA agrees and revised the ''Mast Mounted Flashing Lights'' data field to include a check box to indicate that side lights have been installed at the crossing.

The ICC submitted comments recommending that FRA require counting all individual posts housing flashing-light assemblies whether they contain side lights or regular forward-facing lights. The ICC also recommended that we include illustrations in the Inventory Guide of flashing light pairs and back lights. We agree and revised the Inventory Guide to advise Crossing Inventory users that they should count the total number of masts with flashing lights and indicate whether they include back lights and side lights. We also added illustrations of flashing light pairs, back lights, and side lights to the Inventory Guide.

The AAR submitted comments recommending that we assign States the responsibility for updating the ''Mast Mounted Flashing Lights'' data field because this information is maintained by the States and it benefits highway users. FRA agrees with this recommendation and revised Appendix B to the Inventory Guide to assign responsibility for submitting voluntary updates to this data field to State agencies. However, the primary operating railroad is required to submit updated data within three months of any change in the number of masts with flashing lights at a public highway-rail grade crossing under § 234.411(c). In addition, FRA strongly encourages primary operating railroads to complete the ''Mast Mounted Flashing Lights'' data fields for private highway-rail grade crossings. As noted previously, the NTSB recently issued Safety Recommendation R–14–48 that FRA should require equivalent levels of reporting for both public and private highway-rail grade crossings. Therefore, FRA may issue regulations in the future that would require railroads to provide additional data on private highway-rail and pathway crossings to the Crossing Inventory.

We also changed the title of this data field from ''Post-Mounted Flashing Light Assemblies'' to ''Mast-Mounted Flashing Lights'' to distinguish between

flashing-lights and crossbuck assemblies.

Total Count of Flashing Light Pairs

With respect to the ''Total Count of Flashing Light Pairs'' data field in Part III of the Inventory Form, the ICC submitted comments recommending that the Inventory Guide advise Crossing Inventory users to submit data on each pair of flashing lights installed at the crossing, whether backlight, sidelight or regular, forward facing flashing-lights. In addition, the ICC recommended that FRA add an illustration of a pair of flashing-lights to the Inventory Guide to eliminate confusion between side by side flashing lights and two pairs of back to back flashing lights. Consistent with this recommendation, FRA revised the Inventory Guide to advise Crossing Inventory users to count each pair of flashing lights installed at the crossing, including back lights, side lights, and flashing light pairs installed on cantilever structures and added illustrations of flashing light pairs to the Inventory Guide.

Installation Date of Current Active Warning Devices

In the proposed rule, FRA solicited comment on whether it should collect data on the installation date of active warning devices installed after the final rule effective date for the Crossing Inventory.

The CPUC submitted comments supporting collection of data on the original installation date of the active warning devices installed at the crossing for the Crossing Inventory to facilitate data analysis of the types of active warning devices at the crossing when certain crossing accidents occurred. The CPUC also recommended that the installation date shown in the Crossing Inventory should only be updated when there is a change in the configuration of warning devices, such as the installation of gates at a crossing equipped with flashing lights.

The ICC, Denver RTD, and NDOT submitted comments recommending that FRA only require submission of data on the installation date of active warning devices that are installed after the final rule effective date. In addition, the ICC recommended that FRA only require reporting of installation year since the specific date of any change in warning devices could be found from a review of the ''history file'' for the grade crossing. Denver RTD also noted that use of the term ''original installation date'' in the proposed title of this data field on the Inventory Form (''Original Installation Date of Current Active Warning Devices'') could be confusing, especially if additional active warning devices are installed at a later date.

In response to the comments, we changed the title of this data field on the Inventory Form to ''Installation Date of Current Active Warning Devices'' to avoid confusion. FRA also agrees it would be helpful to record the installation date of active warning devices installed at a crossing after the final rule effective date to facilitate grade crossing safety analyses. FRA encourages the voluntary submission of data on the installation date of active warning devices installed at public highway-rail grade crossings prior to March 9, 2015, as well as the voluntary submission of data on the installation date of active warning devices installed at private highway-rail grade crossings. However, the primary operating railroad is only required to submit data on the installation date of active warning devices installed at public highway-rail grade crossings after the effective date of this final rule. We hope limiting the application of this data collection requirement to active warning devices installed after March 9, 2015 will help minimize the reporting burden on the primary operating railroad. However, the Inventory Guide does require the primary operating railroad to report the month and year the active warning devices are installed or upgraded. This will be beneficial if there is more than one change in warning devices during the calendar year.

DelDOT submitted comments recommending that we not hold State agencies responsible for submitting data or updates to this data field since railroads should have this information readily available. The primary operating railroad is required to update this data field within three months of any change in train-activated warning devices at a public highway-rail grade crossing under § 234.411(c). In addition, FRA strongly encourages primary operating railroads to complete this data field for private highway-rail grade crossings. As noted previously, the NTSB recently issued Safety Recommendation R–14–48 that FRA should require equivalent levels of reporting for both public and private highway-rail grade crossings. Therefore, FRA may issue regulations in the future that would require railroads to provide additional data on private highway-rail and pathway crossings to the Crossing Inventory.

However, States generally have some involvement in approving the installation of train-activated warning devices at public highway-rail grade crossings. Therefore, we are asking States to consider submitting voluntary updates to this data field for train-activated warning devices that have already been installed, as well as train-activated warning devices that are installed after the final rule effective date. Even though the primary operating railroad is required to update this data field within three months of any change in train-activated warning devices at a public highway-rail grade crossing, we retained the language in Appendix B to the Inventory Guide to invite States to voluntarily update this data field if the primary operating railroad fails to do so in a timely manner.

Wayside Horn/Highway Traffic Signals Controlling Crossing

The ICC submitted comments recommending that FRA merge the ''Automated Wayside Horn'' and ''Highway Traffic Signals Controlling Crossing'' data fields in Part III of the Inventory Form into the ''Special Active Warning'' data field. The ICC states that there are not many crossings equipped with wayside horn system installations or controlled by highway traffic signals. However, if we retain a separate data field to collect data on wayside horn systems, the ICC recommended we change the title of the ''Automated Wayside Horn'' data field to ''Wayside Horn System''. In addition, the ICC recommended that the Inventory Guide discussion of this data field should refer to Section 8C.07 of the MUTCD, which contains a discussion of wayside horn systems.

We retained a separate data field for wayside horn systems on the Inventory Form to facilitate collection of data on the prevalence of these warning devices and the date the wayside horn was installed. Consistent with the ICC's recommendation, we changed the title of the ''Automated Wayside Horn'' data field to ''Wayside Horn.'' However, we did not add a reference to Section 8C.07 of the MUTCD in the Inventory Guide because the MUTCD is frequently revised.

Non-Train Active Warning

The ICC submitted comments recommending that we change the title of the ''Special Active Warning'' data field in Part III of the Inventory Form to remove the reference to FRA's ''WD–5'' warning device code to avoid confusion of individuals who are not familiar with this code. FRA agrees and changed the title of the ''Special Active Warning'' data field to ''Non-Train Active Warning'' and removed the reference to FRA's warning device code.

The ICC also recommended that FRA remove the boxes for ''Manually Operated Signals'' and ''Watchman''

from the ''Special Active Warning'' data field on the Inventory Form unless these types of warning can be found at more than 500 locations nationwide. While FRA acknowledges that manually operated signals and watchmen are being utilized at a diminishing number of crossings, we retained the boxes on the Inventory Form to indicate the presence of manually operated signals and watchmen at crossings to allow long-term analysis of existing crossing data.

In addition, the ICC recommended that the Inventory Guide explain the various scenarios that might constitute ''flagging,'' such as a flag attached to a crossbuck assembly or a fusee/flare left to burn on the ground at a crossing. As indicated in the Inventory Guide, the term ''flagging'' is generally understood to mean an appropriately equipped flagger is actively controlling the flow of vehicular traffic. Thus, for purposes of the Crossing Inventory, merely attaching a flag to a crossbuck assembly or lighting a fuse/flare and leaving it to burn on the ground at a crossing does not, in and of itself, constitute flagging. Flagging situations are so varied and site specific that providing a useful list would be impractical.

Other Flashing Lights or Warning Devices

The ICC submitted comments recommending that we merge the ''Wigwags'' data field in Part III of the Inventory Form into the ''Other Flashing Lights or Warning Devices'' data field since there were only 440 crossings equipped with wigwags as of December 2012. FRA agrees it is no longer necessary to retain a separate data field for the collection of data on wigwags. Therefore, we revised the Inventory Guide to advise Crossing Inventory users to submit data on the presence of wigwags in the ''Other Flashing Lights or Warning Devices'' data field in Part III of the Inventory Form.

Does nearby hwy intersection have traffic signals?

The ICC submitted comments recommending that the Inventory Guide define a ''nearby highway intersection'' as a highway intersection located within 500 feet from the near rail at a crossing. FRA agrees and revised the Inventory Guide accordingly.

The ICC also recommended that the Crossing Inventory collect data on nearby intersections equipped with stop signs to identify crossings with potential queuing problems. However, potential queuing problems can be identified by the data collected on intersecting roadways located within 500 feet of the grade crossing in Part IV of the Inventory Form. Therefore, FRA did not adopt this recommendation.

NCDOT submitted comments recommending that we assign railroads the responsibility for updating the data fields which pertain to the presence of traffic signals at a nearby highway intersection and the presence of highway traffic signal interconnection and preemption since some municipalities do not report this information to the State. However, the ICC submitted comments recommending that we assign the responsibility for updating the Highway Traffic Signal Interconnection data field exclusively to State agencies. After considering these comments, Appendix B to the Inventory Guide, now assigns responsibility for submitting voluntary updates for items 4.A., 4.B, and 4.C (''Does nearby Hwy Intersection have Traffic Signals?'', ''Hwy Traffic Signal Interconnection'' and ''Hwy Traffic Signal Preemption'') on Part III of the Inventory Form to State agencies. However, the primary operating railroad is required to complete these data fields for new and previously unreported public highway-rail grade crossings. The primary operating railroad also is required to update items 4.B and 4.C (''Hwy Traffic Signal Interconnection'' and ''Hwy Traffic Signal Preemption'') after a change in crossing characteristics at a public highway-rail grade crossing, if applicable.

Highway Traffic Signal Interconnection

The ICC submitted comments recommending that the Inventory Guide use terms and definitions consistent with terminology the MUTCD uses and refer to the appropriate MUTCD sections that address traffic signal interconnection and preemption. NCDOT and the CPUC submitted comments noting that the Inventory Guide did not provide guidance on when the ''For Warning Signs'' box in the ''Hwy Traffic Signal Interconnection'' data field should be checked. FRA has incorporated terms and definitions that are consistent with the MUTCD in the Inventory Guide, where applicable. In addition, we revised the Inventory Guide to state the meaning of ''Not Interconnected'', ''For Traffic Signals'', and ''For Warning Signs.'' However, we did not revise the Inventory Guide to contain specific references to the applicable MUTCD section(s) due to frequent updating of the MUTCD.

Highway Traffic Pre-Signals

NCDOT submitted comments recommending that the definition for ''Stop Line Distance'' in the Inventory Guide should state that stop line distance is the distance between the highway intersection's stop line and the nearest crossing gate(s). However, after evaluating the proposed definition for ''stop line distance'' in the Inventory Guide, which defines stop line distance as the distance between the stop line and the crossing gates, we determined that the proposed definition accomplishes the same purpose.

The ICC submitted comments recommending that we add illustrations demonstrating how the measurements for Storage Distance and Stop Line Distance should be obtained to the Inventory Guide discussion of the Highway Traffic Pre-Signals data field. We did not adopt this recommendation because these terms are widely used in highway safety parlance and additional guidance on how to obtain these measurements can be obtained from a variety of sources, including the MUTCD.

The CPUC and ICC submitted comments recommending that the Inventory Guide should direct Crossing Inventory users to complete the ''Storage Distance'' subfield in the ''Highway Traffic Pre-Signals'' data field, if an intersecting roadway is located within 500 feet of the grade crossing or if a nearby highway intersection has traffic signals. We did not revise the Inventory Guide to require completion of the ''Storage Distance'' subfield. However, storage distance can be calculated by using data reported in the ''Intersecting Roadway within 500 feet?'' data field in Part IV of the Inventory Form, which should contain data on the approximate distance of any intersecting roadway within 500 feet of the crossing.

Highway Monitoring Devices

The ICC submitted comments recommending that FRA change the title of the ''Monitoring Devices'' data field in Part III of the Inventory Form to ''Automated Enforcement (of Traffic Laws).'' NCDOT also submitted comments recommending that the title of this data field be revised to avoid confusion with the ''Remote Health Monitoring'' data field in Part II of the Inventory Form. FRA agrees and changed the title of this data field to ''Highway Monitoring Devices'' to clarify the intent of this data field is to collect data on the presence of device(s) at the crossing that monitor highway vehicles.

The ICC recommended that we revise the Inventory Guide to provide additional explanation of the two types of highway monitoring devices featured

in this data field. The ICC also recommended that the Inventory Guide advise Crossing Inventory users that this data field is only intended to collect data on crossings with train activated warning devices. FRA agrees and revised the Inventory Guide to provide additional explanation of the two types of highway monitoring devices in the ''Highway Monitoring Devices'' data field. We also revised the Inventory Guide to advise Crossing Inventory users that the ''Highway Monitoring Devices'' data field only applies to crossings equipped with train activated warning devices.

NCDOT submitted comments recommending that we change the ''Photo/Video Enforcement'' box in the ''Highway Monitoring Devices'' data field to ''Photo/Video Recording'' since efforts to use photo and video data for enforcement purposes are being challenged in court. We agree and changed the title of the ''Photo/Video Enforcement'' box to ''Photo/Video Recording.'' We also revised the Inventory Guide to state the temporary installation of these devices (*e.g.,* for research purposes) should not be reported to the Crossing Inventory.

Crossing Warning Device WD Code

The ICC submitted comments recommending that FRA remove the ''Crossing Warning Device WD Code'' data field from the Inventory Form since this data field has been reserved for the exclusive use of FRA. We adopted this recommendation.

Part IV, Physical Characteristics

The ICC submitted comments recommending that Parts IV and V of the Inventory Form be merged into one section titled ''Roadway/Pathway Information.'' We did not adopt this recommendation because we want to maintain a clear demarcation between the physical and operating characteristics of highway-rail and pathway crossings.

Traffic Lanes Crossing Railroad

NCDOT submitted comments recommending that we revise the Inventory Guide to clarify that only dedicated travel lanes should be counted in this data field. NCDOT noted that some highway-rail crossings have a double-yellow solid painted cross-hatch island approaching the crossing, yet further away (say 100 to 200 feet) from the crossing, the painted island may change/revert into a center turn lane or left turn lane. Therefore, at a crossing which may be 60 feet wide and physically capable of carrying five 12-foot wide lanes across the crossing, only four lanes are painted as crossing the tracks. In this type of scenario, NCDOT recommended that only dedicated travel lanes be counted as traffic lanes crossing the tracks. We agree and revised the Inventory Guide to state this data field is intended to capture through traffic lanes that cross the railroad tracks.

NCDOT also recommended that the Inventory Guide should clarify that the term, ''divided traffic'', refers to the characteristic of the entire roadway longitudinally away from the crossing. NCDOT believes the mere presence of channelization at a crossing should not be considered for purposes of determining whether there is divided highway traffic on the roadway that crosses the railroad tracks. We adopted this recommendation and revised the Inventory Guide to state that the Divided Traffic box in the ''Traffic Lanes Crossing Railroad'' data field refers to the characteristics of the entire roadway (as opposed to the presence of channelization devices at the crossing).

Is roadway/pathway paved?

The ICC submitted comments recommending that the Inventory Guide advise Crossing Inventory users to submit data on paved pathways, in addition to paved roadways. The ICC also recommended that the definition of a paved roadway be consistent with the FHWA and/or the American Association of State Transportation and Highway Officials (AASHTO) definition of a paved road. We did not change the Inventory Guide description of a paved roadway because it reflects generally accepted use of the term. However, we did revise the title of this data field and the Inventory Guide discussion of this data field to include a reference to paved pathways in addition to paved roadways, at crossings.

Does track run down a street?

NCDOT submitted comments recommending that the Inventory Guide provide additional clarification for completing this data field. FRA agrees and revised the Inventory Guide to provide additional guidance on the type of crossing configuration for which data is being collected.

Is crossing illuminated?

NCDOT submitted comments recommending that we should revise the Inventory Guide state that an illuminated crossing must have publicly maintained street lighting. However, FRA is primarily interested in collecting data on the presence (or absence) of street lighting at the crossing. Since FRA does not wish to exclude crossings that are illuminated by privately maintained street lighting, we did not adopt this recommendation.

Crossing Surface

The ICC submitted comments recommending that FRA remove the box for ''Width'' from the ''Crossing Surface'' data field since it is essentially captured by the number of tracks at the crossing. The ICC also recommended that the Inventory Guide explain how length should be measured when there are sidewalks present at the crossing and add helpful illustrations on how to measure crossing length in a variety of different environments.

We retained the box for ''Width'' as proposed in the Crossing Surface data field since the distance between railroad tracks is not uniform and therefore cannot be relied upon for purposes of determining crossing width. However, we revised the Inventory Guide to provide additional explanation on how crossing length (and width) should be measured.

NCDOT submitted comments recommending that we revise the Inventory Guide description for the subfield ''Asphalt and Timber'' to refer to a range of materials that could be used to form flangeway openings, such as ''rubber, steel, or other flange material.'' However, after evaluating the language in the Inventory Guide, FRA determined the description for this subfield (which states that other material which could be used to form flangeway openings may include rubber) is broad enough to accomplish the same purpose. Therefore, we did not adopt this recommendation.

Intersecting roadway within 500 feet?

LaDOTD submitted comments recommending that FRA revise this data field to collect data on the presence of an intersecting roadway within 200 feet of the crossing to identify highway-rail crossings that might be good candidates for highway traffic signal preemption. While the MUTCD recommends the use of highway traffic signal preemption for highway-rail grade crossings located less than 200 feet from an intersecting roadway, FRA believes highway traffic signal preemption may be beneficial for highway-rail grade crossings that are located up to 500 feet from an intersecting roadway. Therefore, we did not revise this data field.

The CPUC submitted comments recommending addition of checkboxes to the ''Intersecting Roadway within 500 feet?'' data field in Part IV of the Inventory Form that would capture additional data on the type of any highway traffic control device present at the highway intersection. Although we

did not adopt this recommendation, State agencies may record data on the types of highway traffic control devices that are present at the crossing in the State Use data fields in Part I of the Inventory Form.

Smallest Crossing Angle

The CPUC submitted comments recommending that FRA revise the Inventory Form to require reporting of the smallest crossing angle as a whole number between 0 and 90 degrees, as opposed to a 30-degree range to improve precision. We did not adopt this recommendation because the specific data that would be captured does not justify the additional burden that would be imposed by the proposed revision to this data element.

The CPUC also recommended that Inventory Guide advise Crossing Inventory users to determine the smallest crossing angle from the roadway approach lane to the track on the right-hand side of the roadway approach. The CPUC asserted that research of detailed angle data and associated accident history seems to indicate that small angles on the right-hand side of the roadway approach may be a significant factor in crossing collisions. FRA did not adopt this recommendation because FRA has historically collected data on the smallest angle present at the crossing rather than limiting data collection to the size of the angle present on the right-hand side of the roadway approach. The presence of acute angles on the left-hand side of the roadway approach can also be problematic. Whenever the railroad tracks intersect roadway approaches at an acute angle, drivers must look over one shoulder to watch for approaching trains. However, States may record the measurements of acute angles on either side of the roadway approach in the State Use fields in Part I of the Inventory Form.

Is commercial power available?

The ICC submitted comments recommending removal of the ''Is Commercial Power Available'' data field from Part IV of the Inventory Form unless an analysis determines this data field is sufficiently utilized and demonstrates collecting this data is worth the effort. However, we retained this data field as proposed on the Inventory Form because the data collected in this data field is often relied upon when evaluating crossings that are candidates for potential crossing improvements.

Part V, Public Highway Information

The CPUC submitted comments recommending that FRA add a new data field to Part V of the Inventory Form for the name of the local highway agency responsible for installing and maintaining signs and pavement markings near the crossing. FRA also received comments from the University of Nebraska-Lincoln recommending that we add a new data field to Part V of the Inventory Form to capture data on estimated pedestrian and bicycle traffic counts at the crossing.

FRA encourages State agencies to use their ''State Use'' data fields in Part I of the Inventory Form to record the name of the local highway agency that is responsible for installing and maintaining signs and pavement markings, as well as estimated pedestrian and bicycle traffic counts. However, we did not add data fields to Part V of the Inventory Form to collect this data.

Highway System

The ICC submitted comments recommending that we remove the ''Highway System'' data field in Part V of the Inventory Form unless an analysis determines that this data is sufficiently utilized such that the burden associated with collecting and reporting this information is justified. However, we retained the ''Highway System'' data field as proposed since the data collected in this data field can be useful for nationwide analyses.

Functional Classification of Road at Crossing

In the proposed rule, FRA solicited comment on whether the ''Local Access'' functional classification code should be changed to ''Local'' to be consistent with the official functional classification codes contained in the FHWA's Highway Performance Monitoring System (HMPS) Manual. FRA received multiple comments from State agencies, including the CPUC, NCDOT, DelDOT, FDOT, and NDOT, requesting that FRA revise the proposed Functional Classification categories provided on the Inventory Form to make them consistent with FHWA's current Functional Classification Codes. FRA adopted this recommendation and revised the functional classification codes in this data field to be consistent with FHWA's current Functional Classification Codes.

Linear Referencing System (LRS Route ID)/LRS Milepost

LaDOTD and Tavla Solutions submitted comments recommending elimination of the Linear Referencing System data fields in Part V of the Inventory Form based on the assertion that this information can vary within the State and railroad system. The ICC submitted comments recommending that the Inventory Guide discussion of the ''Linear Referencing System'' (LRS) data field explain that this data field is intended to show whether the crossing is on a State-defined linear referencing system or the Federal Highway Performance Monitoring System (HPMS).

We retained these data fields in the Inventory Form as proposed. However, to address situations when more than one LRS code is used, FRA revised the Inventory Guide to recommend that the LRS code entered should match the HPMS data reported to the Federal Highway Administration. In addition, FRA notes that the Linear Referencing System data fields in Part V of the Inventory Form are optional.

Annual Average Daily Traffic

FRA changed the title of the ''Estimated Average Daily Traffic'' data field in Part V of the Inventory Form to ''Annual Average Daily Traffic'' to make the title consistent with generally accepted terms used in highway safety parlance. We made this revision in response to comments the ICC submitted recommending that the title of this data field be revised to reflect the terminology used in the MUTCD. While the ICC also recommended that we add subfields for ''Actual'' and ''Estimated'' to this data field, we did not adopt this recommendation because there are very few annual average daily traffic counts that reflect actual (as opposed to estimated) values.

Estimated Percent of Trucks

We changed the title of the ''Estimated Percent Commercial Trucks'' data field in Part V of the Inventory Form to ''Estimated Percent Trucks.'' In addition, in response to ICC comments requesting clarification of the primary purpose of this data field, FRA revised the Inventory Guide to explain that this data field is intended to collect data on crossing usage by vehicles having a manufacturer's gross vehicle weight (GVW) rating of 9,000 pounds for more and having dual tires on at least one rear axle. This would include buses, single-unit trucks, combination trucks, and campers/recreational vehicles, but not school buses.

The ICC also submitted comments recommending that we add a subfield to the Estimated Percent Trucks data field to collect data on whether the crossing is located on a State's officially designated Truck Route System or a

locally-designated municipal Truck Route. While FRA encourages State agencies to use their ''State Use'' data fields in Part I of the Inventory Form to collect this data, we did not add these subfields to the Inventory Form because the potential benefits that might result from collecting this additional data do not appear to justify the increased burden associated with collection of this data.

Regularly used by school buses?

The ICC submitted comments recommending that the ''Regularly Used by School Buses'' data field in Part V of the Inventory Form be analyzed to determine whether this data can be collected with statistical reliability. However, if this data field is retained, the ICC recommended that FRA revise the Inventory Guide to capture data on whether the crossing is located on a local school district's published school bus route system or a local mass transit fixed route bus system used to transport schoolchildren. The ICC also recommended that we add boxes for ''Unknown'' and ''No'' to this data field.

We retained this data field as proposed except we added a ''No'' box for crossings that are not subject to at least one school bus movement on a normal school day. While we did not revise the Inventory Guide to require the submission of data on whether a crossing is located on a local school district's published school bus route system or a local mass transit fixed route bus system that is used to transport schoolchildren, State agencies may use their State Use data fields in Part I of the Inventory Form to record this data.

Regularly used by hazmat vehicles?

With respect to the data field titled, ''Regularly Used by Hazmat Vehicles?'' in the Inventory Form, in the NPRM, FRA solicited comments on how it should define ''regular use'' in the Inventory Guide. DelDOT submitted comments asserting the collection of data on crossing use by vehicles transporting hazardous materials could be time consuming and costly because it would require additional field data collection. LaDOTD and Tavla Solutions submitted comments asserting the collection of this data would be difficult to obtain, not reliable, and might have liability implications. AAR also submitted comments stating that railroads do not maintain the type of information which would be collected in this data field. In response to these comments, we removed the ''Regularly Used by Hazmat Vehicles?'' data field from the Inventory Form. However, State agencies may record this information in one of the State Use fields in Part I of the Inventory Form.

Emergency Services Route

With respect to the ''Regular Emergency Services Route'' data field in Part V of the Inventory Form, FRA solicited comments in the NPRM on how it should define the term ''regular emergency services route.''

The AAR submitted comments stating that railroads do not maintain information about emergency service routes and therefore should not be held responsible for reporting information to the Crossing Inventory that State agencies maintain. However, under this rule, the primary operating railroad is only required to provide information for this data field for new and previously unreported public highway-rail grade crossings. In addition, under §§ 234.405(d) and 234.407(d), if the primary operating railroad cannot obtain information for this data field from the applicable State agency responsible for grade crossing safety, the primary operating railroad may provide a written certification statement to the FRA Associate Administrator noting that it has requested, and not yet received, this information from the appropriate State agency.

FRA also received comments from NCDOT requesting that we clarify what would constitute a regular emergency services route. In response, we added guidance in the Inventory Guide to explain that the ''Yes'' box in the ''Emergency Services Route'' data field should be checked if highway vehicles routinely use a crossing to obtain access to emergency facilities including hospitals and police and fire stations.

While FRA received comments from the ICC, LaDOTD, and Tavla Solutions recommending elimination of the Emergency Services Route data field in Part V of the Inventory Form, FRA decided to retain this data field in order to facilitate safety analysis of crossings located on emergency services routes. However, we changed the title of the ''Regular Emergency Services Route'' data field in Part V of the Inventory Form to ''Emergency Services Route.'' We also drew a clear demarcation between the section titled, ''Submission Information,'' and Part V of the Inventory Form. FRA made this change in response to CPUC comments recommending that we revise the Inventory Form to include a clear separation between Part V and the data fields which identify and provide contact information for the individual who submits crossing data to the Crossing Inventory.

Appendix A, U.S. DOT Crossing Inventory Form

We revised Appendix A by including specific instructions for the initial reporting of new and previously unreported highway-rail and pathway crossings. We also added instructions for reporting changes in crossing characteristics at a public highway-rail grade crossing, under § 234.411(c), as well as changes to the public/private status of highway-rail and pathway grade crossings to this appendix.

Appendix A contains a draft of the revised Form FRA F6180.71, ''U.S. DOT Crossing Inventory Form.'' Form FRA F6180.71 was submitted to OMB for approval and is still pending OMB approval. Therefore, operating railroads and State agencies cannot use the form until it has been approved. FRA expects that, prior to the final rule effective date, the form will be approved. Following approval, the final form will be available on FRA's safety data Web site under the Forms/Publications tab.

Appendix B, Responsibility Table for Periodic Updates to the Crossing Inventory

In the NPRM, FRA requested comments on the proposed Crossing Inventory Responsibility Table, which assigns responsibility for updating specific data fields on the Inventory Form to either the State or railroad.

Several commenters recommended that FRA assign responsibility for the completion of each individual data field (with the exception of the data fields contained in the Header of the Inventory Form) to either the State or the railroad. For example, DelDOT submitted comments recommending that we assign responsibility for updating the ''Type of Land Use'' data field in Part I of the Inventory Form to railroads, while Tavla Solutions submitted comments recommending that we assign responsibility for updating this data field exclusively to States. The CPUC also submitted comments recommending that we assign responsibility for updating the ''Gate Arms'' data field in Part III of the Inventory Form to railroads, while NCDOT submitted comments recommending that we assign responsibility for updating the ''Highway Traffic Signal Interconnection'' and ''Highway Traffic Signal Preemption'' data fields in Part III of the Inventory Form to railroads.

FRA also received comments recommending that we assign responsibility for updating certain data fields exclusively assigned to States. NCDOT and the CPUC submitted

comments recommending that we assign responsibility for updating the ''Latitude in decimal degrees'' and ''Longitude in decimal degrees'' data fields in Part I of the Inventory Form to States, while Tavla Solutions submitted comments recommending that we assign responsibility for updating the ''Crossing Type'' data field in Part I of the Inventory Form to States. The ICC submitted comments recommending that we assign responsibility for updating all of the data fields in Parts III through V of the Inventory Form for public highway-rail grade crossings to States.

In response to these comments, FRA revised Appendix B to the Inventory Guide to clarify which data fields are assigned to States for voluntary updating and which data fields are assigned to primary operating railroads for mandatory updating. For example, we assigned the responsibility for updating the ''Type of Land Use'' data field in Part I of the Inventory Form to primary operating railroads for private highway-rail grade crossings and private pathway grade crossings, while State agencies are being asked to voluntarily update this data field for public highway-rail grade crossings and public pathway grade crossings. Similarly, we assigned the responsibility for updating the ''Crossing Type'', ''Latitude in decimal degrees'' and ''Longitude in decimal degrees'' data fields in Part I of the Inventory Form to primary operating railroads for private highway-rail grade crossings and private pathway grade crossings, while asking State agencies to voluntarily update these data fields for public highway-rail grade crossings and public pathway grade crossings.

We are not requiring primary operating railroads to submit data for Parts III—V of the Inventory Form for private highway-rail crossings and private pathway crossings (with the exception of the ''Private Crossing Sign'' data field in Part III of the Inventory Form). This final rule only requires primary operating railroads to update one data field (the ''Private Crossing Sign'' data field) in Parts III—V of the Inventory Form for private highway-rail grade crossings and private pathway grade crossings. However, FRA strongly encourages primary operating railroads to voluntarily report data on train-activated warning devices and crossing signs at private highway-rail grade crossings and private pathway crossings to the Crossing Inventory. As noted previously, the NTSB recently issued Safety Recommendation R–14–48 that FRA should require equivalent levels of reporting for both public and private highway-rail grade crossings. Therefore, FRA may issue regulations in the future that would require railroads to complete Parts III–V of the Inventory Form for private highway-rail crossings and private pathway crossings. With respect to public pathway grade crossings, Appendix B states that State agencies are being asked to submit voluntary updates to certain specified data fields in Part I of the Inventory Form. However, with respect to public highway-rail grade crossings, State agencies are being asked to submit voluntary updates to certain specified data fields in Part I of the Inventory Form for public highway-rail grade crossings, along with the data fields in Parts III–V of the Inventory Form (with the exception of the ''Private Crossing Sign'' data field in Part III of the Inventory Form).

Appendix C, Reporting Crossings That Have Multiple Operating Railroads

FRA revised Appendix C to the Inventory Guide to provide specific guidance on the reporting and updating of Crossing Inventory data by operating railroads that operate trains on separate tracks through highway-rail and pathway crossings. The requirements that apply to the reporting and updating of Crossing Inventory data by individual operating railroads are in §§ 234.405(b), 234.407(b), and 234.409(b).

Appendix D, Definitions

We added new definitions for various terms used in the Inventory Guide to Appendix D and revised the proposed definitions for certain terms (*e.g.,* ''adjacent crossing'', ''operating railroad'', ''primary operating railroad'', and ''public crossing'') as further explained below.

FRA revised the definition of ''adjacent crossing'' in Appendix D to the Inventory Guide to provide additional detail. As stated in the revised definition, adjacent crossings have separate warning devices and separate Crossing Inventory Numbers, even though they are located on the same vehicular highway or pathway and the distance between the inside rail of each crossing does not exceed 100 feet.

We added a definition of ''Annual Average Daily Traffic (AADT)'' to Appendix D to the Inventory Guide and the Inventory Guide discussion of the ''Annual Average Daily Traffic (AADT)'' data field in Part V of the Inventory Form to clarify the meaning of this term.

We also added a definition of ''back lights'' to Appendix D to the Inventory Guide and an illustration of ''back lights'' in the Inventory Guide discussion of the ''Mast Mounted Flashing Lights'' data field in Part III of the Inventory Form. FRA added the definition and illustration in response to ICC comments recommending that we add an illustration of back lights to the Inventory Guide to clarify the meaning of this term.

As discussed previously in the Section-by-Section Analysis of the ''Reason for Update'' data field in Part I of the Inventory Form, we revised the definition of ''closed crossing'' in response to comments submitted by LaDOTD, NCDOT, and Tavla Solutions. Therefore, we made the same revision to the definition of ''closed crossing'' in Appendix D to the Inventory Guide.

In addition, we added definitions for ''event recorder'' and ''remote health monitoring'' to Appendix D to the Inventory Guide and to the Inventory Guide discussion of the ''Event Recorder'' and ''Remote Health Monitoring'' data fields in Part II of the Inventory Form. These data fields were originally combined on the Inventory Form to collect data on the presence of either an event recorder or a remote health monitoring system at a highway-rail or pathway crossing. However, in response to comments the ICC submitted, we divided the ''Event Recorder Monitoring Device'' data field on the Inventory Form into two separate data fields, with one data field for Event Recorders and another data field for Remote Health Monitoring Systems. Likewise, we added definitions for ''event recorder'' and ''remote health monitoring'' to Appendix D to the Inventory Guide to clarify the meaning of these terms for Crossing Inventory users.

FRA added a definition of ''flashing light pairs'' to Appendix D to the Inventory Guide and illustrations of flashing light pairs to the Inventory Guide discussion of the ''Total Count of Flashing Light Pairs'' data field in Part III of the Inventory Form. These additions were made in response to ICC comments recommending that an illustration of a pair of flashing lights be added to the Inventory Guide to provide further clarification of the meaning of this term for Crossing Inventory users.

We made revisions to the definition of ''gate'' and the definitions for specific types of gate configurations (such as ''Two Quadrant Gates'', ''Three Quadrant Gates'' and ''Four Quadrant Gates'') in Appendix D to the Inventory Guide to correct inadvertent errors and clarify the meaning of these terms for Crossing Inventory users. In addition, we removed the proposed definition for ''full entrance closure gates'' from Appendix D to the Inventory Guide because the ''Gate Configuration'' data field in Part III of the Inventory Form no

longer contains a reference to full entrance closure gates.

To clarify that the term ''grade crossing'' applies to both highway-rail grade crossings and pathway grade crossings (including pedestrian station crossings), we added a definition of ''grade crossing'' to Appendix D to the Inventory Guide. We also added definitions of ''highway-rail grade crossing,'' ''pathway grade crossing,'' and ''pedestrian station grade crossing'' to Appendix D to the Inventory Guide because these terms are used frequently in the Inventory Guide. These terms are not defined in § 234.401, due to the limited use of these terms in the text of the final rule.

In response to comments seeking clarification as to whether a pathway crossing is essentially a type of highway-rail crossing, we revised the definition of ''highway-rail crossing'' in § 234.401. Therefore, to be consistent, we also made the same revision to the definition of ''highway-rail crossing'' in Appendix D to the Inventory Guide.

We added a definition of ''median'' to Appendix D to the Inventory Guide and to the Inventory Guide discussion of the ''Channelization Devices/Medians'' data field in Part III of the Inventory Form. This definition addresses NCDOT comments recommending that the Inventory Guide be revised to clarify the classification of medians.

We made the same revisions to the definition of ''operating railroad'' in Appendix D to the Inventory Guide as the revisions that were made to the definition of this term in § 234.401.

FRA added to the definition of ''pathway crossing'' in Appendix D to the Inventory Guide to clarify that pathways located more than 25 feet from the location where a highway, road, or street intersects with one or more railroad tracks are generally considered to be separate pathway crossings.

Denver RTD submitted a comment requesting guidance on the proper classification of station crossings that are used by fare-paying passengers. In response to this comment, we added a definition of ''pedestrian station crossing'' to Appendix D to the Inventory Guide and to the Inventory Guide discussion of the ''Crossing Purpose'' data field in Part I of the Inventory Form. The Inventory Guide also states that for the ''Crossing Purpose'' data field, pedestrian station crossings are basically pathway crossings that are located within passenger stations.

We also added a definition of ''plant railroad'' to Appendix D to the Inventory Guide in response to comments from NCDOT and the CPUC recommending that we add a definition of this term to this appendix. As stated in § 234.3, plant railroads are not subject to the reporting and updating requirements of this subpart. Nonetheless, we added a definition of ''plant railroad'' consistent with the definition in § 234.5 for reference purposes.

To be consistent with the revisions we made to the definition of ''primary operating railroad'' in § 234.401, we also revised this definition in Appendix D to the Inventory Guide.

We revised the definition of ''private crossing'' in Appendix D to the Inventory Guide to specifically reference pathway crossings in addition to highway-rail crossings. In addition, FRA revised the definition of ''public crossing'' in Appendix D to the Inventory Guide to specifically reference pathway crossings, in addition to highway-rail crossings, and to replace the term ''roadway approaches'' with ''approaches'' to acknowledge the fact that pathway crossings generally do not have roadway approaches. We also merged the proposed definition of ''open to public travel'' in Appendix D to the Inventory Guide with the definition of ''public crossing'' and added an exception to the requirement that all approaches to the crossing must be on public property for situations where State law or regulation provides otherwise.

To clarify the meaning of the term ''side lights'' for Crossing Inventory users, we added a definition of this term to Appendix D to the Inventory Guide and an illustration of ''side lights'' to the Inventory Guide discussion of the ''Mast Mounted Flashing Lights'' data field in part III of the Inventory Form.

We revised the definition of ''temporary crossing'' in Appendix D to the Inventory Guide to specifically reference pathway crossings in addition to highway-rail crossings.

The ICC submitted comments recommending we add all definitions to § 234.401, or in the body of the Inventory Guide, where the data item is discussed. FRA notes that the definitions of terms in § 234.401 are consistent with the definitions in Appendix D to the Inventory Guide. We did not adopt this recommendation because the definitions in § 234.401 are intended to clarify terms used in the rule text. For the most part, the definitions in Appendix D to the Inventory Guide are also in the Inventory Guide discussion of the specific data field on the Inventory Form where the defined term is used. However, in some instances, FRA determined that illustrations of specific defined terms would be especially helpful to Crossing Inventory users. In those instances, we included illustrations of the defined term in the Inventory Guide discussion of the relevant data field on the Inventory Form, but retained the official definition of the term in Appendix D to the Inventory Guide for reference purposes.

Appendix E, Frequently Asked Questions (FAQs)

To be consistent with changes we made to the final rule and Inventory Guide, we made minor revisions to the questions and answers in Appendix E to the Inventory Guide. We also added new questions and answers to Appendix E to provide guidance on the following topics: (1) Whether the Crossing Inventory records for closed or grade-separated crossings must be updated; (2) how to report a previously closed crossing that has recently been re-opened; (3) how to report the sale of a highway-rail or pathway crossing to the Crossing Inventory; (4) how to report a change in crossing characteristics (such as a change in the crossing surface or a change in the crossing warning devices); and (5) whether a private company can have more than one Inventory Number.

Appendix F, High-Speed Rail ID Corridor Designations and Codes

We updated Appendix F to the Inventory Guide to show current high-speed rail corridor designations and codes.

V. Regulatory Impact and Notices

A. Executive Order 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Order 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034, Feb. 26, 1979. FRA has prepared and placed in the docket a Regulatory Evaluation addressing the economic impact of this rule. The primary purpose of the Crossing Inventory is to provide a uniform inventory database that can be merged with highway-rail crossing collision files and used to analyze information for planning and implementation of crossing improvement programs by public and private agencies responsible for highway-rail crossing safety, as well as the railroad industry and academia.

As part of the regulatory evaluation, FRA has assessed quantitative estimates of the costs expected to result from the

implementation of this rule. FRA's analysis follows DOT's ''Guidance on the Economic Value of a Statistical Life in US Department of Transportation Analyses,'' published in March 2013. Based on real wage growth forecasts from the Congressional Budget Office, DOT's estimates that there will be a 1.07 percent annual growth rate in median real wages over a 20-year period (2014–2034). Real wages represent the purchasing power of nominal wages. FRA assumed an income elasticity of 1.0 and adjusted the Value of Statistical Life (VSL) in future years in the same way. VSL is the basis for monetizing avoided casualties. FRA's analysis further accounts for expected wage growth by adjusting the taxable wage component of labor costs. Other non-labor based costs and benefits are not impacted.

The NPRM estimated the costs of the proposed rule to be $2.1 million. Using a 7-percent discount rate the cost estimate will be $1.5 million. The final rule's estimated cost is $2.8 million, discounted to $2.0 million (7 percent). From the NPRM to the final rule, the base cost estimates increased due to the adjustment of the CBO real wage forecasts for each year of the analysis. FRA also updated wage inputs using the Surface Transportation Board's newest wage rates for 2012, which impacted the overall cost estimate. FRA also assumed that the implementation year will be 2014 and adjusted all wages accordingly. While the final rule will not take effect until 2015, FRA does not believe this will materially impact the findings of its analysis. FRA conducted a break-even analysis of the rule and believes that potential benefits from the rule will equal or exceed total costs.

FRA analyzed the industry costs associated with requiring railroads to establish and maintain an inventory for all public and private highway-rail crossings and pathway crossings. Many railroads have already implemented components of the final rule prior to publication of the rulemaking. FRA estimates that as many as 50 percent of all highway-rail crossings currently have up-to-date information in the National Inventory. For more details on the costing, please see the Regulatory Evaluation contained in the public docket. The burdens of the rule relate to the collection of recent information and to the periodic update of the inventory. The table below presents the estimated costs associated with the rule.

20-YEAR COST FOR FINAL RULE

Initial Update of Inventory	$1,178,701
Periodic Update of Inventory	819,473

20-YEAR COST FOR FINAL RULE—Continued

Total	1,998,174

Future costs are discounted to present value using a 7 percent discount rate.

In the Regulatory Evaluation, FRA has explained the expected likely benefits for the final rule, and provided a break-even analysis. The main benefit derived from the rule is improved crossing inventory data. This more precise information will better enable FRA, railroads, and any other entity to accurately analyze pertinent data, detect trends, and if needed, initiate crossing-related safety initiatives. In this analysis, FRA determined that if there were a decrease of 0.015 percent of crossing accidents over the twenty-year period the costs associated with the rule will break-even. In the last decade there were over 26,000 collisions at grade crossings. This break-even analysis indicates that preventing at least three incidents over the next twenty years would justify the rule. FRA anticipates that this rulemaking will increase the precision, completeness, and utility of railroad records and will improve the Crossing Inventory. This will allow FRA to identify certain highway-rail crossings and pathway crossings that are not currently recorded in the existing voluntary crossing inventory. FRA believes that such clarification helps offset costs associated with the rulemaking by simplifying the reporting process. FRA believes the value of the anticipated benefits justify the cost of implementing the final rule.

B. Regulatory Flexibility Act and Executive Order 13272

To ensure potential impacts of rules on small entities are properly considered, FRA has developed this final rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must prepare a regulatory flexibility analysis (RFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

The primary purpose of the Crossing Inventory is to provide a uniform inventory database that can be merged with highway-rail crossing collision files and used to analyze information for planning and implementation of crossing improvement programs by public and private agencies responsible for highway-rail crossing safety, as well as the railroad industry and academia.

(1) Description of Regulated Entities and Impacts: The ''universe'' of the entities to be considered generally includes only those small entities that are reasonably expected to be directly regulated by this action. This final rule directly affects Class I, Class II, and Class III railroads that own or operate over at-grade or grade-separated crossings.

''Small entity'' is defined in 5 U.S.C. 601. Section 601(3) defines a ''small entity'' as having the same meaning as ''small business concern'' under section three of the Small Business Act. This includes any small business concern that is independently owned and operated and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of this term not-for-profit enterprises that are independently owned and operated and are not dominant in their field of operation. The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is ''for profit'' may be and still be classified as a ''small entity'' is 1,500 employees for ''Line Haul Operating Railroads'' and 500 employees for ''Switching and Terminal Establishments.'' Additionally, 5 U.S.C. 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues; and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891, May 9, 2003, codified at appendix C to 49 CFR part 209. The $20 million-limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

Railroads: There are a total of 756 regulated railroads. This rulemaking does not affect 152 railroads because they do not own any crossings. There are seven Class I railroads and 12 Class II railroads, all which are not considered small. There are a total of ten out of 29 commuter/passenger railroads, including Amtrak, this rule will affect. However, all the affected commuter railroads are part of larger public transportation agencies that receive Federal funds and serve major jurisdictions with populations greater than 50,000. There are also 11 transit operators. FRA typically does not regulate transit operators. However, some transit operators have crossings which must be included in the Crossing Inventory.

The costs each railroad incurs will generally vary in proportion to the number of crossings they maintain. For instance, railroads with fewer crossings should have lower overall costs associated with implementing the standards. There are 710 Class III railroads, and of those railroads, this rule affects 569. However, large holding companies own 113 of these railroads and, thus, are not considered small entities for purposes of this analysis. Hence, there are 456 railroads considered to be small entities impacted by this rule.

For the purpose of this analysis, FRA broke Class III railroads into two categories. We considered any Class III railroad with more than 40 crossings a Larger Class III railroad and any Class III railroad with 40 or less crossings a Smaller Class III railroad. FRA anticipates the majority of the Larger Class III railroads will use FRA's Web based program to submit their inventories to the FRA. FRA believes the Smaller Class III railroads will manually fill out and send their inventory forms, by either mail or email, to the FRA. FRA also estimates that 50 percent of all railroads in the industry are already in compliance with the rule.

In the regulatory evaluation FRA determined that there are 322 Larger Class III railroads. FRA estimates each Larger Class III railroad will initially task one person for approximately one week to review and update its inventory. Subsequently, FRA estimates it will take one person two days to update a Larger Class III railroad inventory every year. The initial cost associated with Larger Class III railroads will be around $1,945 per railroad. We estimate the cost to periodically update their inventory is about $780 per railroad. FRA does not believe the regulation will significantly impact the Larger Class III railroads.

In the regulatory evaluation FRA determined that there are 247 Smaller Class III railroads. FRA estimates that each Smaller Class III railroad will initially need one person to work 16 hours to review and update each inventory. Subsequently, the periodic inventory update cost will be the same, requiring one person to work eight hours each year. We estimate the initial cost associated with Smaller Class III railroads will be $778 per railroad. The cost to periodically update their inventory is about $389 per railroad. Again, FRA believes that the regulation will not significantly burden any of the Smaller Class III railroads.

During the NPRM public comment period, FRA did not receive any comments discussing the Initial Regulatory Flexibility Analysis or Executive Order 13272. FRA certifies that the final rule will not have any significant economic impact on the competitive position of small entities, or on the small entity segment of the railroad industry as a whole.

(2) Certification: Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads will be affected by the final rule, none of these entities will be significantly impacted.

C. Federalism

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial effect on the States or their political subdivisions; it will not impose any compliance costs; and it will not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

This final rule amends part 234, which contains FRA's principal regulations regarding grade crossing safety. Part 234 could have preemptive effect by operation of law under a provision of the former Federal Railroad Safety Act of 1970 (repealed and recodified at 49 U.S.C. 20106). Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to section 20106.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under Federal railroad safety statutes, specifically 49 U.S.C. 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

D. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
234.403(a–c)—(New Requirements; Formerly Voluntary)				
—Submission of Data to the U.S. DOT Highway-Rail Crossing Inventory: Completion of Inventory Form.	51 States/entities & 618 railroads.	4,212 forms	30 minutes	2,106
—Mass Update Lists of Designated Data Submitted by Railroads/States.	51 States/entities & 618 railroads.	257 lists	30 minutes	129
—Excel Lists of Submitted Data	51 States/entities & 618 railroads.	1,234 lists	30 minutes	617
—Changes/Corrections to Crossing Inventory Data Submitted via GX 32 Computer Program.	51 States/entities & 618 railroads.	35,845 records	6 minutes	3,585
—Written Requests by States/Railroads for FRA Crossing Inventory Guide (New Requirement).	51 States/entities & 618 railroads.	10 requests	15 minutes	3
(d)—Reporting Crossing Inventory Data by State Agencies on Behalf of Railroads: Written Notices to FRA (New Requirement).	51 States/entities & 618 railroads.	20 notices	30 minutes	10
(e)(1)—Consolidated Reporting by Parent Corporation on Behalf of Its Subsidiary Railroads: Written Notice to FRA (New Requirement).	51 States/entities & 618 railroads.	250 notices	30 minutes	125
(e)(2)—Immediate Notification to FRA by Parent Corporation of Any Changes in the List of Subsidiary Railroads for Which It Reports (New Requirement).	51 States/entities & 618 railroads.	75 notices	30 minutes	38
234.405(a)(1)—Initial Submission of *Previously Unreported Highway-Rail and Pathway Crossings* through which They Operate by Primary Operating Railroads: Providing Assigned Crossing Inventory Number to Each Railroad that Operates One or More Trains Through Crossing (New Requirement).	51 States/entities & 618 railroads.	2,120 assigned numbers + 4,180 provided assigned numbers.	5 minutes + 5 minutes.	525
(a)(2)(i)—Completed Inventory Forms for Each Previously Unreported Crossing (New Requirement).	51 States/entities & 618 railroads.	2,120 forms	30 minutes	1,060
(c)—Duty of All Operating Railroads: Notification to FRA of Previously Unreported Crossing through Which It Operates (New Requirement).	51 States/entities & 618 railroads.	450 notices/ notifications.	30 minutes	225
(d)—Incomplete Submission by State Agency: Written Certification by Primary Operating Railroad that State has Not Provided Requested Crossing Information (New Requirement).	51 States/entities & 618 railroads.	35 certification statements.	45 minutes	26
—Copies of Written Certification Statements to Other Operating Railroads and Responsible State Agency (New Requirement).	51 States/entities & 618 railroads.	105 mailed certification copies.	2 minutes	4
234.407(a)—Submission of Initial Data to the Crossing Inventory for New Crossings: Providing Assigned Inventory Numbers for *New Highway-Rail and Pathway Crossings* through which They Operate by Primary Operating Railroads to Each Railroad that Operates One or More Trains Through the Crossing (New Requirement).	51 States/entities & 618 railroads.	100 assigned numbers + 100 provided assigned numbers.	5 minutes + 5 minutes.	16
(a)(2)(i)—Completed Inventory Forms for Each New Highway-Rail and Pathway Crossing (New Requirement).	51 States/entities & 618 railroads.	100 forms	90 minutes	150
234.409(a)—Submission of Periodic Updates to the Crossing Inventory (New Requirements; Formerly Voluntary).	51 States/entities & 618 railroads.	80,775 crossing inventory updates.	2.5025 minutes	3,369
(c) Duty of All Operating Railroads: Written Notification to FRA of that Up-to-date and Accurate Information has *Not* Been Timely Submitted to the Crossing Inventory (New Requirement).	51 States/entities & 618 railroads.	950 written notices	20 minutes	317
234.411(a)—Crossing Sale: Submission of Crossing Inventory Form by Any Operating Railroad that Sells All or Part of Highway-Rail and Pathway Crossing (New Requirement).	51 States/entities & 618 railroads.	650 updated crossing inventory forms.	2 hours	1,300
(b)—Crossing Closure: Submission of Crossing Inventory Form by Primary Operating Railroad that Closes Highway-Rail and Pathway Crossing (New Requirement).	51 States/entities & 618 railroads.	85 crossing inventory forms (closures).	5 minutes	7
(c)—Primary Operating RR Submission of Inventory form for Any Surface/Warning Device Changes at Crossing (New Req.).	51 States/entities & 618 railroads.	650 forms	30 minutes	325
234.413(a & b)(1)—Recordkeeping: Duplicate Copy of Each Inventory Form Submitted in Hard Copy (New Requirement).	51 States/entities & 618 railroads.	5,901 duplicate copies.	1 minute	98
(a & b)(2)—Railroad Copy of FRA Confirmation after Electronic Submission of Crossing Data to the Crossing Inventory (New Requirement).	51 States/entities & 618 railroads.	80,775 copies	1 minute	1,346
(c)—Railroad List of Establishment Locations Where Any Required Records are Kept (New Requirement).	51 States/entities & 618 railroads.	618 lists	5 minutes	52

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, Office of Safety, at 202–493–6292, or Ms. Kimberly Toone, Records Management Officer, Office of Information Technology, at 202–493–6132 or via email at the following addresses: *Robert.Brogan@dot.gov*; *Kimberly.Toone@dot.gov*.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

E. Environmental Impact

FRA has evaluated this rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this final rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547, May 26, 1999.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in the expenditure, in the aggregate, of $140,800,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355, May 22, 2001. Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

H. Trade Impact

The Trade Agreements Act of 1979 (Pub. L. 96–39, 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards setting or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FRA has assessed the potential effect of this final rule on foreign commerce and believes that its requirements are consistent with the Trade Agreements Act of 1979. The requirements imposed are safety standards which, as noted, are not considered unnecessary obstacles to trade.

I. 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*.

List of Subjects in 49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements, State and local governments.

The Rule

In consideration of the foregoing, FRA amends part 234 of chapter II, subtitle

B of title 49, Code of Federal Regulations as follows:

PART 234—GRADE CROSSING SAFETY

■ 1. The authority citation for part 234 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20152, 20160, 21301, 21304, 21311, 22501 note; Pub. L. 110–432, Div. A., Sec. 202, 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. The heading for part 234 is revised to read as set forth above.

■ 3. Amend § 234.1 by revising paragraphs (a)(3) and (4) and adding paragraph (a)(5) to read as follows:

§ 234.1 Scope.

(a) * * *

(3) Requirements for particular identified States to develop State highway-rail grade crossing action plans;

(4) Requirements that certain railroads establish systems for receiving toll-free telephone calls reporting various unsafe conditions at highway-rail grade crossings and pathway grade crossings, and for taking certain actions in response to those calls; and

(5) Requirements for reporting to, and periodically updating information contained in, the U.S. DOT National Highway-Rail Crossing Inventory for highway-rail and pathway crossings.

* * * * *

■ 4. Subpart F is added to part 234 to read as follows:

Subpart F—Highway-Rail and Pathway Crossing Inventory Reporting

Sec.
234.401 Definitions.
234.403 Submission of data to the Crossing Inventory, generally.
234.405 Submission of initial data and periodic updates to the Crossing Inventory.
234.407 Recordkeeping.
234.409 Electronic recordkeeping.
Appendix A to Part 234—Schedule of Civil Penalties

Subpart F—Highway-Rail and Pathway Crossing Inventory Reporting

§ 234.401 Definitions.

As used in this subpart—

Class I has the meaning assigned by regulations of the Surface Transportation Board (49 CFR part 1201; General Instructions 1–1), as those regulations may be revised and applied by order of the Board (including modifications in class threshold based on revenue deflator adjustments).

Closed crossing means a location where a previous crossing no longer exists because either the railroad tracks have been physically removed, or each pathway or roadway approach to the crossing has been physically removed, leaving behind no intersection of railroad tracks with either a pathway or roadway. A grade-separated highway-rail or pathway crossing that has been physically removed is also considered a closed crossing.

Crossing Inventory means the U.S. DOT National Highway-Rail Crossing Inventory.

FRA Associate Administrator means the FRA Associate Administrator for Railroad Safety/Chief Safety Officer.

Highway-rail crossing means the location where one or more railroad tracks intersect with a public highway, road, street, or private roadway, either at-grade or grade-separated, including associated sidewalks.

Inventory Form means the U.S. DOT Crossing Inventory Form (Form FRA F 6180.71).

Inventory Guide means the FRA Guide for Preparing Highway-Rail Crossing Inventory Forms in effect at the time of the submission of data to the Crossing Inventory.

Inventory Number means the number assigned to a highway-rail crossing or pathway crossing in the Crossing Inventory.

Operating railroad means any railroad or urban rapid transit operator that operates one or more trains through a highway-rail or pathway crossing on, or connected to, the general railroad system of transportation.

Pathway crossing means a pathway that:

(1) Is explicitly authorized by a public authority or a railroad;

(2) Is dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others;

(3) Is not associated with a public highway, road, or street, or a private roadway; and

(4) Crosses one or more railroad tracks either at grade or grade-separated.

Primary operating railroad means the operating railroad that either owns or maintains the track through the highway-rail or pathway crossing, unless the crossing is located within a private company, port, or dock area. If more than one operating railroad either owns or maintains the track through the highway-rail or pathway crossing, or if no operating railroad owns or maintains the track through the highway-rail or pathway crossing, then the operating railroad that operates the highest number of trains through the crossing is the primary operating railroad. In the event that there is only one operating railroad that operates one or more trains through a highway-rail or pathway crossing, that operating railroad is the primary operating railroad. For highway-rail and pathway crossings that are located within a private company, port, or dock area, each railroad that owns track leading to the private company, port, or dock area will be considered a primary operating railroad as applied to crossings within the private company, port, or dock area.

Private crossing means a highway-rail or pathway crossing that is not a public crossing.

Public crossing means a highway-rail or pathway crossing where the approaches are under the jurisdiction of and maintained by a public authority and open to public travel. All approaches must be under the jurisdiction of the public authority and no approach may be on private property, unless State law or regulation provides otherwise.

Temporary crossing means a highway-rail or pathway crossing created to serve a specific activity for a temporary time period not to exceed six months.

§ 234.403 Submission of data to the Crossing Inventory, generally.

(a) Highway-rail and pathway crossing data shall be submitted to the Crossing Inventory on the Inventory Form. Except as provided in paragraph (c) of this section, the Inventory Form may be submitted in hard copy or electronically.

(b) The Inventory Form, or its electronic equivalent, shall be completed in accordance with the Inventory Guide. A copy of this guide may be obtained from the Office of Railroad Safety, RRS–23, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. A copy of this guide can also be viewed or downloaded from FRA's Safety Data Web site under the Forms/Publications tab.

(c) Each Class I railroad shall submit the data required by paragraph (a) of this section to the Crossing Inventory electronically.

(d) *Reporting by State agencies on behalf of operating railroads.* A State agency may submit crossing data to the Crossing Inventory on behalf of an operating railroad. The State agency and the operating railroad shall provide written notice to the FRA Associate Administrator that the State agency has agreed to submit and update crossing data for all of the operating railroad's highway-rail and pathway crossings within the state.

(e) *Reporting by the parent corporation on behalf of subsidiary railroads.* (1) In order to satisfy the reporting requirements of this section, a

parent corporation may submit crossing data to the Crossing Inventory on behalf of one or more of its subsidiary railroads. The parent corporation and the subsidiary railroad(s) shall provide written notice to the FRA Associate Administrator that the parent corporation has assumed reporting and updating responsibility for all of the subsidiary railroad's highway-rail and pathway crossings. The written notification shall include the following:

(i) A list of all subsidiary operating railroads for which the parent corporation will assume reporting and updating responsibility;

(ii) An explanation as to how the parent corporation and the subsidiary operating railroad(s) operate as a single, seamless, integrated United States railroad system; and

(iii) A statement signed by the chief executive officer of the parent corporation, in which the chief executive officer shall consent, on behalf of the parent corporation, to guarantee any monetary penalty assessments or other liabilities owed to the United States government that are incurred by the named subsidiaries for violating the reporting or updating requirements set forth in this subpart.

(2) The parent corporation shall provide immediate written notification to the FRA Associate Administrator of any change in the list of subsidiary operating railroads for which it has assumed reporting and updating responsibility.

(3) The parent corporation shall submit the data required by paragraph (a) of this section to the Crossing Inventory electronically.

§ 234.405 Submission of initial data to the Crossing Inventory for previously unreported crossings.

(a) *Duty of primary operating railroad.* (1)(i) With the exception of highway-rail and pathway crossings that are located in a railroad yard, passenger station, or within a private company, port, or dock area, each primary operating railroad shall assign an Inventory Number to each previously unreported highway-rail and pathway crossing through which it operates.

(ii) A primary operating railroad shall assign one or more Inventory Numbers to previously unreported highway-rail and pathway crossings through which it operates that are located in a railroad yard, passenger station, or within a private company, port, or dock area.

(iii) An Inventory Number shall not be assigned to a temporary crossing, nor shall an Inventory Form be submitted to the Crossing Inventory for a temporary crossing.

(2) With the exception of highway-rail and pathway crossings that are located within a private company, port, or dock area, the primary operating railroad shall provide the assigned Inventory Number to each operating railroad that operates one or more trains through the previously unreported highway-rail or pathway crossing no later than January 6, 2016.

(3) Each primary operating railroad shall submit accurate and complete Inventory Forms, or their electronic equivalent, to the Crossing Inventory for the previously unreported highway-rail and pathway crossings through which it operates, no later than March 7, 2016. The Inventory Form, or its electronic equivalent, shall reference the assigned Inventory Number for the crossing(s) and shall be completed and submitted in accordance with § 234.403.

(b) *Duty of operating railroad when operating railroads operate on separate tracks.* For each previously unreported highway-rail and pathway crossing where operating railroads operate trains on separate tracks through the crossing, each operating railroad (other than the primary operating railroad) shall submit accurate crossing data specified in the Inventory Guide to the Crossing Inventory no later than March 7, 2016. The Inventory Form, or its electronic equivalent, which contains this crossing data shall reference the Inventory Number assigned to the crossing by the primary operating railroad and shall be completed and submitted in accordance with § 234.403.

(c) *Duty of all operating railroads.* Unless a written certification statement has been provided by the primary operating railroad in accordance with paragraph (d) of this section, each operating railroad, other than the primary operating railroad, that operates through a previously unreported highway-rail or pathway crossing (except a temporary crossing) for which a completed Inventory Form, or its electronic equivalent, has not been submitted to the Crossing Inventory in accordance with paragraph (a) of this section shall notify the FRA Associate Administrator in writing of this oversight. Written notification provided by the operating railroad shall include, at a minimum, the latitudinal and longitudinal coordinates for each previously unreported highway-rail or pathway crossing for which a completed Inventory Form, or its electronic equivalent, has not been submitted to the Crossing Inventory in accordance with paragraph (a) of this section.

(d) *Incomplete submission—State agency data.* (1)(i) If a primary operating railroad requests State-maintained crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data and does not receive the requested data within 60 days, the primary operating railroad may provide a written statement to the FRA Associate Administrator certifying that it requested crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data at least 60 days prior, but has not yet received the data. If a written statement is provided to the FRA Associate Administrator pursuant to this subsection by certified mail, return receipt requested, the primary operating railroad will not be held liable for failure to timely submit an accurate and complete Inventory Form, or its electronic equivalent, as required by § 234.405(a)(3). If the primary operating railroad receives the requested crossing data subsequent to the mailing of a certified statement under this section, the primary operating railroad shall submit the crossing data to the Crossing Inventory within 60 days of receipt.

(ii) Any written statement provided pursuant to this subsection shall certify that the primary operating railroad requested crossing information for one or more data fields that have been assigned by the Inventory Guide to the State for updating purposes and the requested information has not yet been provided. The written certification statement shall be mailed no later than March 7, 2016. Copies of this written certification statement shall also be mailed to each operating railroad that operates through the crossing and to the State agency responsible for maintaining highway-rail and pathway crossing data.

(2) The written certification statement shall include the following:

(i) A list of each data field for which crossing information has been requested from the appropriate State agency; and

(ii) The date on which this crossing information was requested from the appropriate State agency.

§ 234.407 Submission of initial data to the Crossing Inventory for new crossings.

(a) *Duty of primary operating railroad.* (1)(i) With the exception of highway-rail and pathway crossings that are located in a railroad yard, a passenger station, or within a private company, port, or dock area, each primary operating railroad shall assign an Inventory Number to each new highway-rail and pathway crossing through which it operates.

(ii) A primary operating railroad shall assign one or more Inventory Numbers to new highway-rail and pathway crossings through which it operates,

which are located in a railroad yard, passenger station, or within a private company, port, or dock area.

(iii) An Inventory Number shall not be assigned to a temporary crossing, nor shall an Inventory Form be submitted to the Crossing Inventory for a temporary crossing.

(2) With the exception of highway-rail and pathway crossings that are located within a private company, port, or dock area, the primary operating railroad shall provide the assigned Inventory Number to each operating railroad that operates one or more trains through the new highway-rail or pathway crossing no later than four (4) months after the crossing becomes operational or January 6, 2016, whichever occurs later.

(3) Each primary operating railroad shall submit accurate and complete Inventory Forms, or their electronic equivalent, to the Crossing Inventory for new highway-rail and pathway crossings through which it operates, no later than six (6) months after the crossing becomes operational or March 7, 2016, whichever occurs later. The Inventory Form, or its electronic equivalent, shall reference the assigned Inventory Number for the crossing(s) and shall be completed and submitted in accordance with § 234.403.

(b) *Duty of operating railroad when operating railroads operate on separate tracks.* For each new highway-rail and pathway crossing where operating railroads operate trains on separate tracks through the crossing, each operating railroad shall submit accurate crossing data specified in the Inventory Guide to the Crossing Inventory no later than March 7, 2016. The Inventory Form, or its electronic equivalent, which contains this crossing data shall reference the Inventory Number assigned to the crossing by the primary operating railroad and shall be completed and submitted in accordance with § 234.403.

(c) *Duty of all operating railroads.* Unless a written certification statement has been provided by the primary operating railroad in accordance with paragraph (d) of this section, each operating railroad, other than the primary operating railroad, that operates through a new highway-rail or pathway crossing (except a temporary crossing) for which a completed Inventory Form, or its electronic equivalent, has not been submitted to the Crossing Inventory in accordance with paragraph (a) of this section shall notify the FRA Associate Administrator in writing of this oversight. Written notification provided by the operating railroad shall include, at a minimum, the latitudinal and longitudinal coordinates for each new and unreported highway-rail or pathway crossing for which a completed Inventory Form, or its electronic equivalent, has not been submitted to the Crossing Inventory in accordance with paragraph (a) of this section.

(d) *Incomplete submission—State agency data.* (1)(i) If a primary operating railroad requests State-maintained crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data and does not receive the requested data within 60 days, the primary operating railroad may provide a written statement to the FRA Associate Administrator certifying that it requested crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data at least 60 days prior, but has not yet received the data. If a written statement is provided to the FRA Associate Administrator pursuant to this subsection by certified mail, return receipt requested, the primary operating railroad will not be held liable for failure to timely submit an accurate and complete Inventory Form, or its electronic equivalent, as required by § 234.405(a)(3). If the primary operating railroad submits the requested crossing data subsequent to the mailing of a certified statement under this section, the primary operating railroad shall submit the crossing data to the Crossing Inventory within 60 days of receipt.

(ii) Any written certification statement provided pursuant to this subsection shall certify that the primary operating railroad requested crossing information for one or more data fields that have been assigned by the Inventory Guide to the State for updating purposes and the requested information has not yet been provided. The written certification statement shall be mailed no later than six (6) months after the crossing becomes operational or March 7, 2016, whichever occurs later. Copies of this written certification statement shall also be mailed to each operating railroad that operates through the crossing and to the State agency responsible for maintaining highway-rail and pathway crossing data.

(2) The written certification statement shall include the following:

(i) A list of each data field for which crossing information has been requested from the appropriate State agency; and

(ii) The date on which this crossing information was requested from the appropriate State agency.

§ 234.409 Submission of periodic updates to the Crossing Inventory.

(a) *Duty of primary operating railroad.* Each primary operating railroad shall submit up-to-date and accurate crossing data to the Crossing Inventory for each highway-rail and pathway crossing (except for a grade-separated or closed highway-rail or pathway crossing) through which it operates, in accordance with the Inventory Guide. Updated crossing data shall be submitted to the Crossing Inventory at least every three (3) years from the date of the most recent submission of data by the primary operating railroad (or on behalf of the primary operating railroad) for the crossing or March 7, 2016, whichever occurs later. For hard-copy submissions to Crossing Inventory, this three-year period shall be measured from mailing date of the most recent submission of data by the primary operating railroad (or on behalf of the primary operating railroad).

(b) *Duty of operating railroad when operating railroads operate on separate tracks.* For each highway-rail and pathway crossing where operating railroads operate trains on separate tracks through the crossing, each operating railroad shall submit up-to-date and accurate crossing data for certain specified data fields on the Inventory Form, or its electronic equivalent, to the Crossing Inventory at least every three (3) years from the date of the most recent submission of data by that operating railroad (or on behalf of that operating railroad) for the crossing or March 7, 2016, whichever occurs later. For hard-copy submissions to Crossing Inventory, this three-year period shall be measured from mailing date of the most recent submission of data by the operating railroad (or on behalf of the operating railroad). The Inventory Form, or its electronic equivalent, shall be partially completed in accordance with the Inventory Guide and submitted in accordance with § 234.403.

(c) *Duty of all operating railroads.* Each operating railroad, other than the primary operating railroad, that operates through a highway-rail or pathway crossing for which up-to-date information has not been timely submitted to the Crossing Inventory in accordance with paragraph (a) of this section shall notify the FRA Associate Administrator in writing of this oversight. Written notification provided by the operating railroad shall include, at a minimum, the Inventory Number for each highway-rail and pathway crossing that has not been updated.

§ 234.411 Changes requiring submission of updated information to the Crossing Inventory.

(a) *Crossing sale.* Any railroad that sells all or part of a highway-rail or

pathway crossing shall submit to the Crossing Inventory an Inventory Form, or its electronic equivalent, which reflects the crossing sale. The updated Inventory Form, or its electronic equivalent, shall be submitted to the Crossing Inventory in accordance with § 234.403 no later than three (3) months after the date of sale or March 7, 2016, whichever occurs later.

(b) *Crossing closure.* Within three (3) months after the closure of any highway-rail or pathway crossing reported to the Crossing Inventory or March 7, 2016, whichever occurs later, the primary operating railroad shall submit an Inventory Form, or its electronic equivalent, that reflects closure of the crossing to the Crossing Inventory, in accordance with the Inventory Guide and § 234.403.

(c) *Changes in crossing characteristics.* (1) Within three (3) months of any change in crossing surface or change in warning device at any public highway-rail grade crossing or March 7, 2016, whichever occurs later, the primary operating railroad shall submit an Inventory Form, or its electronic equivalent, that reflects up-to-date and accurate crossing data for the crossing (including the change in crossing surface or change in warning device) to the Crossing Inventory, in accordance with the Inventory Guide and § 234.403.

(2) For purposes of this subpart, a ''change in warning device'' means the addition or removal of a crossbuck, yield or stop sign, flashing lights, or gates at a public highway-rail grade crossing. The installation of a crossbuck, yield or stop sign, flashing lights, or gates that will be in place for less than six months does not constitute a ''change in warning device'' for purposes of this subpart.

§ 234.413 Recordkeeeping.

(a) Each railroad subject to this subpart shall keep records in accordance with this section. Records may be kept either on paper or by electronic means in a manner that conforms with § 234.415.

(b) Each operating railroad, including the primary operating railroad, responsible for submitting information to the Crossing Inventory in accordance with this subpart shall, at a minimum, maintain the following information for each required Inventory Form:

(1) A duplicate copy of each Inventory Form submitted in hard copy to the Crossing Inventory; or

(2) A copy of the electronic confirmation received from FRA after electronic submission of crossing data to the Crossing Inventory.

(c) Each railroad shall identify the locations where a copy of any record required to be retained by this subpart is accessible for inspection and photocopying by maintaining a list of such establishment locations at the office where the railroad's reporting officer conducts his or her official business.

(d) Each operating railroad shall retain for at least four (4) years from the date of submission to the Crossing Inventory all records referred to in paragraphs (a) and (b) of this section. Records required to be kept under this subpart shall be made available to FRA as provided by 49 U.S.C. 20107.

§ 234.415 Electronic recordkeeping.

(a) If a railroad subject to this subpart maintains records required by this subpart in electronic format in lieu of paper, the system for keeping the electronic records must meet all of the following conditions:

(1) The railroad adequately limits and controls accessibility to the records retained in its electronic database system and identifies those individuals who have such access;

(2) The railroad has a terminal at the office where the railroad's reporting officer conducts his or her official business and at each location designated by the railroad as having a copy of any record required to be retained by this subpart that is accessible for inspection and photocopying;

(3) Each such terminal has a computer and either a facsimile machine or a printer connected to a computer to retrieve and produce information in a usable format for immediate review by FRA representatives;

(4) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as a true and accurate copy of the electronically kept record; and

(5) The railroad provides FRA representatives with immediate access to the record(s) for inspection and copying during normal business hours and provides a printout of such record(s) upon request.

(b) If a record required by this subpart is in the form of an electronic record kept by an electronic recordkeeping system that does not comply with paragraph (a) of this section, then the record must be kept on paper in accordance with the recordkeeping requirements contained in § 234.413.

Appendix A to Part 234—Schedule of Civil Penalties

Section	Violation	Willful violation
Subpart F—Highway-Rail and Pathway Crossing Inventory Reporting		
§ 234.403 Submission of data to the Crossing Inventory:		
(b) Failure to complete Inventory Form (or electronic equivalent) in accordance with the Inventory Guide.	$1,000	$2,000
(c) Class I railroad failure to submit crossing data to the Crossing Inventory electronically.	1,000	2,000
§ 234.405 Submission of initial data to the Crossing Inventory for previously unreported crossings:		
(a) Primary operating railroad failure to timely submit an accurate and complete Inventory Form (or electronic equivalent) to the Crossing Inventory for previously unreported crossing.	2,500	5,000
(b) Operating railroad failure to timely submit accurate partial crossing data to the Crossing Inventory for previously unreported crossing.	2,500	5,000
(c) Operating railroad failure to provide written notification to FRA that the primary operating railroad failed to timely report previously unreported crossing.	1,000	2,000
§ 234.407 Submission of initial data to the Crossing Inventory for new crossings:		
(a) Primary operating railroad failure to timely submit an accurate and complete Inventory Form (or electronic equivalent) to the Crossing Inventory for new crossing.	2,500	5,000
(b) Operating railroad failure to timely submit accurate partial crossing data to the Crossing Inventory for new crossing.	2,500	5,000
(c) Operating railroad failure to provide written notification to FRA that the primary operating railroad failed to timely report new crossing.	1,000	2,000
§ 234.409 Submission of periodic updates to the Crossing Inventory:		
(a) Primary operating railroad failure to timely submit up-to-date and accurate crossing data to the Crossing Inventory for highway-rail or pathway crossing.	2,500	5,000

Section	Violation	Willful violation
(b) Operating railroad failure to timely submit up-to-date and accurate partial crossing data to the Crossing Inventory for highway-rail or pathway crossing.	2,500	5,000
(c) Operating railroad failure to provide written notification to FRA that the primary operating railroad failed to timely submit up-to-date crossing data.	1,000	2,000
§ 234.411 Changes requiring submission of updated information to the Crossing Inventory:		
(a) Failure to timely report crossing sale to the Crossing Inventory.	2,500	5,000
(b) Primary operating railroad failure to timely report crossing closure to the Crossing Inventory.	2,500	5,000
(c) Primary operating railroad failure to timely submit up-to-date and accurate crossing data to the Crossing Inventory after change in crossing characteristics.	2,500	5,000
§ 234.413 Recordkeeping.	1,000	2,000
§ 234.415 Electronic recordkeeping.	1,000	2,000

Issued in Washington, DC, on December 19, 2014.

Melissa L. Porter,

Chief Counsel.

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Part V

Department of Energy

48 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedures for Direct Heating Equipment and Pool Heaters; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2013–BT–TP–0004]

RIN 1904–AC94

Energy Conservation Program for Consumer Products: Test Procedures for Direct Heating Equipment and Pool Heaters

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is amending its test procedures for vented home heating equipment and pool heaters established under the Energy Policy and Conservation Act. This rulemaking fulfills DOE's statutory obligation to review its test procedures for covered products at least once every seven years. The amendments add provisions for testing vented home heating equipment that utilizes condensing technology, and incorporate by reference six industry test standards to replace the outdated test standards referred to in the existing DOE test procedure. For pool heaters, the amendments incorporate by reference Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 1160–2009, ''Performance Rating of Heat Pump Pool Heaters,'' and ANSI/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 146–2011, ''Method of Testing and Rating Pool Heaters,'' to establish a test method for electric pool heaters (including heat pump pool heaters). The amendments also clarify the test procedure's applicability to oil-fired pool heaters.

DATES: The effective date of this rule is February 5, 2015. Compliance will be mandatory starting July 6, 2015.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of February 5, 2015. Other publications referenced were approved on January 3, 2014.

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

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-TP-0004.* This Web page contains a link to the docket for this rule on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

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

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

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

SUPPLEMENTARY INFORMATION: This final rule incorporates by reference into subpart B of 10 CFR part 430, the following industry standards:

AHRI Standard 1160–2009 (''AHRI 1160''), Performance Rating of Heat Pump Pool Heaters, 2009.

Copies of AHRI 1160 can be obtained from the Air-Conditioning, Heating, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201, 703–524–8800, or go to *http://www.ahrinet.org.*

ANSI Z21.86–2008, (''ANSI Z21.86''), Vented Gas-Fired Space Heating Appliances, Fifth Edition.

Copies of ANSI Z21.86 can be obtained from American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, 212–642–4900, or go to *http://www.ansi.org.*

ANSI/ASHRAE Standard 103–2007, (''ASHRAE 103–2007''), Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers, ANSI approved March 25, 2008.

Copies of ASHRAE 103–2007 can be obtained from American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., Publication Sales, 1791 Tullie Circle, NE., Atlanta, GA 30329, 800–527–4723 or 404–636–8400, or go to *http://www.ashrae.org.*

ANSI/ASHRAE Standard 146–2011 (''ASHRAE 146''), Method of Testing and Rating Pool Heaters, ASHRAE approved February 2, 2011.

Copies of ASHRAE 146 can be obtained from American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., Publication Sales, 1791 Tullie Circle, NE., Atlanta, GA 30329, 800–527–4723 or 404–636–8400, or go to *http://www.ashrae.org.*

ASTM D2156–09, (''ASTM D2156''), Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels, ASTM approved December 1, 2009.

Copies of ASTM D2156 can be obtained from American Society for Testing and Materials International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, or go to *http://www.astm.org.*

UL 729–2003 (''UL 729''), Standard for Safety for Oil-Fired Floor Furnaces, Sixth Edition, dated August 29, 2003, including revisions through April 22, 2010.

Copies of UL 729 can be obtained from Underwriters Laboratories, Inc., 2600 NW. Lake Rd., Camas WA 98607–8542, or go to *http://www.UL.com.*

UL 730–2003 (''UL 730''), Standard for Safety for Oil-Fired Wall Furnaces, Fifth Edition, dated August 29, 2003, including revisions through April 22, 2010.

Copies of UL 730 can be obtained from Underwriters Laboratories, Inc., 2600 NW. Lake Rd., Camas WA 98607–8542, or go to *http://www.UL.com.*

UL 896–1993 (''UL 896''), Standard for Safety for Oil-Burning Stoves, Fifth Edition, dated July 29, 1993, including revisions through May 7, 2010.

Copies of UL 896 can be obtained from Underwriters Laboratories, Inc., 2600 NW. Lake Rd., Camas WA 98607–8542, or go to *http://www.UL.com.*

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I. Authority and Background

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (''EPCA'' or ''the Act''), Public Law 94–163 (*codified at* 42 U.S.C. 6291–6309) sets forth a variety of provisions designed to improve energy efficiency and establishes the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] These include two covered products that are the subject of this rule: direct heating equipment (DHE) and pool heaters. (42 U.S.C. 6292(a)(9) and (11))

Under EPCA, the energy conservation program generally consists of four parts: (1) Testing; (2) labeling; (3) establishing Federal energy conservation standards; and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for making representations about the efficiency of those products, including representations to DOE of compliance with applicable energy conservation standards adopted pursuant to EPCA. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures that DOE must follow when prescribing or amending test procedures for covered products. EPCA provides, in relevant part, that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the product's measured energy efficiency. (42 U.S.C. 6293(e)(1))

Further, the Energy Independence and Security Act of 2007 (EISA 2007) amended EPCA to require that at least once every seven years, DOE must review test procedures for all covered products and either amend test procedures (if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of 42 U.S.C. 6293(b)(3)), or publish notice in the **Federal Register** of any determination not to amend a test procedure. (42 U.S.C. 6293(b)(1)(A)) Under this requirement, DOE must review the test procedures for direct heating equipment and pool heaters not later than December 19, 2014 (*i.e.,* seven years after the enactment of EISA 2007). This final rule satisfies this requirement.

This rulemaking covers two types of direct heating equipment: vented home heating equipment and unvented home heating equipment. For vented home heating equipment, the test procedure is located at 10 CFR 430.23(o) and 10 CFR part 430, subpart B, appendix O (Appendix O). The vented home heating equipment test procedure includes provisions for determining energy efficiency (annual fuel utilization efficiency (AFUE)), as well as annual energy consumption. DOE's test procedures for unvented home heating equipment are located at 10 CFR 430.23(g) and 10 CFR 430, subpart B, appendix G (Appendix G). For unvented heaters that are used as the primary heating source for the home, there is a calculation of annual energy consumption based on a single assignment of active mode hours; there is no provision for calculation of energy efficiency. For unvented heaters that are not used as the primary heating source for the home, there are no provisions for calculating either the energy efficiency or annual energy consumption.

DOE's test procedure for pool heaters is found at 10 CFR 430.23(p) and 10 CFR part 430, subpart B, appendix P (Appendix P). The test procedure includes provisions for determining two energy efficiency descriptors (*i.e.,* thermal efficiency and integrated thermal efficiency), as well as annual energy consumption.

In addition to the test procedure review provision discussed above, EISA 2007 also amended EPCA to require DOE to amend its test procedures for all covered products to include measurement of standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) DOE published a final rule adopting standby mode and off mode provisions for heating products in the **Federal Register** on December 17, 2012. 77 FR 74559. That rulemaking was limited to test procedure amendments to address standby mode and off mode requirements; it did not address non-standby/off mode issues in DOE's existing test procedures for the covered products. DOE addresses those issues separately in this final rule.

On October 12, 2011, DOE published in the **Federal Register** a request for information (RFI) that identified and requested comment on a number of issues regarding the test procedures for DHE (including both vented and unvented home heating equipment) and pool heaters (October 2011 RFI).[3] 76 FR 63211. DOE accepted comments and information on the October 2011 RFI until November 28, 2011, and considered all feedback received.

On October 24, 2013, DOE published a notice of proposed rulemaking (NOPR) to propose amendments for its test procedures for vented home heating equipment and pool heaters (October 2013 NOPR). 78 FR 63410. In the October 2013 NOPR, DOE proposed amending the test procedure to include provisions for condensing technology in vented home heating equipment, updating outdated references, and clarifying the pool heater test procedure as it applies to oil-fired products. DOE also proposed new test provisions for electric pool heaters, including electric heat pump pool heaters. DOE did not receive comments on the RFI relating to unvented home heating equipment and, after reviewing the test method, did not propose any changes to the test procedure for unvented home heating equipment in the October 2013 NOPR. Pursuant to 42 U.S.C. 6293(b)(1)(A)(ii), DOE has determined not to amend the test procedure for unvented home heating equipment.

The October 2013 NOPR serves as the basis for this final rule. On December 4, 2013, DOE held a public meeting to discuss the test procedure proposals outlined in the October 2013 NOPR. DOE accepted comments and information on the NOPR until January 7, 2014. DOE considered the feedback received from stakeholders, which is discussed in section III of this final rule.

II. Synopsis of the Final Rule

In this final rule, DOE amends its test procedures for vented home heating equipment and pool heaters. The vented

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

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

[3] The October 2011 RFI also requested information on the need to amend the test procedures for residential water heaters. However, because the American Energy Manufacturing and Technical Corrections Act amended EPCA to require that DOE develop a uniform efficiency descriptor for residential and commercial water heaters (42 U.S.C. 6295(e)(5)), DOE is addressing test procedure updates for that product in a separate rulemaking.

home heating equipment amendments add provisions for testing vented heaters that utilize condensing technology and update incorporations by reference in the existing test procedure. The pool heater amendments incorporate by reference Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 1160–2009, ''Performance Rating of Heat Pump Pool Heaters'' (AHRI 1160) and American National Standards Insitute (ANSI)/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 146–2011, ''Method of Testing and Rating Pool Heaters'' (ASHRAE 146), to establish testing procedures for electric resistance and electric heat pump pool heaters. The amendments for pool heaters also clarify the test procedure's applicability to gas-fired and oil-fired pool heaters. The amendments and clarifications for both product types are summarized below.

DOE amends the test procedure for vented heaters to incorporate by reference the following six current industry standards to replace the outdated standards referenced in the existing DOE test procedure: (1) ANSI/ASHRAE Standard 103–2007, ''Method of Test for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers'' (ASHRAE 103–2007); (2) ANSI Z21.86–2008, ''Gas-Fired Space Heating Appliances'' (ANSI Z21.86); (3) ASTM D2156–09, ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels'' (ASTM D2156); (4) UL 729–2003, ''Standard for Safety for Oil-Fired Floor Furnaces'' (UL 729); (5) UL 730–2003, ''Standard for Safety for Oil-Fired Wall Furnaces'' (UL 730); and (6) UL 896–1993, ''Standard for Safety for Oil-Burning Stoves'' (UL 896). DOE also establishes a test method to determine the AFUE of vented heaters that use condensing technology.

DOE does not adopt as part of the final rule a proposal included in the October 2013 NOPR for a default jacket loss value for vented floor furnaces. DOE proposed a default value of one percent for floor furnace jacket loss (measured as a percentage of fuel input rate in Btu/h). However, subsequent DOE testing revealed an average jacket loss of 3.05 percent with a standard deviation of 0.45 percent. Because the results show jacket losses to be much higher than one percent, DOE will not adopt a default value. The test procedure continues to require the measurement of jacket losses for vented floor furnaces when determining the AFUE.

In addition, DOE corrects multiple clerical errors and clarifies sections that commenters identified as ambiguous or unclear in the test procedure for vented home heating equipment. These changes are identified and explained in section III.

In this final rule, DOE clarifies the applicability of the pool heater test method for oil-fired products. DOE also adopts new provisions for testing electric pool heaters, including electric heat pump pool heaters. DOE adopts test methods for electric pool heaters by incorporating by reference ASHRAE 146. In addition, DOE adopts test methods for electric heat pump pool heaters by incorporating by reference AHRI 1160, which provides a method to convert the coefficient of performance (COP) metric used in that standard to the thermal efficiency metric required by EPCA. (42 U.S.C. 6291(22)(E))

In any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product from that determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) For both vented home heating equipment and pool heaters, DOE has determined that the proposed test procedure amendments would have a *de minimis* impact on the products' measured efficiency. A full discussion of the rationale for this conclusion is provided in section III.C.

III. Discussion

DOE received seven written comments in response to the October 2013 NOPR in addition to the comments received during the December 2013 public meeting. The commenters included: AHRI; ASHRAE; Empire Comfort Systems (ECS); Intertek; the Natural Resources Defense Council (NRDC); Raypak; and China WTO/TBT National Notification & Enquiry Center, Standard and Regulation Researching Center, AQSIQ, P.R. China (CWTO). These interested parties commented on a range of issues, including those DOE identified in the October 2013 NOPR, as well as several other pertinent issues. The issues on which DOE received comments, as well as DOE's responses to those comments and the resulting changes to the test procedures for vented home heating equipment and pool heaters, are discussed in the following subsections C and D.

DOE notes that the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) on February 8, 2013, issued a decision vacating the DOE definition of ''Vented hearth heater'' at 10 CFR 430.2 and remanded the issue to DOE to interpret the challenged provisions consistent with the court's opinion.[4] As such, DOE amends the definition of ''vented home heating equipment'' at 10 CFR 430.2 to remove the term ''vented hearth heater.'' DOE did not receive comments related to the application of the test procedure to vented hearth heaters in response to the October 2013 NOPR. DOE plans to address the vented hearth heaters test procedure in a separate rulemaking.

A. Products Covered by This Final Rule

The amendments in this final rule cover those products that meet the definitions for vented home heating equipment and pool heaters, as codified in 10 CFR 430.2. DOE received no comment regarding unvented home heating equipment in response to the RFI and thus did not propose test procedure amendments for these products in the October 2013 NOPR. Likewise, DOE does not adopt any amendments to its test procedure for unvented home heating equipment in this final rule.

B. Dates for the Amended Test Procedure

This final rule amends 10 CFR 430.3, 10 CFR 430.23, Appendix O to subpart B of part 430, and Appendix P to subpart B of part 430. The amendments to 10 CFR 430.3 and 10 CFR 430.23 are effective 30 days after publication of this final rule. Pursuant to 42 U.S.C. 6293(c)(2), effective 180 days after DOE prescribes or establishes a new or amended test procedure, manufacturers must make representations of energy efficiency, including certifications of compliance, using that new or amended test procedure. Accordingly, all representations of energy efficiency, including certifications of compliance, must be based on testing conducted in accordance with the amended Appendix O and Appendix P as of 180 days after publication of the test procedure final rule.

C. Test Procedure for Direct Heating Equipment

This final rule amends DOE's test procedures for vented heaters to account for this condensing technology. Condensing technology is a design strategy that increases the efficiency of a heating appliance by extracting additional thermal energy from the flue gases, causing the water vapor created in the combustion process to condense. The provisions regarding condensing technology for vented home heating equipment are essentially the same as those contained in ASHRAE 103–2007.

[4] *Hearth, Patio & Barbecue Ass'n* v. *U.S. Dep't of Energy,* 706 F.3d 499, 509 (D.C. Cir. 2013).

However, because of the numerous clarifications and modifications needed to apply the condensing technology provisions of the industry standard for furnaces and boilers to vented home heating equipment, DOE incorporates the condensing procedures as stand-alone amendments to DOE's vented home heating equipment test procedure, rather than incorporating by reference select provisions of ASHRAE 103–2007.

Consistent with 42 U.S.C. 6293(c), any representations of energy consumption of vented home heating equipment must be based on the final amended test procedures 180 days after the publication of this test procedure final rule in the **Federal Register.** Until that time, manufacturers must make such representations based either on the final amended test procedures or on the previous test procedures, set forth at 10 CFR part 430, subpart B, appendix O, revised as of January 1, 2014.

In response to the October 2013 NOPR and during the December 2013 public meeting, DOE received comments relating to vented home heating equipment from five interested parties (Intertek, ECS, AHRI, NRDC, and ASHRAE). The comments focused on: (1) condensate collection test procedures, (2) updating incorporations by reference to industry standards, and (3) other test procedure details. Regarding the first issue, commenters generally favored incorporating condensing technology into the test procedure, although some further clarifications were requested. Regarding the second issue, commenters generally favored updating incorporations by reference to more recent industry standards. As part of DOE's overall review of test procedures, these vented home heating equipment amendments include a complete updating of references to industry standards used in the vented home heating equipment test procedure and modifications to the test procedure as necessary. Finally, regarding the third issue, the comments primarily concerned clerical, typographical, and other minor issues present in the existing and proposed test procedures. These issues are discussed in greater detail below.

1. Vented Home Heating Equipment Employing Condensing Technology

DOE considered the possibility of minimizing the test burden by reducing the time required for measuring condensate mass during steady-state conditions. The test procedure section 3.8.1 requires that the measurement of condensate shall be conducted during the thirty-minute period after steady-state conditions have been established.

DOE received comments from four interested parties regarding the order of the condensate collection test procedures for vented home heating equipment. Comments from AHRI, ECS, Intertek, and NRDC were generally in favor of amending the test procedure to account for condensing technology, as the technology results in lower energy use. AHRI and Intertek both questioned the need for separate condensation testing as opposed to combining the testing with current steady-state testing to decrease the test burden. (ECS, No. 7 at p.1; NRDC, No. 10 at p.1; Intertek, Public Meeting Transcript, No. 6 at p. 14; AHRI, No. 9 at p.1)

In order to reduce test burden, DOE allows for the measurement of condensate during the establishment of the steady-state conditions (10 CFR part 430, subpart B, App. O, section 3.8.1) rather than after establishing steady-state conditions (10 CFR part 430, subpart B, App. O, section 3.1). DOE investigated the difference in condensate mass collected and the rate of condensate production during the two separate periods (*i.e.,* during the establishment of steady-state conditions and once steady-state conditions have been reached). Based on the comparison of the measurements, DOE has determined that there is no significant difference in the mass of condensate collected or the rate of condensate production during the two separate periods. Therefore, DOE concurs with AHRI and Intertek's comments that the condensation collection may be performed during the steady-state test.

Accordingly, DOE adopts provisions that allow for performance of the steady-state condensate collection test set forth in section 3.8.1 during the steady-state test set out in section 3.1 of the test procedure. DOE amends Appendix O by adding section 3.8.1 to allow the option for condensate measurements either concurrently with or immediately after completion of the steady-state test.

AHRI commented that the margin of error for a measurement of condensate mass ($M_{C,SS}$) should not be more than ±0.5 percent and that section 2 of the existing test procedure should be modified to include this language. (AHRI, No.9 at p.1) DOE agrees with the comment from AHRI as this margin of error for the measurement of condensate mass is consistent with the margin of error provided in the residential furnace and boiler test procedures. DOE is using the language from section 6.6 of ASHRAE 103–2007 for this clarification. DOE placed this phrasing in section 3.8.1 of the new test procedure instead of in section 2.

Empire Comfort Systems and AHRI commented that there is no guidance in the existing test procedure specifying the mode in which to test units, especially condensing units, shipped with multiple control modes. Further, AHRI recommended that DOE add a provision specifying that models that provide consumers with the capability to operate the heater in more than one mode should be tested using the mode that represents the least efficient operation. AHRI specifically mentioned the need for clarification when a unit has a manual mode and a thermostat-controlled, step-modulating mode and stated that the selection of the operational mode for testing affects the AFUE rating. (AHRI, No.9 at p.3; ECS, No. 7 p.2; ECS, Public Meeting Transcript, No. 6, p.18–19)

DOE agrees that a clarification is necessary regarding in which control mode to test when multiple options are present, particularly when a unit is capable of both automatic and manual modes. Automatic mode indicates that the unit has thermostat control and operates using single-stage, two-stage, or step-modulating controls. In manual mode the unit is controlled by the user. Because these appliances are most often operated in automatic mode when both automatic and manual are available, DOE is requiring units capable of both automatic and manual control to be tested according to the provisions in the test procedure for units with automatic mode. DOE added section 2.11 to the test procedure to implement this change.

ECS and AHRI submitted comments in favor of adopting the ASHRAE 103 methodology to determine a default flue gas draft factor (D_F) value for condensing units with no off period flue losses. This method provides the option of testing or assigning a default draft factor of 0.05. (AHRI, No.9 at p.1; ECS, No. 7 at p.1)

DOE agrees to include the option of testing or assigning a default value for the draft factor for units with no measureable off period flue losses. Adopting this provision is in line with the general intent of adopting ASHRAE103–2007 methodologies when appropriate. It also reduces the testing burden by allowing the use of a default factor of 0.05 in some cases.

DOE incorporates a test method based on the use of a smoke stick device to establish the absence of flow through the heat exchanger of vented home heating equipment designed with no measurable airflow through the heat exchanger. This test is used only to determine whether the use of the default draft factor is appropriate (per sections

8.8.3 and 9.10 of ASHRAE 103–2007). This test is not intended to determine the volume of air moving through the heat exchanger. If the test confirms the absence of airflow, then the default draft factor of 0.05 may be used. If the test results indicate the presence of airflow, then the draft factor must be determined either through testing or as specified in Table 1 of 10 CFR part 430, subpart B, Appendix O. DOE has implemented these changes by adding sections 3.6.1 and 3.6.2 to the existing test procedure and modifying sections 4.1.2 and 4.5.2 of the existing test procedure by incorporating certain provisions from sections 8.8.3 and 9.10 of ASHRAE 103–2007.

2. Updating of Industry Reference Standards

ASHRAE commented in favor of the DOE proposal to include by reference ASHRAE 103–2007, as this standard best represents collective industry knowledge and best practices. (ASHRAE, No. 5 at p.1) Because all ASHRAE103–1993 sections referenced in this test procedure are identical to the 2007 version, DOE is incorporating those sections from the ASHRAE 103–2007 in the final rule in order to reference the most current version of the standard.

AHRI commented against the proposed change to section 2.1.3 of the test procedure, which would reference 37.1.1 of UL 896 for installing vented room heaters, because this reference is a standard for oil-fired heaters and makes no improvement to the current test procedure. AHRI stated the current language to use manufacturer's instructions is more appropriate for the overall body of units tested. This approach reflects the variety of oil- and gas-fired appliances and the nature of the testing conducted. (AHRI, No. 9 at p.2; AHRI, Public Meeting Transcript, No. 6 at p.21) DOE agrees that this reference change should not be adopted, but is adopting slight modifications to section 2.1.3 to provide that the unit under test must be installed in accordance with the manufacturer's installation and operations (I&O) manual provided with the unit.

AHRI commented against the proposed change to section 2.3.3 of the existing test procedure, which would reference Table 1 of ASHRAE 103–2007 instead of section 2.2, Table VII, of ANSI Standard Z21.11.1–1974. AHRI proposed instead to reference Table IV of ANSI Z21.86. AHRI's reasoning is that the Z21 series of safety standards are the source documents for general specifications on gases used during the testing of gas-fired appliances, including Table 1 of ASHRAE 103–1993, which comes from Table XI in ANSI Z21.47. (AHRI, No. 9 at p.2) DOE agrees with this proposal since Z21.86has the advantages AHRI has mentioned. The reference in section 2.1.3 of the final rule is changed to Table IV of ANSI Z21.86.

DOE implements a number of additional changes in this final rule. In most cases, these changes consist of updating incorporations by reference to a more current version of industry standards. These updates allow for new users of the test procedures to execute the DOE test procedures without depending on outdated standards, which may be difficult to obtain.

In some cases, an update incorporates by reference a standard that, in its more current version, includes several of the standards that are incorporated by reference in the existing test procedure and used to be published separately, but are now combined under a new title. One such case is the standard that includes the ANSI standards for wall furnaces, floor furnaces, and room heaters, which were once separate standards but are now combined into a single standard. This new standard is titled, ''Vented Gas-Fired Space Heating Appliances'' and is referred to as ''ANSI Z21.86'' in this final rule. DOE is incorporating by reference ANSI Z21.86–2008 to specify the testing procedures related to circulating air adjustments, found in section 2.5 of the revised DOE test procedure, and location of temperature measuring instrumentation, found in section 2.6.1. In addition, DOE incorporates by reference ANSI Z21.86 to specify the installation instructions for direct vent (section 6.1.3 and figure 6) and non-direct vent (section 8.1.3 and figure 7 or figure 10) wall furnaces. ANSI Z21.86 does not include installation specifications for vented room heaters and vented floor furnaces. Accordingly, as discussed previously, for vented room heaters the manufacturer's recommendations as described in the installation and operations (I&O) manual provided with the units must be used for installation. For vented floor furnaces, the requirement in section 2.1.2 of the current test procedure to install vented floor furnaces for testing as specified in sections 35.1 through 35.5 of UL–729–1976 remains materially unchanged; the updated UL test methods are the same as those in the existing test procedure and reflect the specific installation requirements of each appliance. Although the UL standards typically are used for oil-fired equipment and the ANSI standards typically are used for gas-fired equipment, in the existing DOE test procedure, where there is no distinction between installation provisions, the UL standards are cited in application to both gas and oil floor furnaces (*i.e.,* section 2.1.2).

DOE incorporates by reference ASHRAE 103–2007 in three locations within the revised test procedure—sections 2.3 Fuel supply, 2.4 Burner adjustments, and 3.2 Jacket loss measurement—in lieu of three older standards incorporated by reference in the existing test procedure. DOE is updating these references to ASHRAE 103–2007 because this standard incorporates industry consensus without the need to depend on other references. It is not materially different from the test method used in the current vented home heating equipment test procedure (*i.e.,* the AFUE test method). All referenced industry standards are listed in 10 CFR 430.3, *Materials incorporated by reference.* DOE concludes that these changes and updates to materials incorporated by reference will neither result in material differences in test results nor increase test procedure burden.

The following is a list of the shorthand titles and full titles of all the referenced standards used in the existing test procedure and those used in this vented home heating equipment test procedure.

Standards Used in the Existing Test Procedures for Vented Home Heating Equipment:

''ANSI Standard Z21.11.1–1974'' means the American National Standard for Gas-Fired Room Heaters.

''ANSI Standard Z21.44–1973'' means the American National Standard for Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces.

''ANSI Standard Z21.48–1976'' means the American National Standard for Gas-Fired Gravity and Fan Type Floor Furnaces.

''ANSI Standard Z21.49–1975'' means the American National Standard for Gas-Fired Gravity and Fan Type Vented Wall Furnaces.

''ANSI Standard Z91.1–1972'' means the American National Standard for Performance Standards for Oil-Powered Central Furnaces.

''ANSI Standard Z11.182–1965 (R1971) (ASTM D 2156–65 (1970))'' means the standard published by the American Society of Testing and Materials titled, ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels.''

''UL 729–1976'' means the Underwriters Laboratories standard for Oil-Fired Floor Furnaces.

''UL 730–1974'' means the Underwriters Laboratories standard for Oil-Fired Wall Furnaces.

''UL 896–1973'' means the Underwriters Laboratories standard for Oil-Burning Stoves.

Standards Used in the Amended Test Procedure for Vented Home Heating Equipment:

''ANSI/ASHRAE Standard 103–2007'' means the test standard published by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers titled, ''Method of Test for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers.''

''ANSI Z21.86–2008'' means the standard published by the American National Standards Institute titled, ''Vented Gas-Fired Space Heating Appliances.''

''ASTM D2156–09'' means the standard published by the American Society of Testing and Materials titled, ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels.''

''UL 729–2003'' means the test standard published by the Underwriters Laboratory, Inc. titled, ''Standard for Safety for Oil-Fired Floor Furnaces.''

''UL 730–2003'' means the test standard published by the Underwriters Laboratory, Inc. titled, ''Standard for Safety for Oil-Fired Wall Furnaces.''

3. Other Issues

AHRI and ECS commented on three typographical errors. First, in the October 2013 NOPR, the denominator of the equation for $L_{C,SS}$ in section 4.1.6.2 and the denominator of the equation for L_C in section 4.1.6.4 were supposed to read ''1053.3'' but instead read ''1053'' and the missing ''.3'' was erroneously placed at the end of the equation. Second, the variable C_{T*} had been replaced with the number ''100'' in the $M_{S,OFF}$ and $M_{F,OFF}$ equations in 4.3.3 and 4.5.1in the existing test procedure. Finally, values for D_S for system numbers 9 through 12 were omitted in Table 1 from the existing test procedure. (AHRI, No.9 at p.2; AHRI, Public Meeting Transcript, No. 6, p.27; ECS, No. 7 p.1–2; ECS Public Meeting Transcript, No. 6, p.17) DOE recognizes the errors as clerical. DOE found that the first error resulted from the conversion to publishing format and that the error is not present in the original document. DOE has corrected this error and to prevent future errors, DOE will submit equations as images and request the printing office review the document before publication. Regarding the second error, although C_{T*} equals 100 when the tracer gas is a single component gas, this is not always the case. Thus, DOE agrees that the ''100'' term should be ''C_{T*}'' to account for instances when the tracer gas is not a single component gas. DOE notes that this is consistent with the text following the equation. Regarding the third error, there is no value given for D_S for system numbers 9 through 12 as these systems are direct vent systems to which D_S does not apply. The value is intentionally omitted from subsequent calculations and has been changed to ''0'' for clarity.

ECS commented that the ANSI Z21.86, incorporated by reference in the revised test procedure, does not provide detailed information about the appropriate positioning of thermocouple(s) for measuring the flue exhaust temperature. (ECS, No. 7 p.1; ECS, Public Meeting Transcript, No. 6, p.22) DOE disagrees. These details are in section 2.6 of the existing test procedure.

ECS and AHRI submitted comments in favor of DOE's proposal to include the option to set a jacket loss value for vented floor furnaces at a default of one percent in lieu of testing. (AHRI, No.9 at p.2; ECS, No. 7 p.1) DOE is generally in favor of simplifying the test procedure where results would not be affected. In this case, DOE's testing revealed an average jacket loss of 3.05 percent with a standard deviation of 0.45 percent. DOE concluded from this testing that the proposed default jacket loss value of one percent for vented floor furnaces, while consistent with industry practices for other equipment, is too low for this product. However, adopting a higher default jacket loss value would significantly affect AFUE. Therefore, DOE does not introduce an optional default jacket loss value for vented floor furnaces and continues to require testing as described in section 3.2 of the existing test procedure.

Intertek and AHRI submitted comments in favor of removing the requirement to install simulated walls and floors for performance testing of floor furnaces. The comments argue that these requirements are driven by safety concerns and have no effect on the efficiency ratings, so removing the requirement will reduce test burden. (AHRI, Public Meeting Transcript, No. 6, p.23–25; Intertek Public Meeting Transcript, No. 6, p.23–25) DOE rejects this suggestion primarily because DOE has no data to confirm that the performance testing is not affected by the added walls and floors. Furthermore, in DOE's view, any decrease in test burden resulting from elimination of this requirement would be minimal. Manufacturers are already required to install these simulated floors and walls during safety testing. As a result, any decrease in test burden would affect only a small group of independent laboratories, if any, that only conduct performance testing and thus may not have an existing setup. Therefore, DOE is retaining these requirements in the test procedure.

DOE corrected other typographical errors that are present in the existing test procedure. In the equation in section 4.3.6 of appendix O, DOE has (1) added a missing minus (''-'') sign immediately to the right of the ''C_jL_j''; (2) replaced the plus (''+'') sign between the two bracketed parts of the equation with a multiplication (''X'') symbol; and (3) replaced the second ''$L_{s,OFF}$'' in the second bracketed part of the equation with ''$L_{I,OFF}$''. In section 4.1.15, DOE corrects ''equFipped'' to read ''equipped'' and corrects ''therostats'' to read ''thermostats.'' In section 4.1.8, DOE corrects ''drafthood'' to read ''draft hood.'' These and other typographical errors have been corrected in this final rule document. These errors are obviously typographical in nature, because similar efficiency equations in other parts of the test procedure, as well as those used in industry standards, do not include these errors. The relevant industry groups have determined the correct format of this equation since its adoption and have been utilizing the correct format when testing and rating product efficiency.

Another issue that was identified during DOE's review is the lack of a defining equation in the calculation procedures for manually controlled vented heaters in section 4.2.4 of the existing test procedure. To correct this omission, DOE adds an equation describing the weighted average steady-state efficiency (η_{SS-WT}) in terms of the latent and sensible losses to section 4.2.4.1.

DOE identified several additional sections of the existing test procedure that require clarification. Section 2.9 states, ''maintain the room temperature within ± 5 °F (±2.8°C) of the value T_{RA} measured during the steady-state performance test.'' However, while section 3.1.1 and 3.1.2 explain to establish steady state using three successive readings of the stack or flue gas temperature taken 15 minutes apart, it does not indicate at what time the variable T_{RA} is established (or whether it is an average). DOE clarifies that while the room temperature must be continuously monitored in order to meet the conditions specified in section 2.9, T_{RA} is to be measured in coincidence with the third of the three successive 15-minute interval readings of the stack or flue gas temperatures

taken during the steady-state tests (sections 3.1.1 and 3.1.2). Likewise, the measurement of additional variables ($T_{S,SS}$, X_{CO2S}, $T_{F,SS}$, X_{CO2F}) described in section 3.1 are to coincide with the third of these three successive 15-minute interval readings.

DOE also identified that the requirements in section 2.9 for combustion air and draft relief air temperatures require clarification. Section 2.9 states that the ''temperature of the air for combustion and the air for draft relief shall not differ more than ± 5 °F from room temperature as measured above.'' DOE clarifies that this means these temperatures shall not differ more than ± 5 °F from the room ambient temperature at any point in time; it does *not* mean ± 5 °F with respect to the measurement $T_{RA.}$ DOE also clarifies that this requirement for the combustion air does not apply during the cool-down tests of sections 3.3 and 3.6. These tests are conducted during shut-down of the unit, when maintaining requirements for combustion air temperatures are unnecessary.

DOE clarifies in sections 4.1.2 and 4.1.3 that the flue and stack draft factors may be obtained through the test method and calculations in sections 3.6 and 4.5, respectively, or by using the appropriate default factors from Table 1.

The final issue identified by DOE was to clarify the applicability of the testing and calculation method in sections 3.3 and 4.3 (tracer gas method) for units without a thermal stack damper. The test procedure currently prescribes that units without thermal stack dampers be rated using the calculation method in section 4.1 or 4.2 depending on the control type. Section 4.3 incorrectly states that as an optional procedure all vented heaters without thermal stack dampers can elect to use the AFUE calculation method described in 4.3.

DOE reviewed the use of the tracer gas method as described in 4.3 for units without thermal stack dampers. DOE believes manufacturers do not use the tracer gas method to test units without thermal stack dampers and do not use such testing results to calculate the AFUE for such units. In previous rulemakings for vented home heating equipment, DOE did not receive public comments regarding the applicability of section 4.3, and DOE has not received waiver requests that would indicate that there are any instances in which the calculation methods of 4.1 cannot be used for units without thermal stack dampers, suggesting that an alternative test method is unnecessary for these units.

DOE performed testing on several representative units to determine the applicability of sections 4.1, 4.2, and 4.3 to units with and without stack dampers. The AFUE values were generated twice for each unit, once using the results from the tracer gas method, and once using the calculation method in 4.1 (for units equipped without manual controls or thermal stack dampers) or 4.2 (for models equipped with manual controls). The results are presented in Table 3.1 below and show an average 2.6 percent higher AFUE when using the tracer gas method in section 4.3 as opposed to the calculation method in 4.1.

TABLE 3.1—DIFFERENCE IN AFUE IN UNITS OF VENTED HOME HEATING EQUIPMENT WHEN TESTED USING TRACER GAS METHOD AND STANDARD METHOD

	Difference in AFUE
Unit A	3.3
Unit B	3.2
Unit C	1.2

The sign of the AFUE change is consistent with the operation of the system with the stack damper removed or forced open because the flue gases would more freely move with the damper open resulting in higher loss. This fundamental design difference along with the differences in AFUE values from the testing show that the calculation methods are not equivalent and so only one should be allowed for each design.

Further, 10 CFR 430.23, Test procedures for the measurement of energy and water consumption, states clearly that the tracer gas calculation method in section 4.3 applies to ''vented heaters equipped with thermal stack dampers,'' and that section 4.1 applies to vented heaters ''without either manual controls or thermal stack dampers.'' Thus, DOE considers this a clarification of, rather than a modification to, the current test procedure.

For the reasons described previously, DOE clarifies that the optional use of the tracer gas method does not apply to units without thermal stack dampers. DOE has determined this clarification will not impose any additional burden on manufacturers, since units without thermal stack dampers are already commonly rated using the calculation method in 4.1 or 4.2. Moreover, DOE has determined that disallowing the tracer gas method for units without thermal stack dampers will not affect efficiency ratings, since it is highly unlikely that manufacturers have rated units without thermal stack dampers using the tracer gas test method previously.

D. Test Procedure for Pool Heaters

DOE's existing test procedure for pool heaters is found at 10 CFR 430.23(p) and 10 CFR part 430, subpart B, appendix P (existing test procedure).

In its definition of ''efficiency descriptor,'' EPCA specifies that for pool heaters, the efficiency descriptor shall be ''thermal efficiency'' (42 U.S.C. 6291(22)(E)). Current energy conservation standards for pool heaters do not account for standby mode and off mode energy use. As part of a recent test procedure rulemaking, DOE prescribed a new efficiency metric for pool heaters, titled ''integrated thermal efficiency.'' 77 FR 74559 (Dec. 17, 2012). This prescribed integrated thermal efficiency (TE_I) metric builds on the existing thermal efficiency metric to include electrical energy consumption during standby mode and off mode operation, as required by EISA 2007. (42 U.S C. 6295(gg)(2)(A))

Because certain types of pool heaters are powered by energy sources other than gas, DOE requested comments in the October 2011 RFI regarding the appropriateness of prescribing the currently incorporated ANSI Z21.56 test method, titled ''Gas-Fired Pool Heaters,'' for testing pool heaters that operate with electricity (including electric heat pump pool heaters) or oil. 76 FR 63211, 63215–16 (Oct. 12, 2011). In the October 2011 RFI, DOE tentatively concluded that the test procedure for pool heaters at 10 CFR part 430, subpart B, appendix P already contains provisions to allow the ANSI Z21.56 test method to be applied to oil-fired pool heaters, and, therefore, no further action is necessary for those products. DOE received no comments that were contrary to this conclusion.

Prior to the October 2011 RFI, in a December 2009 NOPR for energy conservation standards for heating products, DOE concluded that, as currently drafted, the DOE test procedure for pool heaters is not suitable for measuring energy efficiency for electric pool heaters (including electric heat pump pool heaters). 74 FR 65852, 65866–67 (Dec. 11, 2009). In the October 2011 RFI, DOE noted that for electric pool heaters (including those units using electric heat pump technology), the fuel source is electricity (measured in watts) instead of gas (measured in Btu/h), but ''thermal efficiency,'' as required under EPCA and determined using ANSI Z21.56, is a

measure of heat delivered to the water at the heater outlet (in Btu/h) divided by the heat input (in Btu/h) of the fuel. 76 FR 63211, 63215 16 (Oct. 12, 2011). It is technologically feasible to develop an integrated thermal efficiency rating for an electric heat pump pool heater by converting the power input in watts to the input in Btu/h (which can be done for both the power used during active mode and the power used during standby mode and off mode).

Currently, electric heat pumps for space heating are typically rated using industry standards for coefficient of performance (COP). DOE notes that when an integrated thermal efficiency metric as described above is applied to electric heat pump pool heaters, the calculated results are efficiency ratings of more than 100 percent. This may necessitate some reeducation among consumers to alleviate any confusion resulting from changing labeling from COP to integrated thermal efficiency. Furthermore, the test procedure still includes provisions for calculating heat pump pool heater COP. Another consideration for electric heat pump pool heaters is that performance depends upon the ambient temperature and humidity, so environmental conditions for testing are much more important for electric heat pump pool heaters than for gas-fired pool heaters, oil-fired pool heaters, or electric resistance pool heaters.

In response to the October 2013 NOPR and during the December 2013 public meeting, DOE received comments from four interested parties (Raypak, AHRI, NRDC, and CWTO). The comments focused primarily on the inclusion of electric resistance and electric heat pump pool heaters into the pool heater test procedure. The main issues of concern stem from implementing common metrics over all pool heater types. More specifically, the base operating hours, efficiency metrics, and different features of electric resistance and electric heat pump pool heaters as compared to traditional gas fired pool heaters drew comments and discussion.

1. Electric Pool Heaters

AHRI commented that the nomenclature in the proposed subsection 1.6, 'Hybrid Pool Heater,' in which the term 'hybrid' refers to a combination gas and electric pool heater, may cause confusion because hybrid is already used to refer to an electric heat pump for other product classes. (AHRI, Public Meeting Transcript, No. 6 at p. 33–34) DOE found that the term hybrid most commonly refers to pool heaters that use solar energy in conjunction with a traditional gas or electric pool heater. In addition, certain electric heat pump pool heaters and combination electric heat pump and electric resistance heating pool heaters are referred to as hybrid heat pumps. DOE reviewed this issue and found that appliances that used the term hybrid or a variant of it have relatively low market penetration. Furthermore, other appliances that use the term ''hybrid,'' or a variant of it, generally have an additional qualifier such as ''hybrid solar pool heater'' or ''hybrid heat pump.'' Given that gas pool heaters and electric heat pump pool heaters comprise the large majority of pool heaters today, DOE believes that 'hybrid pool heater' is an intuitive name for a pool heater that combines the functionality of gas and electric heat pump pool heaters. Therefore, DOE is adopting this nomenclature.

In response to DOE's proposal to introduce the integrated thermal efficiency metric as an efficiency descriptor for pool heaters, Raypak commented that implementing a new metric has the potential to confuse customers and will create a significant burden on pool heater manufacturers, which are primarily small business entities. In addition, Raypak commented that thermal efficiency does not address energy prices. (Raypak, No. 8 at pp. 1–2)

DOE believes that the confusion to customers caused by the introduction of the new integrated thermal efficiency metric should be minimal, as other parameters such as COP can continue to be used in the manufacturers' literature if such parameters are determined pursuant to the applicable DOE test procedure. DOE does not believe that implementing the integrated thermal efficiency metric represents an undue burden on manufacturers. The integrated thermal efficiency metric incorporates the COP as determined by the current industry standard AHRI 1160 and therefore changes in test set-up or methods will be minimal. Also, DOE does not recognize the changes in labeling as unduly burdensome. DOE agrees that the new integrated thermal efficiency metric does not directly address energy price. However, it is DOE's intent for this metric to provide information about the unit's efficiency, not overall cost to the consumer. Therefore, DOE is not incorporating energy price into the integrated thermal efficiency metric.

AHRI and Raypak commented that the current burner operating hour (BOH) value of 104 hours is inappropriate for this test procedure as it is specific to gas-fired pool heaters. They further state that the current BOH value does not apply to heat pump pool heaters because of typical industry sizing conventions, which are that gas-fired pool heaters have a significantly higher heating capacity than heat pump pool heaters sized for the same pool. (AHRI, No. 9 at p. 3; Raypak, No. 8 at p. 1)

Regarding the use of an average burner operating hours (BOH) value of 104 hours, DOE understands that the output capacity of the pool heater is typically selected based on the specific pool characteristics, namely pool size (surface area) and the ambient conditions.[5] DOE found that some pool heater sizing conventions list similar sizing guidelines for both gas-fired[6] and electric heat pump[7] pool heaters. Therefore, if a pool heater's output capacity is properly selected relative to the pool's load requirement, then the actual burner operating time will be similar whether gas-fired or electric. Therefore, DOE is not changing the BOH value for electric heat pump pool heaters.

AHRI commented that the integrated thermal efficiency metric is not appropriate for many reasons, including, primarily, that standby mode and off mode energy consumption in pool heaters provides no heating benefit and distorts the relevance of thermal efficiency ratings. AHRI also provided potential alternatives, such as using heating seasonal efficiency ($EFFY_{HS}$) or simply modifying the existing average annual electrical energy consumption (E_{AE}) calculation. (AHRI, No. 9 at pp. 5–6)

EPCA requires DOE to include the standby energy consumption in the existing metrics unless ''such an integrated test procedure is technically infeasible.'' (42 U.S.C. 6295(gg)(2)(A)) Previous test procedures also accounted for the standby energy consumption for pool heaters with continuous pilot lights in the $EFFY_{HS}$ term. However, $EFFY_{HS}$ is not appropriate as a naming convention for the new metric because it is specific to the heating season and the new metric also includes non-heating season effects.

AHRI's suggestion to modify the E_{AE} calculation is consistent with the test procedure in this final rule. The standby

[5] *See* Dep't of Energy, Heat Pump Swimming Pool Heaters (May 29, 2012), *http://energy.gov/energysaver/articles/heat-pump-swimming-pool-heaters* Dep't of Energy, Gas Swimming Pool Heaters (June 10, 2014), *http://energy.gov/energysaver/articles/gas-swimming-pool-heaters.*

[6] *See* In the Swim, Calculating Approximate Heater Size, *https://www.intheswim.com/landing/whichsizeheater.aspx.*

[7] *See* AquaCal, How Can I Size My Swimming Pool Heat Pump? (July 22, 2013), *http://www.aquacal.com/blog/post/127-How-Can-I-Size-My-Swimming-Pool-Heat-Pump-.*

and off mode electrical energy is accounted for in $E_{AE,Standby,off}$, which is a component of E_{AE}. However, E_{AE} does not include fuel energy consumption and is therefore not a comprehensive energy efficiency metric for all pool heaters. The TE_I metric is a more complete representation of the energy efficiency of pool heaters because it includes both fuel and electricity energy consumption.

AHRI also commented that the new integrated thermal efficiency metric cannot be used for sizing. (AHRI, No. 9 at pp. 3–6) DOE agrees that pool heaters should not be sized based on integrated thermal efficiency. Instead, pool heaters should be sized based on the pool heater capacity and the thermal efficiency (E_T), which is part of this test procedure, and can continue to be used for sizing. DOE also points out that the industry can use thermal efficiency in addition to integrated thermal efficiency when communicating marketing and sizing information to consumers.

AHRI further commented that prescribing TE_I as the new energy efficiency metric will impose an enormous and needless burden on manufacturers and disrupt the marketplace. (AHRI, No. 9 at pp. 3–6) DOE believes that the additional testing burdens of measuring standby are minimal. Specifically, the test procedure specifies monitoring the standby energy consumption for an additional 60 minutes using the existing set-up for other parts of the test procedures. In addition, AHRI commented that they recognize the 2007 amendments to EPCA allow DOE latitude and discretion to prescribe a separate test procedure to determine standby mode and off mode energy use, as well as a separate energy conservation standard for standby mode and off mode energy consumption. AHRI further interprets this to mean there is no mandate that DOE must integrate the standby and off mode consumption into the thermal efficiency, citing Sections 325(gg)(3)(B) and Subsection 325(gg)(2)(A)(ii). Lastly, AHRI suggested the possibility of using an annual consumption metric as a replacement for thermal efficiency. (AHRI, No. 9 at p. 5)

DOE reviewed this issue and reaffirms that in its definition of ''efficiency descriptor,'' EPCA specifies that the efficiency descriptor for pool heaters shall be ''thermal efficiency.'' (42 U.S.C. 6291(22)(E)) EPCA requires DOE to include the standby energy consumption in the existing metrics unless ''such an integrated test procedure is technically infeasible.'' (42 U.S.C. 6295(gg)(2)(A)) DOE has the option to create a separate standard for standby and off mode consumption only if incorporation into a standard is ''not feasible.'' (42 U.S.C. 6295(gg)(3)(B)) In the case of pool heaters, DOE determined that it is technically feasible to measure standby and off mode consumption and incorporate those measurements into the thermal efficiency metric.

CWTO submitted two comments that concern the inclusion of electrical power (PE) in the seasonal useful output (E_{OUT}) equation. CWTO questioned applying thermal efficiency to rated fuel input capacity and electrical power in section 5.4.3 of the pool heater test procedure. CWTO stated that if E_{OUT} was only based on absorbed heat it would be more intuitive. (CWTO, No 11 at p.3) It is DOE's position that for all pool heaters, contrary to some other appliances, the electrical components in active mode provide useful energy that justifies including them into that equation in addition to the more familiar Q_{IN}. This is true for both gas-fired and electric pool heaters. In addition, because these components are present and active during thermal efficiency testing, including their energy use in the overall integrated thermal efficiency is necessary. This formulation also allows for the integration of standby and off mode energy consumption into the metric. Finally, this formulation applies equally to gas-fired, oil-fired, electric resistance, and electric heat pump pool heaters.

Through this final rule, DOE adds test methods that apply to electric heat pump and electric resistance pool heaters. DOE amends its pool heater test procedure by adding a test method for electric heat pump pool heaters that references AHRI Standard 1160–2009, ''Performance Rating of Heat Pump Pool Heaters,'' and ANSI/ASHRAE Standard 146–2011, ''Method of Testing and Rating Pool Heaters.'' In addition, DOE amends its pool heater test procedure by adding a test method for electric resistance pool heaters that references ASHRAE146. DOE concludes that incorporation of these industry test standards is appropriate as they represent current best practices for these pool heater products.

Although DOE prescribes amended test procedures in this final rule, manufacturers are not required to certify compliance for electric heat pump and electric resistance pool heaters until such time as DOE sets minimum energy conservation standards for those products (which would include energy consumption in active, standby, and off modes). Prior to DOE setting energy conservation standards for electric heat pump and electric resistance pool heaters, any representations as to the energy efficiency or energy use of those products made after 180 days after the publication of this test procedure final rule must be based on this amended test procedure. Manufacturers of electric heat pump pool heaters may use the COP metric as measured by the DOE test procedure being adopted in this final rule in addition to the integrated thermal efficiency metric for making efficiency representations.

2. Other Issues

In addition to the changes for electric pool heaters described in the previous section, DOE also clarifies that the DOE test procedure is applicable to oil-fired pool heaters, despite the incorporation of a test method (ANSI Z21.56) titled ''Gas-Fired Pool Heaters.'' Section 4.1.1 of that test method contains a provision to compute the energy used when oil is the fuel, as opposed to natural gas. In addition, DOE is clarifying the definition of the equilibrium term used in the active mode thermal efficiency testing. This clarification has been inserted into section 2.1 of existing test procedure, as listed in the regulatory text. Finally, DOE has added clarifications regarding burner input rate error, equilibrium conditions, water temperature rise, seasonal off switch, and recirculating pump to the existing test procedure as listed in the regulatory text.

E. Compliance With Other EPCA Requirements

As mentioned in the preamble at section II, in amending a test procedure, EPCA directs DOE to determine to what extent, if any, the amended test procedure would alter the measured energy efficiency or measured energy use of a covered product as determined under the current test procedure. (42 U.S.C. 6293(e)(1)) The current energy conservation standards for vented home heating equipment and pool heaters are based on existing test procedure efficiency metrics—AFUE and thermal efficiency (E_t), respectively.

The test procedure amendments for vented home heating equipment in this final rule do not contain changes that will alter the measured energy efficiency of equipment. Rather, the changes represent either clarifications that would improve the uniform application of the test procedures for certain product types or provisions to cover new product types. Any change in the reported efficiency of currently covered products that might be associated with these clarifications is expected to be *de minimis.*

Consistent with 42 U.S.C. 6293(c), any representations of energy consumption of vented home heating equipment must be based on any final amended test procedures no later than 180 days after the publication of the test procedure final rule in the **Federal Register.** Until that time, manufacturers must make such representations based either on the final amended test procedure or on the previous test procedure, set forth at 10 CFR part 430, subpart B, appendix O as contained in 10 CFR parts 200 to 499 edition revised as of January 1, 2014. Consistent with 42 U.S.C. 6291(8), representations of energy consumption includes representations regarding the measures of energy use (including, for this product, active mode, standby mode, and off mode energy use), annual operating cost, energy efficiency (including, for this product, AFUE), or other measure of energy consumption. DOE notes that manufacturers must use the same test procedure for all representations of energy efficiency, including certifications of compliance.

This final rule does not include any changes to the current standby mode and off mode testing procedures and calculations for vented home heating equipment as established in the December 2012 final rule. 77 FR 74559 (Dec. 17, 2012). Although fossil fuel standby mode and off mode energy consumption were already captured in the existing AFUE metric, the December 2012 final rule required manufacturers to use the new test procedures for determining electrical standby mode and off mode energy consumption in Appendix O beginning on June 17, 2013. Certifications of compliance with the electrical standby mode and off mode energy consumption standards are not required until the compliance date of DOE standards that include electrical standby mode and off mode energy consumption.

The test procedure amendments in this final rule for pool heaters do not alter the measured efficiency of equipment covered by the existing test procedure. This final rule provides a new test method for electric resistance and electric heat pump pool heaters. However, electric resistance and electric heat pump pool heaters are not currently subject to energy conservation standards by DOE. Therefore, DOE has concluded that there is no need to address the impact of these amendments on current energy conservation standards for pool heaters.

Consistent with 42 U.S.C. 6293(c), any representations of energy consumption of pool heaters must be based on any final amended procedures and calculations in appendix P starting 180 days after the publication of any final amended test procedures in the **Federal Register.** Until that time, manufacturers of gas-fired and oil-fired pool heaters may make such representations based either on the final amended test procedures or on the previous test procedures, set forth at 10 CFR part 430, subpart B, appendix P as contained in the 10 CFR parts 200 to 499 edition revised as of January 1, 2014. Consistent with 42 U.S.C. 6291(8), representations of energy consumption include representations of measures of energy use (including for this product, active mode, standby mode, and off mode energy use), annual operating cost, energy efficiency (including for this product, thermal efficiency (E_t), or integrated thermal efficiency (TE_I)), or other measure of energy consumption. Again, DOE notes that manufacturers must use the same test procedure for all representations of energy efficiency, including certifications of compliance.

There are currently no energy conservation standards for electric resistance pool heaters, electric heat pump pool heaters, or oil-fired pool heaters. Upon the compliance date of any final energy conservation standards for these types of pool heaters, use of any final test procedures in appendix P will be required to demonstrate compliance. There are also currently no energy conservation standards for the standby mode and off mode energy use of gas-fired pool heaters. Upon the compliance date of any energy conservation standards that incorporate standby mode and off mode energy consumption for gas-fired pool heaters (*i.e.,* for this product, a standard expressed as integrated thermal efficiency (TE_I)), use of any final test procedures in appendix P will be required to demonstrate compliance.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this regulatory action is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Administrative Procedure Act

Pursuant to the decision in *Hearth, Patio & Barbecue Ass'n* v. *U.S. Dep't of Energy,* 706 F.3d 499 (D.C. Cir. 2013), DOE removed the definition of ''vented hearth heater'' from 10 CFR 430.2 to reflect the Court's order vacating the regulatory definition of ''vented hearth heater.'' 79 FR 43927 (July 29, 2014). As such, in this final rule, DOE is removing the cross references to ''vented hearth heater'' from the definition of ''vented home heating equipment'' at 10 CFR 430.2. DOE has determined, pursuant to 5 U.S.C. 553(b)(B), that prior notice and an opportunity for public comment on this final rule are unnecessary. DOE is not exercising any of the discretionary authority that the Congress has provided to the Secretary of Energy in EPCA. DOE, therefore, finds that good cause exists to waive prior notice and an opportunity to comment for this rulemaking.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site at: *www.energy.gov/gc.*

This final rule amends DOE's test procedures that will be used to determine compliance with energy conservation standards for vented home heating equipment and pool heaters. For vented home heating equipment, the amendments add provisions for testing models that utilize condensing technology and incorporate by reference the most appropriate or recent versions of several industry standards referenced in the DOE test procedure for the purposes of test set-up and installation specifications. For pool heaters, the amendments incorporate by reference

AHRI 1160 and ASHRAE 146 to establish testing procedures for electric (including electric heat pump) pool heaters. The amendments for pool heaters also clarify the test procedure's applicability to oil-fired pool heaters. DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. 68 FR 7990.

1. Reasons for, Objectives of, and Legal Basis for the Final Rule

The reasons for, objectives of, and legal basis for the final rule are stated elsewhere in the preamble and are not repeated here.

2. Description and Estimated Number of Small Entities Regulated

For the manufacturers of the covered products, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848–49 (May 15, 2000), as amended at 65 FR 53533, 53544–45 (Sept. 5, 2000) and codified at 13 CFR part 121. The SBA size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.* Vented home heating equipment and pool heater manufacturing are classified under NAICS 333414—''Heating Equipment (except Warm Air Furnaces) Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for both of these categories.[8]

To estimate the number of companies that could be small business manufacturers of products covered by this rulemaking, DOE conducted a market survey using available public information to identify potential small manufacturers. DOE's research involved reviewing several industry trade association membership directories (*e.g.,* AHRI[9]), product databases (*e.g.,* AHRI[10] and CEC[11] databases), individual company Web sites, and marketing research tools (*e.g.,* Hoovers[12] reports) to create a list of all domestic small business manufacturers of heating products covered by this rulemaking. DOE identified 2 manufacturers of vented home heating equipment and 5 manufacturers of pool heaters (including electric heat pump pool heater manufacturers) that can be considered small businesses.

3. Description and Estimate of Compliance Requirements

a. Vented Home Heating Equipment

DOE amends its test procedure for vented home heating equipment to incorporate by reference the most recent or appropriate version of six industry standards to replace the outdated standards referenced in the existing DOE test procedure as described in section III. C.2. of this document. These updates result in no material change to DOE's test procedure for vented home heating equipment.

In addition, DOE amends the test procedure to include a test method to determine the AFUE of vented home heating equipment that use condensing technology. The AFUE test method may add a modest cost to testing for manufacturers of such products. The test can be conducted in the same test facility and simultaneous to the former AFUE test requirements, but some additional testing and calculation is required to accurately determine AFUE. Specifically, this test procedure requires a condensate collection test to be conducted on vented heaters utilizing condensing technologies. The duration of the condensate collection test time would be 30 minutes for steady-state testing, if conducted subsequent to all other steady-state testing and 1–2 hours for cyclic testing. In some cases, only steady-state testing is required (*i.e.,* all manually-controlled vented heaters and those vented heaters not utilizing the optional tracer gas procedures). In such cases, the condensation test provisions would not require any additional time because the test procedure allows for the condensate collection to be conducted simultaneously with the other steady-state test requirements of section 3.1. Vented home heaters are tested utilizing the optional tracer gas procedures and are required to conduct both steady-state and cyclic condensate collection procedures. DOE estimates that the additional testing for condensing units adds a maximum of three hours to the AFUE test. DOE estimates that lab technicians on average, are paid at a rate of $27.50 per hour.[13] Therefore, DOE estimates the added cost will be a maximum of $82.50 per test unit, which is modest in comparison to the overall cost of product development and certification.

b. Pool Heaters

DOE amends its test procedure for pool heaters to adopt provisions for testing electric pool heaters, including electric heat pump pool heaters. In addition, DOE amends the test procedure to incorporate by reference AHRI 1160 and ASHRAE 146 for both electric resistance and electric heat pump pool heaters. These pool heaters are not currently regulated by DOE, but DOE's research showed that all identified domestic small business manufacturers of electric heat pump pool heaters already rate COP and capacity according to the rating conditions specified in AHRI 1160 and typically at an additional rating point outside of the AHRI 1160 test conditions. In addition, DOE notes that ANSI/ASHRAE Standard 90.1–2010 contains efficiency levels for electric heat pump pool heaters and specifies AHRI 1160 as the test method. Several States (*e.g.,* Florida, California) also have minimum efficiency requirements for electric heat pump pool heaters, which is another factor that may drive manufacturers to rate their products for efficiency. Because manufacturers of electric heat pump pool heaters are already rating their products using AHRI 1160 due to the ANSI/ASHRAE Standard 90.1–2010 requirements and State efficiency requirements, DOE does not believe that including an electric heat pump pool heater test method that references the industry standard will cause significant, if any, additional burden to manufacturers. The additional burdens for measuring standby consist of one 60 minute period where the electricity use is metered. For a technician making an average of $37.50 per hour, this results in an added cost of $37.50, which is not significant in comparison to the overall cost of product development and certification.

For electric resistance pool heaters, the test method in ASHRAE 146—is comparable to that for gas-fired and oil-fired pool heaters in the existing DOE test method. Since the new test method in this final rule is essentially the same as the existing test method used by the industry and incorporated by reference, it is not expected that the new rule will add to the burden of manufacturers of electric resistance pool heaters.

[8] In the December 2009 NOPR, DOE mistakenly listed gas-fired pool heater manufacturing under NAICS code 335228. 74 FR 65852, 65984 (Dec. 11, 2009). The correct classification for pool heater manufacturing is NAICS 333414. Both NAICS categories have the same 500 employee limit.

[9] *See http://www.ahrinet.org/ahri+members.aspx.*

[10] *See http://www.ahridirectory.org/ahriDirectory/pages/home.aspx.*

[11] *See http://www.appliances.energy.ca.gov/.*

[12] *See http://www.hoovers.com/.*

[13] ''Lab Technician Salary.'' *Job Search.* N.p., n.d. Web. 22 Aug. 2014. *http://www.indeed.com/salary/Lab-Technician.html.*

4. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being adopted today.

5. Significant Alternatives to the Rule

As noted earlier in the preamble, this rule is largely based upon the industry testing procedures already in place for vented home heating equipment and pool heaters. DOE believes the amendments will be useful for both consumers and industry, and are consistent with the Department's goals and statutory requirements, while also minimizing the economic burden on manufacturers. After a full review of the test procedure and comments received from the NOPR and public meeting, DOE has incorporated changes to the vented home heating equipment test procedure as discussed in section III. and listed in the regulatory text, including adding a condensation collection test, adding a test to determine default draft factor eligibility, and updating references to the most recent or appropriate version. DOE has incorporated changes to the pool heater test procedure as listed in the regulatory text including adding test provisions for electric resistance and electric heat pump pool heaters and incorporating a new metric, integrated thermal efficiency, which incorporates standby losses. DOE has determined that there is no further need for alternative test methods for this test procedure.

D. Review Under the Paperwork Reduction Act of 1995

Manufacturers of vented home heating equipment and pool heaters must certify to DOE that their products comply with all applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for vented home heating equipment and pool heaters, including any amendments adopted for those test procedures, on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including vented home heating equipment and pool heaters. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE is amending the test procedure that it expects will be used to develop and implement future energy conservation standards for vented home heating equipment and pool heaters. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this final rule amends the existing test procedures without affecting the amount, quality, or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States, and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and has determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires

each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For regulatory actions likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at *www.gc.doe.gov/gc/office-general-counsel.*) This final rule, which modifies the test procedures for vented home heating equipment and for pool heaters, contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule concerning test procedures would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this final rule will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

K. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action to amend the test procedure for measuring the energy efficiency of vented home heating equipment and pool heaters is not a significant regulatory action under Executive Order 12866 or any successor order. Moreover, it will not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects for this rulemaking.

M. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with all laws applicable to the former Federal Energy Administration, including section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788; FEAA) Section 32 essentially provides, in relevant part, that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

This final rule incorporates testing methods contained in the following commercial standards: (1) ANSI/ASHRAE Standard 103–2007, ''Method of Test for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers''; (2) ANSI Z21.86–2008, ''Vented Gas-Fired Space Heating Appliances''; (3) ASTM D2156–09, ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels''; (4) UL 729–2003, ''Standard for Safety for Oil-Fired Floor Furnaces''; (5) UL 730–2003, ''Standard for Safety for Oil-Fired Wall Furnaces''; (6) UL 896–1993, ''Standard for Safety for Oil-Burning Stoves''; (7) AHRI 1160–2009, ''Performance Rating of Heat Pump Pool Heaters''; and (8) ANSI/ASHRAE Standard 146–2011, ''Method of Testing and Rating Pool Heaters.'' While the test procedures are not exclusively based on these standards, components of the test procedures are adopted directly from these standards without amendment. The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with the Attorney General and the Chairman of the FTC concerning the impact on competition of requiring manufacturers to use the test methods contained in these standards, and neither recommended against incorporation of these standards.

N. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on December 23, 2014.

Kathleen B. Hogan,

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

For the reasons stated in the preamble, DOE amends part 430 of Chapter II, Subchapter D of Title 10, Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by revising the definition of ''vented home heating equipment or vented heater'' to read as follows:

§ 430.2 Definitions.

* * * * *

Vented home heating equipment or vented heater means a class of home heating equipment, not including furnaces, designed to furnish warmed air to the living space of a residence, directly from the device, without duct connections (except that boots not to exceed 10 inches beyond the casing may be permitted) and includes: vented wall furnace, vented floor furnace, and vented room heater.

* * * * *

■ 3. Section 430.3 is amended by:

■ a. Redesignating paragraphs (d)(18) as (d)(19), (t) as (v), and (i) through (s) as (j) through (t), respectively; and

■ b. Adding paragraphs (b)(2), (d)(18), (f)(13), (i), and (u).

■ c. Revising paragraph (f)(11).

The revisions and additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(b) * * *

(2) AHRI Standard 1160–2009 (''AHRI 1160''), Performance Rating of Heat Pump Pool Heaters, 2009, IBR approved for appendix P to subpart B.

* * * * *

(d) * * *

(18) ANSI Z21.86–2008, (''ANSI Z21.86''), Vented Gas-Fired Space Heating Appliances, Fifth Edition, approved March 28, 2008, IBR approved for appendix O to subpart B.

* * * * *

(f) * * *

(11) ANSI/ASHRAE Standard 103–2007, (''ASHRAE 103–2007''), Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers, ANSI approved March 25, 2008, IBR approved for appendices O and AA to subpart B.

* * * * *

(13) ANSI/ASHRAE Standard 146–2011 (''ASHRAE 146''), Method of Testing and Rating Pool Heaters, ASHRAE approved February 2, 2011, IBR approved for appendix P to subpart B.

* * * * *

(i) *ASTM.* American Society for Testing and Materials International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 (*www.astm.org*)

(1) ASTM D2156–09, (''ASTM D2156''), Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels, ASTM approved December 1, 2009, IBR approved for appendix O to subpart B.

(2) [Reserved]

* * * * *

(u) *UL.* Underwriters Laboratories, Inc., 2600 NW. Lake Rd., Camas, WA 98607–8542 (*www.UL.com*)

(1) UL 729–2003 (''UL 729''), Standard for Safety for Oil-Fired Floor Furnaces, Sixth Edition, dated August 29, 2003, including revisions through April 22, 2010, IBR approved for appendix O to subpart B.

(2) UL 730–2003 (''UL 730''), Standard for Safety for Oil-Fired Wall Furnaces, Fifth Edition, dated August 29, 2003, including revisions through April 22, 2010, IBR approved for appendix O to subpart B.

(3) UL 896–1993 (''UL 896''), Standard for Safety for Oil-Burning Stoves, Fifth Edition, dated July 29, 1993, including revisions through May 7, 2010, IBR approved for appendix O to subpart B.

■ 4. Section 430.23 is amended by revising paragraphs (o) and (p) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(o) *Vented home heating equipment.* (1) When determining the annual fuel utilization efficiency (AFUE) of vented home heating equipment (see the note at the beginning of appendix O), expressed in percent (%), calculate AFUE in accordance with section 4.1.17 of appendix O of this subpart for vented heaters without either manual controls or thermal stack dampers; in accordance with section 4.2.6 of appendix O of this subpart for vented heaters equipped with manual controls; or in accordance with section 4.3.7 of appendix O of this subpart for vented heaters equipped with thermal stack dampers.

(2) When estimating the annual operating cost for vented home heating equipment, calculate the sum of:

(i) The product of the average annual fuel energy consumption, in Btus per year for natural gas, propane, or oil fueled vented home heating equipment, determined according to section 4.6.2 of appendix O of this subpart, and the representative average unit cost in dollars per Btu for natural gas, propane, or oil, as appropriate, as provided pursuant to section 323(b)(2) of the Act; plus

(ii) The product of the average annual auxiliary electric energy consumption in kilowatt-hours per year determined according to section 4.6.3 of appendix O of this subpart, and the representative average unit cost in dollars per kilowatt-hours as provided pursuant to section 323(b)(2) of the Act. Round the resulting sum to the nearest dollar per year.

(3) When estimating the operating cost per million Btu output for gas or oil vented home heating equipment with an auxiliary electric system, calculate the product of:

(i) The quotient of one million Btu divided by the sum of:

(A) The product of the maximum fuel input in Btus per hour as determined in sections 3.1.1 or 3.1.2 of appendix O of this subpart times the annual fuel utilization efficiency in percent as determined in sections 4.1.17, 4.2.6, or 4.3.7 of this appendix (as appropriate) divided by 100, plus

(B) The product of the maximum electric power in watts as determined in section 3.1.3 of appendix O of this subpart times the quantity 3.412; and

(ii) The sum of:

(A) the product of the maximum fuel input in Btus per hour as determined in

sections 3.1.1 or 3.1.2 of this appendix times the representative unit cost in dollars per Btu for natural gas, propane, or oil, as appropriate, as provided pursuant to section 323(b)(2) of the Act; plus

(B) the product of the maximum auxiliary electric power in kilowatts as determined in section 3.1.3 of appendix O of this subpart times the representative unit cost in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act. Round the resulting quantity to the nearest 0.01 dollar per million Btu output.

(p) *Pool heaters.* (1) Determine the thermal efficiency (E_t) of a pool heater expressed as a percent (%) in accordance with section 5.1 of appendix P to this subpart.

(2) Determine the integrated thermal efficiency (TE_I) of a pool heater expressed as a percent (%) in accordance with section 5.4 of appendix P to this subpart.

(3) When estimating the annual operating cost of pool heaters, calculate the sum of:

(i) The product of the average annual fossil fuel energy consumption, in Btus per year, determined according to section 5.2 of appendix P to this subpart, and the representative average unit cost in dollars per Btu for natural gas or oil, as appropriate, as provided pursuant to section 323(b)(2) of the Act; plus

(ii) The product of the average annual electrical energy consumption in kilowatt-hours per year determined according to section 5.3 of appendix P to this subpart and converted to kilowatt-hours using a conversion factor of 3412 Btus = 1 kilowatt-hour, and the representative average unit cost in dollars per kilowatt-hours as provided pursuant to section 323(b)(2) of the Act. Round the resulting sum to the nearest dollar per year.

* * * * *

■ 5. Appendix O to subpart B of part 430 is amended by:

■ a. Revising the note at the beginning of appendix O;

■ b. Redesignating section 1.33 (following 1.37) as 1.39;

■ c. Redesignating sections 1.5 through 1.37 as 1.6 through 1.38;

■ d. Adding section 1.5;

■ e. Revising sections 1.27, 2.1.1, 2.1.2, 2.1.3, 2.2.2;

■ f. Adding section 2.2.4;

■ g. Revising section 2.3.1, 2.3.2, 2.3.3, 2.3.4, 2.4.2, 2.5.1;

■ h. Removing in section 2.6.1 in the last paragraph ''ANSI Z21.49–1975, section 2.14.'' and adding in its place ''Part VIII section 8.7 of ANSI Z21.86 (incorporated by reference, see § 430.3)'';

■ i. Removing in section 2.6.2 in the first paragraph ''Figure 34.4 of UL 730–1974, or Figures 35.1 and 35.2 of UL 729–1976'' and adding in its place ''Figure 36.4 of UL 730, or Figure 38.1 and 38.2 of UL 729 (incorporated by reference, see § 430.3)'' and removing in the last paragraph ''sections 35.12 through 35.17 of UL 730–1974'' and adding in its place ''sections 37.5.8 through 37.5.18 of UL 730 (incorporated by reference, see § 430.3)'';

■ j. Revising section 2.9;

■ k. Adding section 2.11;

■ l. Revising sections 3.1.1, 3.1.2, 3.2, 3.3;

■ m. Adding sections 3.6.1, 3.6.2, 3.6.2.1, 3.6.2.2, 3.6.2.2.1, 3.6.2.2.2, 3.6.2.3, 3.6.2.4, 3.6.2.4.1, 3.6.2.4.2, 3.6.2.4.3, 3.8, 3.8.1, 3.8.2;

■ n. Revising sections 4.1, 4.1.2, 4.1.3, 4.1.6;

■ o. Adding sections 4.1.6.1, 4.1.6.2, 4.1.6.3, and 4.1.6.4;

■ p. Revising sections 4.1.8, 4.1.10, 4.1.15, 4.1.16, 4.2.1, 4.2.2, 4.2.4.1, 4.3, 4.3.1, 4.3.2, 4.3.3, 4.3.4, 4.3.5, 4.3.6, 4.5.1, 4.5.2, 4.5.3 and Table 1.

These additions and revisions read as follows:

Appendix O to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Vented Home Heating Equipment

Note: On and after July 6, 2015, any representations made with respect to the energy use or efficiency of vented home heating equipment must be made in accordance with the results of testing pursuant to this appendix. On and after this date, if a manufacturer makes representations of standby mode and off mode energy consumption, then testing must also include the provisions of this appendix related to standby mode and off mode energy consumption. Until July 6, 2015, manufacturers must test vented home heating equipment in accordance with this appendix or appendix O as it appeared at 10 CFR part 430, subpart B revised as of January 1, 2014. Any representations made with respect to the energy use or efficiency of such vented home heating equipment must be made in accordance with whichever version is selected. DOE notes that, because testing under this appendix O is required as of July 6, 2015, manufacturers may wish to begin using this test procedure immediately.

* * * * *

1.5 ''Condensing vented heater'' means a vented heater that, during the laboratory tests prescribed in this appendix, condenses part of the water vapor in the flue gases.

* * * * *

1.27 ''Single-stage thermostat'' means a thermostat that cycles a burner at the maximum heat input rate and off.

* * * * *

2.1.1 *Vented wall furnaces (including direct vent systems).* Install non-direct vent gas fueled vented wall furnaces as specified in section 8.1.3 and figure 7 or figure 10 of ANSI Z21.86 (incorporated by reference, see § 430.3). Install direct vent gas fueled vented wall furnaces as specified in section 6.1.3 and figure 6 of ANSI Z21.86 (incorporated by reference, see § 430.3). Install oil fueled vented wall furnaces as specified in section 36.1 of UL 730 (incorporated by reference, see § 430.3).

2.1.2 *Vented floor furnaces.* Install vented floor furnaces for test as specified in section 38.1 of UL 729 (incorporated by reference, see § 430.3).

2.1.3 *Vented room heaters.* Install vented room heaters for test in accordance with the manufacturer's installation and operations (I&O) manual provided with the unit.

* * * * *

2.2.2 *Oil fueled vented home heating equipment (excluding direct vent systems).* Use flue connections for oil fueled vented floor furnaces as specified in section 38.2 of UL 729, sections 36.2 of UL 730 for oil fueled vented wall furnaces, and sections 37.1.2 and 37.1.3 of UL 896 (all incorporated by reference, see § 430.3) for oil fueled vented room heaters.

* * * * *

2.2.4 *Condensing vented heater, additional flue requirements.* The flue pipe installation must not allow condensate formed in the flue pipe to flow back into the unit. An initial downward slope from the unit's exit, an offset with a drip leg, annular collection rings, or drain holes must be included in the flue pipe installation without disturbing normal flue gas flow. Flue gases should not flow out of the drain with the condensate. For condensing vented heaters that do not include means for collection of condensate, a means to collect condensate must be supplied by the test lab for the purposes of testing.

* * * * *

2.3.1 *Natural gas.* For a gas fueled vented heater, maintain the gas supply to the unit under test at a normal inlet test pressure immediately ahead of all controls at 7 to 10 inches water column. Maintain the regulator outlet pressure at normal test pressure approximately at that recommended by the manufacturer. Use natural gas having a specific gravity of approximately 0.65 and a higher heating value within ±5 percent of 1,025 Btu's per standard cubic foot. Determine the actual higher heating value in Btu's per standard cubic foot for the natural gas to be used in the test with an error no greater than one percent.

2.3.2 *Propane gas.* For a propane-gas fueled vented heater, maintain the gas supply to the unit under test at a normal inlet pressure of 11 to 13 inches water column and a specific gravity of approximately 1.53. Maintain the regulator outlet pressure, on units so equipped, approximately at that recommended by the manufacturer. Use propane having a specific gravity of approximately 1.53 and a higher heating value within ±5 percent of 2,500 Btu's per standard cubic foot. Determine the actual higher heating value in Btu's per standard

cubic foot for the propane to be used in the test

2.3.3 *Other test gas.* Use other test gases with characteristics as described in Table 4 of ANSI Z21.86 (incorporated by reference, see § 430.3). Use gases with a measured higher heating value within ±5 percent of the values specified in the Tables section of ANSIZ21.86. Determine the actual higher heating value of the gas used in the test with an error no greater than one percent.

2.3.4 *Oil supply.* For an oil fueled vented heater, use No. 1 fuel oil (kerosene) for vaporizing-type burners and either No. 1 or No. 2 fuel oil, as specified by the manufacturer in the I&O manual provided with the unit, for mechanical atomizing type burners. Use test fuel conforming to the specifications given in Tables 2 and 3 of ASHRAE 103–2007 (incorporated by reference, see § 430.3). Measure the higher heating value of the test fuel within ±1 percent.

* * * * *

2.4.2 *Oil burner adjustments.* Adjust the burners of oil fueled vented heaters to give the CO_2 reading recommended by the manufacturer and an hourly Btu input, during the steady-state performance test described below, which is within ±2 percent of the heater manufacturer's specified normal hourly Btu input rating. On units employing a power burner, do not allow smoke in the flue to exceed a No. 1 smoke during the steady-state performance test as measured by the procedure in ASTM D2156 (incorporated by reference, see § 430.3). If, on units employing a power burner, the smoke in the flue exceeds a No. 1 smoke during the steady-state test, readjust the burner to give a lower smoke reading, and, if necessary a lower CO_2 reading, and start all tests over. Maintain the average draft over the fire and in the flue during the steady-state performance test at that recommended by the manufacturer within ±0.005 inches of water gauge. Do not make additional adjustments to the burner during the required series of performance tests. The instruments and measuring apparatus for this test are described in section 6 and shown in Figure 8 of ASHRAE 103–2007 (incorporated by reference, see § 430.3).

* * * * *

2.5.1 *Forced air vented wall furnaces (including direct vent systems).* During testing, maintain the air flow through the heater as specified by the manufacturer in the I&O manual provided with the unit and operate the vented heater with the outlet air temperature between 80 °F and 130 °F above room temperature. If adjustable air discharge registers are provided, adjust them so as to provide the maximum possible air restriction. Measure air discharge temperature as specified in section 8.7 of ANSI Z21.86 (incorporated by reference, see § 430.3).

* * * * *

2.9 *Room ambient temperature.* The room ambient temperature shall be the arithmetic average temperature of the test area, determined by measurement with four No. 24 AWG bead-type thermocouples with junctions shielded against radiation, located approximately at 90-degree positions on a circle circumscribing the heater or heater enclosure under test, in a horizontal plane approximately at the vertical midpoint of the appliance or test enclosure, and with the junctions approximately 24 inches from sides of the heater or test enclosure and located so as not to be affected by other than room air.

The value T_{RA} is the room ambient temperature measured at the last of the three successive readings taken 15 minutes apart described in section 3.1.1 or 3.1.2 as applicable. During the time period required to perform all the testing and measurement procedures specified in section 3.0 of this appendix, maintain the room ambient temperature within ±5 °F (±2.8 C) of the value T_{RA}. At no time during these tests shall the room ambient temperature exceed 100 °F (37.8 C) or fall below 65 °F (18.3 C).

Locate a thermocouple at each elevation of draft relief inlet opening and combustion air inlet opening at a distance of approximately 24 inches from the inlet openings. The temperature of the air for combustion and the air for draft relief shall not differ more than ±5 °F from the room ambient temperature as measured above at any point in time. This requirement for combustion air inlet temperature does not need to be met once the burner is shut off during the testing described in sections 3.3 and 3.6 of this appendix.

* * * * *

2.11 *Equipment with multiple control modes.* For equipment that has both manual and automatic thermostat control modes, test the unit according to the procedure for its automatic control mode, *i.e.* single-stage, two stage, or step-modulating.

* * * * *

3.1.1 *Gas fueled vented home heating equipment (including direct vent systems).* Set up the vented heater as specified in sections 2.1, 2.2, and 2.3 of this appendix. The draft diverter shall be in the normal open condition and the stack shall not be insulated. (Insulation of the stack is no longer required for the vented heater test.) Begin the steady-state performance test by operating the burner and the circulating air blower, on units so equipped, with the adjustments specified by sections 2.4.1 and 2.5 of this appendix, until steady-state conditions are attained as indicated by three successive readings taken 15 minutes apart with a temperature variation of not more than ±3 °F (1.7 C) in the stack gas temperature for vented heaters equipped with draft diverters or ±5 °F (2.8 C) in the flue gas temperature for vented heaters equipped with either draft hoods or direct vent systems. The measurements described in this section are to coincide with the last of these 15 minute readings.

On units employing draft diverters, measure the room temperature (T_{RA}) as described in section 2.9 of this appendix and measure the steady-state stack gas temperature ($T_{S,SS}$) using the nine thermocouples located in the 5 foot test stack as specified in section 2.6.1 of this appendix. Secure a sample of the stack gases in the plane where $T_{S,SS}$ is measured or within 3.5 feet downstream of this plane. Determine the concentration by volume of carbon dioxide (X_{CO2S}) present in the dry stack gas. If the location of the gas sampling differs from the temperature measurement plane, there shall be no air leaks through the stack between these two locations.

On units employing draft hoods or direct vent systems, measure the room temperature (T_{RA}) as described in section 2.9 of this appendix and measure the steady-state flue gas temperature ($T_{F,SS}$), using the nine thermocouples located in the flue pipe as described in section 2.6.1 of this appendix. Secure a sample of the flue gas in the plane of temperature measurement and determine the concentration by volume of CO_2 (X_{CO2F}) present in dry flue gas. In addition, for units employing draft hoods, secure a sample of the stack gas in a horizontal plane in the five foot test stack located one foot from the test stack inlet; and determine the concentration by volume of CO_2 (X_{CO2S}) present in dry stack gas.

Determine the steady-state heat input rate (Qin) including pilot gas by multiplying the measured higher heating value of the test gas by the steady-state gas input rate corrected to standard conditions of 60 °F and 30 inches of mercury. Use measured values of gas temperature and pressure at the meter and the barometric pressure to correct the metered gas flow rate to standard conditions.

After the above test measurements have been completed on units employing draft diverters, secure a sample of the flue gases at the exit of the heat exchanger(s) and determine the concentration of CO_2 (X_{CO2F}) present. In obtaining this sample of flue gas, move the sampling probe around or use a sample probe with multiple sampling ports in order to assure that an average value is obtained for the CO_2 concentration. For units with multiple heat exchanger outlets, measure the CO_2 concentration in a sample from each outlet to obtain the average CO_2 concentration for the unit. A manifold (parallel connected sampling tubes) may be used to obtain this sample.

For heaters with single-stage thermostat control (wall mounted electric thermostats), determine the steady-state efficiency at the maximum fuel input rate as specified in section 2.4 of this appendix.

For gas fueled vented heaters equipped with either two stage control or step-modulating control, determine the steady-state efficiency at the maximum fuel input rate and at the reduced fuel input rate, as specified in section 2.4.1 of this appendix.

For manually controlled gas fueled vented heaters with various input rates, determine the steady-state efficiency at a fuel input rate that is within ±5 percent of 50 percent of the maximum rated fuel input rate as indicated on the nameplate of the unit or in the manufacturer's installation and operation manual shipped with the unit. If the heater is designed to use a control that precludes operation at other than maximum rated fuel input rate (single firing rate) determine the steady state efficiency at the maximum rated fuel input rate only.

3.1.2 *Oil fueled vented home heating equipment (including direct vent systems).* Set up and adjust the vented heater as specified in sections 2.1, 2.2, and 2.3.4 of this appendix. Begin the steady-state performance test by operating the burner and the

circulating air blower, on units so equipped, with the adjustments specified by sections 2.4.2 and 2.5 of this appendix, until steady-state conditions are attained as indicated by a temperature variation of not more than ±5 °F (2.8 C) in the flue gas temperature in three successive readings taken 15 minutes apart. The measurements described in this section are to coincide with the last of these 15 minutes readings.

For units equipped with power burners, do not allow smoke in the flue to exceed a No. 1 smoke during the steady-state performance test as measured by the procedure described in ASTM D2156 (incorporated by reference, see § 430.3). Maintain the average draft over the fire and in the breeching during the steady-state performance test at that recommended by the manufacturer ±0.005 inches of water gauge.

Measure the room temperature (T_{RA}) as described in section 2.9 of this appendix. Measure the steady-state flue gas temperature ($T_{F,SS}$) using nine thermocouples located in the flue pipe as described in section 2.6.2 of this appendix. From the plane where $T_{F,SS}$ was measured, collect a sample of the flue gas and determine the concentration by volume of CO_2 (X_{CO2F}) present in dry flue gas. Measure and record the steady-state heat input rate (Q_{in}).

For manually controlled oil fueled vented heaters, determine the steady-state efficiency at a fuel input rate that is within ±5 percent of 50 percent of the maximum fuel input rate; or, if the design of the heater is such that the fuel input rate cannot be set to ±5 percent of 50 percent of the maximum rated fuel input rate, determine the steady-state efficiency at the minimum rated fuel input rate as measured in section 3.1.2 of this appendix for manually controlled oil fueled vented heaters.

* * * * *

3.2 *Jacket loss measurement.* Conduct a jacket loss test for vented floor furnaces. Measure the jacket loss (L_j) in accordance with ASHRAE 103–2007 section 8.6 (incorporated by reference, see § 430.3), applying the provisions for furnaces and not the provisions for boilers.

3.3 *Measurement of the off-cycle losses for vented heaters equipped with thermal stack dampers.* Unless specified otherwise, the thermal stack damper should be at the draft diverter exit collar. Attach a five foot length of bare stack to the outlet of the damper. Install thermocouples as specified in section 2.6.1 of this appendix.

For vented heaters equipped with single-stage thermostats, measure the off-cycle losses at the maximum fuel input rate. For vented heaters equipped with two stage thermostats, measure the off-cycle losses at the maximum fuel input rate and at the reduced fuel input rate. For vented heaters equipped with step-modulating thermostats, measure the off-cycle losses at the reduced fuel input rate.

Allow the vented heater to heat up to a steady-state condition. Feed a tracer gas at a constant metered rate into the stack directly above and within one foot above the stack damper. Record tracer gas flow rate and temperature. Measure the tracer gas concentration in the stack at several locations in a horizontal plane through a cross-section of the stack at a point sufficiently above the stack damper to ensure that the tracer gas is well mixed in the stack.

Continuously measure the tracer gas concentration and temperature during a 10-minute cool-down period. Shut the burner off and immediately begin measuring tracer gas concentration in the stack, stack temperature, room temperature, and barometric pressure. Record these values as the midpoint of each one-minute interval between burner shut-down and ten minutes after burner shut-down. Meter response time and sampling delay time shall be considered in timing these measurements.

* * * * *

3.6.1 *Procedure for determining* (D_F and D_P) *of vented home heating equipment with no measurable airflow.* On units whose design is such that there is no measurable airflow through the combustion chamber and heat exchanger when the burner(s) is off (as determined by the test procedure in section 3.6.2 of this appendix), D_F and D_P may be set equal to 0.05.

3.6.2 *Test Method to Determine Whether the Use of the Default Draft Factors* (D_F and D_P) *of 0.05 is Allowed.* Manufacturers may use the following test protocol to determine whether air flows through the combustion chamber and heat exchanger when the burner(s) is off using a smoke stick device. The default draft factor of 0.05 (as allowed per section 3.6.1 of this appendix) may be used only for units determined pursuant to this protocol to have no air flow through the combustion chamber and heat exchanger.

3.6.2.1 *Test Conditions.* Wait for two minutes following the termination of the vented heater's on-cycle.

3.6.2.2 *Location of Test Apparatus*

3.6.2.2.1 After all air currents and drafts in the test chamber have been minimized, position the operable smoke stick/pencil as specified, based on the following equipment configuration: for horizontal combustion air intakes, approximately 4 inches from the vertical plane at the termination of the intake vent and 4 inches below the bottom edge of the combustion air intake, or for vertical combustion air intakes, approximately 4 inches horizontal from vent perimeter at the termination of the intake vent and 4 inches down (parallel to the vertical axis of the vent). In the instance where the boiler combustion air intake is closer than 4 inches to the floor, place the smoke device directly on the floor without impeding the flow of smoke.

3.6.2.2.2 Monitor the presence and the direction of the smoke flow.

3.6.2.3 *Duration of Test.* Continue monitoring the release of smoke for no less than 30 seconds.

3.6.2.4 *Test Results*

3.6.2.4.1 During visual assessment, determine whether there is any draw of smoke into the combustion air intake.

3.6.2.4.2 If absolutely no smoke is drawn into the combustion air intake, the vented heater meets the requirements to allow use of the default draft factor of 0.05 pursuant to Section 8.8.3 and/or 9.10 of ASHRAE 103–2007 (incorporated by reference, see § 430.3).

3.6.2.4.3 If there is any smoke drawn into the intake, use of default draft factor of 0.05 is prohibited. Proceed with the methods of testing as prescribed in section 3.6 of this appendix, or select the appropriate default draft factor from Table 1.

* * * * *

3.8 *Condensing vented heaters—measurement of condensate under steady-state and cyclic conditions.* Attach condensate drain lines to the vented heater as specified in the manufacturer's I&O manual provided with the unit. The test unit shall be level prior to all testing. A continuous downward slope of drain lines from the unit shall be maintained. The drain lines must facilitate uninterrupted flow of condensate during the test. The condensate collection container must be glass or polished stainless steel to facilitate removal of interior deposits. The collection container shall have a vent opening to the atmosphere, be dried prior to each use, and be at room ambient temperature. The humidity of the room air shall at no time exceed 80 percent relative humidity. For condensing units not designed for collecting and draining condensate, drain lines must be provided during testing that meet the criteria set forth in this section 3.8. Units employing manual controls and units not tested under the optional tracer gas procedures of sections 3.3 and 3.6 of this appendix shall only conduct the steady-state condensate collection test.

3.8.1 *Steady-state condensate collection test.* Begin steady-state condensate collection concurrently with or immediately after completion of the steady-state testing of section 3.1 of this appendix. The steady-state condensate collection period shall be 30 minutes. Condensate mass shall be measured immediately at the end of the collection period to minimize evaporation loss from the sample. Record fuel input during the 30-minute condensate collection steady-state test period. Measure and record fuel higher heating value (HHV), temperature, and pressures necessary for determining fuel energy input ($Q_{c,ss}$). The fuel quantity and HHV shall be measured with errors no greater than ±1 percent. Determine the mass of condensate for the steady-state test ($M_{c,ss}$) in pounds by subtracting the tare container weight from the total container and condensate weight measured at the end of the 30-minute condensate collection test period. The error associated with the mass measurement instruments shall not exceed ±0.5 percent of the quantity measured.

For units with step-modulating or two stage controls, the steady-state condensate collection test shall be conducted at both the maximum and reduced input rates.

3.8.2 *Cyclic condensate collection tests.* If existing controls do not allow for cyclical operation of the tested unit, control devices shall be installed to allow cyclical operation of the vented heater. Run three consecutive test cycles. For each cycle, operate the unit until flue gas temperatures at the end of each on-cycle, rounded to the nearest whole number, are within 5°F of each other for two consecutive cycles. On-cycle and off-cycle times are 4 minutes and 13 minutes respectively. Control of ON and OFF operation actions shall be within ±6 seconds of the scheduled time. For fan-type vented heaters, maintain circulating air adjustments

as specified in section 2.5 of this appendix. Begin condensate collection at one minute before the on-cycle period of the first test cycle. Remove the container one minute before the end of each off-cycle period. Measure condensate mass for each test-cycle. The error associated with the mass measurement instruments shall not exceed ±0.5 percent of the quantity measured.

Fuel input shall be recorded during the entire test period starting at the beginning of the on-time period of the first cycle to the beginning of the on-time period of the second cycle, from the beginning of the on-time period of the second cycle to the beginning of the on-time period of the third cycle, etc., for each of the test cycles. Fuel HHV, temperature, and pressure necessary for determining fuel energy input, Q_c, shall be recorded. Determine the mass of condensate for each cycle, M_c, in pounds. If at the end of three cycles, the sample standard deviation is within 20 percent of the mean value for three cycles, use total condensate collected in the three cycles as M_c; if not, continue collection for an additional three cycles and use the total condensate collected for the six cycles as M_c. Determine the fuel energy input, Q_c, during the three or six test cycles, expressed in Btu.

4.0 *Calculations*

4.1 *Annual fuel utilization efficiency for gas fueled or oil fueled vented home heating equipment equipped without manual controls or with multiple control modes as per 2.11 and without thermal stack dampers.* The following procedure determines the annual fuel utilization efficiency for gas fueled or oil fueled vented home heating equipment equipped without manual controls and without thermal stack dampers.

* * * * *

4.1.2 *Off-cycle flue gas draft factor.* Based on the system number, determine the off-cycle flue gas draft factor (D_F) from Table 1 of this appendix or the test method and calculations of sections 3.6 and 4.5 of this appendix.

4.1.3 *Off-cycle stack gas draft factor.* Based on the system number, determine the off-cycle stack gas draft factor (D_s) from Table 1 of this appendix or from the test method and calculations of sections 3.6 and 4.5 of this appendix,.

* * * * *

4.1.6 *Latent heat loss.* For non-condensing vented heaters, obtain the latent heat loss ($L_{L,A}$) from Table 2 of this appendix. For condensing vented heaters, calculate a modified latent heat loss ($L_{L,A}$*) as follows:

For steady-state conditions:

$L_{L,A}^* = L_{L,A} - L_{G,SS} + L_{C,SS}$

where:

$L_{L,A}$ = Latent heat loss, based on fuel type, from Table 2 of this appendix,

$L_{G,SS}$ = Steady-state latent heat gain due to condensation as determined in section 4.1.6.1 of this appendix, and

$L_{C,SS}$ = Steady-state heat loss due to hot condensate going down the drain as determined in 4.1.6.2 of this appendix.

For cyclic conditions: (only for vented heaters tested under the optional tracer gas procedures of section 3.3 or 3.6)

$L_{L,A}^* = L_{L,A} - L_G + L_C$

where:

$L_{L,A}$ = Latent heat loss, based on fuel type, from Table 2 of this appendix,

L_G = Latent heat gain due to condensation under cyclic conditions as determined in section 4.1.6.3 of this appendix, and

L_C = Heat loss due to hot condensate going down the drain under cyclic conditions as determined in section 4.1.6.4 of this appendix.

4.1.6.1 *Latent heat gain due to condensation under steady-state conditions.* Calculate the latent heat gain ($L_{G,SS}$) expressed as a percent and defined as:

$$L_{G,SS} = 100\frac{(1053.3)M_{C.SS}}{Q_{C,SS}}$$

where:

100 = conversion factor to express a decimal as a percent,

1053.3 = latent heat of vaporization of water, Btu per pound,

$M_{c,ss}$ = mass of condensate for the steady-state test as determined in section 3.8.1 of this appendix, pounds, and

$Q_{c,ss}$ = fuel energy input for steady-state test as determined in section 3.8.1 of this appendix, Btu.

4.1.6.2 *Heat loss due to hot condensate going down the drain under steady-state conditions.* Calculate the steady-state heat loss due to hot condensate going down the drain ($L_{C,SS}$) expressed as a percent and defined as:

$$L_{C,SS} = L_{G,SS}\frac{1.0\left(T_{F,SS} - 70\right) - 0.45\left(T_{F,SS} - 45\right)}{1053.3}$$

where:

$L_{G,SS}$ = Latent heat gain due to condensation under steady-state conditions as defined in section 4.1.6.1 of this appendix,

1.0 = specific heat of water, Btu/lb − °F,

$T_{F,SS}$ = Flue (or stack) gas temperature as defined in section 3.1 of this appendix, °F,

70 = assumed indoor temperature, °F,

0.45 = specific heat of water vapor, Btu/lb − °F, and

45 = average outdoor temperature for vented heaters, °F.

4.1.6.3 *Latent heat gain due to condensation under cyclic conditions.* (only for vented heaters tested under the optional tracer gas procedures of section 3.3 or 3.6 of this appendix) Calculate the latent heat gain (L_G) expressed as a percent and defined as:

$$L_G = 100\frac{(1053.3)M_C}{Q_C}$$

where:

100 = conversion factor to express a decimal as a percent,

1053.3 = latent heat of vaporization of water, Btu per pound,

M_c = mass of condensate for the cyclic test as determined in 3.8.2 of this appendix, pounds, and

Q_c = fuel energy input for cyclic test as determined in 3.8.2 of this appendix, Btu.

4.1.6.4 *Heat loss due to hot condensate going down the drain under cyclic conditions. (only for vented heaters tested under the optional tracer gas procedures of section 3.3 or 3.6 of this appendix)* Calculate the cyclic heat loss due to hot condensate going down the drain (L_C) expressed as a percent and defined as:

$$L_C = L_G\frac{1.0\left(T_{F,SS} - 70\right) - 0.45\left(T_{F,SS} - 45\right)}{1053.3}$$

where:

L_G = Latent heat gain due to condensation under cyclic conditions as defined in section 4.1.6.3 of this appendix,

1.0 = specific heat of water, Btu/lb − °F,

$T_{F,SS}$ = Flue (or stack) gas temperature as defined in section 3.1 of this appendix,

70 = assumed indoor temperature, °F,

0.45 = specific heat of water vapor, Btu/lb − °F, and

45 = average outdoor temperature for vented heaters, °F.

* * * * *

4.1.8 *Ratio of combustion and relief air mass flow rate to stoichiometric air mass flow rate.* For vented heaters equipped with either an integral draft diverter or a draft hood, determine the ratio of combustion and relief air mass flow rate to stoichiometric air mass flow rate ($R_{T,S}$), and defined as:

$R_{T,S} = A + [B/X_{CO2S}]$

where:

A = as determined from Table 2 of this appendix,

B = as determined from Table 2 of this appendix, and

X_{CO2S} = as defined in section 3.1 of this appendix.

* * * * *

4.1.10 *Steady-state efficiency.* For vented heaters equipped with single-stage thermostats, calculate the steady-state efficiency (excluding jacket loss), η_{SS}, expressed in percent and defined as:

$\eta_{SS} = 100 - L_{L,A} - L_{S,SS,A}$

where:

$L_{L,A}$ = latent heat loss, as defined in section 4.1.6 of this appendix (for condensing vented heaters $L_{L,A}$* for steady-state conditions), and

$L_{S,SS,A}$ = sensible heat loss at steady-state operation, as defined in section 4.1.9 of this appendix.

For vented heaters equipped with either two stage controls or with step-modulating controls, calculate the steady-state efficiency at the reduced fuel input rate, η_{SS-L}, expressed in percent and defined as:

$\eta_{SS-L} = 100 - L_{L,A} - L_{S,SS,A}$

where:

$L_{L,A}$ = latent heat loss, as defined in section 4.1.6 of this appendix (for condensing vented heaters $L_{L,A}$* for steady-state conditions at the reduced firing rate), and

$L_{S,SS,A}$ = sensible heat loss at steady-state operation, as defined in section 4.1.9 of this appendix, in which $L_{S,SS,A}$ is determined at the reduced fuel input rate.

For vented heaters equipped with two stage controls, calculate the steady-state efficiency at the maximum fuel input rate, η_{SS-H}, expressed in percent and defined as:

$\eta_{SS-H} = 100 - L_{L,A} - L_{S,SS,A}$

where:

$L_{L,A}$ = latent heat loss, as defined in section 4.1.6 of this appendix (for condensing vented heaters $L_{L,A}$* for steady-state conditions at the maximum fuel input rate), and

$L_{S,SS,A}$ = sensible heat loss at steady-state operation, as defined in section 4.1.9 of this appendix, in which $L_{S,SS,A}$ is measured at the maximum fuel input rate.

For vented heaters equipped with step-modulating thermostats, calculate the weighted-average steady-state efficiency in the modulating mode, η_{SS-MOD}, expressed in percent and defined as:

$$\eta_{SS-MOD} = [\eta_{SS-H} - \eta_{SS-L}]\left[\frac{T_C - T_{OA*}}{T_C - 15}\right] + \eta_{SS-L}$$

where:

η_{SS-H} = steady-state efficiency at the maximum fuel input rate, as defined in section 4.1.10 of this appendix,

η_{SS-L} = steady-state efficiency at the reduced fuel input rate, as defined in section 4.1.10 of this appendix,

T_{OA}* = average outdoor temperature for vented heaters with step-modulating thermostats operating in the modulating mode and is obtained from Table 3 or Figure 1 of this appendix, and

T_C = balance point temperature which represents a temperature used to apportion the annual heating load between the reduced input cycling mode and either the modulating mode or maximum input cycling mode and is obtained either from Table 3 of this appendix or calculated by the following equation:

$T_C = 65 - [(65 - 15)R]$

where:

65 = average outdoor temperature at which a vented heater starts operating,

15 = national average outdoor design temperature for vented heaters, and

R = ratio of reduced to maximum heat output rates, as defined in section 4.1.13 of this appendix.

* * * * *

4.1.15 *Fraction of heating load at maximum operating mode or noncycling mode.* For vented heaters equipped with either two stage thermostats or step-modulating thermostats, determine the fraction of heating load at the maximum operating mode or noncycling mode (X_2) expressed as a decimal and listed in Table 3 of this appendix or obtained from Figure 2 of this appendix.

4.1.16 *Weighted-average steady-state efficiency.* For vented heaters equipped with single-stage thermostats, the weighted-average steady-state efficiency (η_{SS-WT}) is equal to η_{SS}, as defined in section 4.1.10 of this appendix. For vented heaters equipped with two stage thermostats, η_{SS-WT} is defined as:

$\eta_{SS-WT} = X_1\eta_{SS-L} + X_2\eta_{SS-H}$

where:

X_1 = as defined in section 4.1.14 of this appendix

η_{SS-L} = as defined in section 4.1.10 of this appendix

X_2 = as defined in section 4.1.15 of this appendix

η_{SS-H} = as defined in section 4.1.10 of this appendix

For vented heaters equipped with step-modulating controls, η_{SS-WT} is defined as:

$\eta_{SS-WT} = X_1\eta_{SS-L} + X_2\eta_{SS-MOD}$

where:

X_1 = as defined in section 4.1.14 of this appendix

η_{SS-L} = as defined in section 4.1.10 of this appendix

X_2 = as defined in section 4.1.15 of this appendix

η_{SS-MOD} = as defined in section 4.1.10 of this appendix

* * * * *

4.2.1 *Average ratio of stack gas mass flow rate to flue gas mass flow rate at steady-state operation.* For vented heaters equipped with either direct vents or direct exhaust or that are outdoor units, the average ratio of stack gas mass flow rate to flue gas mass flow rate at steady-state operation (S/F) shall be equal to unity. (S/F=1) For all other types of vented heaters, calculate (S/F) defined as:

$$\frac{S}{F} = 1.3\frac{R_{T,S}}{R_{T,F}}$$

where:

$R_{T,S}$ = as defined in section 4.1.8 of this appendix with X_{CO2s} as measured in section 3.1. of this appendix

$R_{T,F}$ = as defined in section 4.1.7 of this appendix with X_{CO2F} as measured in section 3.1. of this appendix

4.2.2 *Multiplication factor for infiltration loss during burner on-cycle.* Calculate the multiplication factor for infiltration loss during burner on-cycle ($K_{I,ON}$) defined as:

$$K_{I,ON} = 100(0.24)(S/F)(0.7)\frac{1 + R_{T,F}(A/F)}{HHV_A}$$

where:

100 = converts a decimal fraction into a percent

0.24 = specific heat of air

A/F = stoichiometric air/fuel ratio, determined in accordance with Table 2 of this appendix

S/F = as defined in section 4.2.1 of this appendix

0.7 = infiltration parameter

$R_{T,F}$ = as defined in section 4.1.7 of this appendix

HHV_A = average higher heating value of the test fuel, determined in accordance with Table 2 of this appendix

* * * * *

4.2.4.1 For manually controlled heaters with various input rates the weighted average

steady-state efficiency (η_{SS-WT}), is determined as follows:

$\eta_{SS-WT} = 100 - L_{L,A} - L_{S,SS,A}$

where:

$L_{L,A}$ = latent heat loss, as defined in section 4.1.6 of this appendix (for condensing vented heaters, $L_{L,A}$* for steady-state conditions), and

$L_{S,SS,A}$ = steady-state efficiency at the reduced fuel input rate, as defined in section 4.1.9 of this appendix and where $L_{L,A}$ and $L_{S,SS,A}$ are determined:

(1) at 50 percent of the maximum fuel input rate as measured in either section 3.1.1 of this appendix for manually controlled gas vented heaters or section 3.1.2 of this appendix for manually controlled oil vented heaters, or

(2) at the minimum fuel input rate as measured in either section 3.1.1 of this appendix for manually controlled gas vented heaters or section 3.1.2 of this appendix for manually controlled oil vented heaters if the design of the heater is such that the ±5 percent of 50 percent of the maximum fuel input rate cannot be set, provided this minimum rate is no greater than ⅔ of the maximum input rate of the heater.

* * * * *

4.3 *Annual fuel utilization efficiency by the tracer gas method.* The annual fuel utilization efficiency shall be determined by the following tracer gas method for all vented heaters equipped with thermal stack dampers.

4.3.1 *On-cycle sensible heat loss.* For vented heaters equipped with single-stage thermostats, calculate the on-cycle sensible heat loss ($L_{S,ON}$) expressed as a percent and defined as:

$L_{S,ON} = L_{S,SS,A}$

where:

$L_{S,SS,A}$ = as defined in section 4.1.9 of this appendix

For vented heaters equipped with two stage thermostats, calculate $L_{S,ON}$ defined as:

$L_{S,ON} = X_1 L_{S,SS,A\text{-}red} + X_2 L_{S,SS,A\text{-}max}$

where:

X_1 = as defined in section 4.1.14 of this appendix

$L_{S,SS,A\text{-}red}$ = as defined as $L_{S,SS,A}$ in section 4.1.9 of this appendix at the reduced fuel input rate

X_2 = as defined in section 4.1.15 of this appendix

$L_{S,SS,A\text{-}max}$ = as defined as $L_{S,SS,A}$ in section 4.1.9 of this appendix at the maximum fuel input rate

For vented heaters with step-modulating controls, calculate $L_{S,ON}$ defined as:

$L_{S,ON} = X_1 L_{S,SS,A\text{-}red} + X_2 L_{S,SS,A\text{-}avg}$

where:

X_1 = as defined in section 4.1.14 of this appendix

$L_{LS,SS,A\text{-}red}$ = as defined in section 4.3.1 of this appendix

X_2 = as defined in section 4.1.15 of this appendix

$L_{S,SS,A\text{-}avg}$ = average sensible heat loss for step-modulating vented heaters operating in the modulating mode

$$L_{S,SS,A-avg} = \left[\left[L_{S,SS,A-max} - L_{S,SS,A-red}\right]\left[\frac{T_C - T_{OA*}}{T_C - 15}\right]\right] + L_{S,SS,A-red}$$

where:

$L_{S,SS,A\text{-}avg}$ = as defined in section 4.3.1 of this appendix

T_C = as defined in section 4.1.10 of this appendix

T_{OA*} = as defined in section 4.1.10 of this appendix

15 = as defined in section 4.1.10 of this appendix

4.3.2 *On-cycle infiltration heat loss.* For vented heaters equipped with single-stage thermostats, calculate the on-cycle infiltration heat loss ($L_{I,ON}$) expressed as a percent and defined as:

$L_{I,ON} = K_{I,ON}(70 - 45)$

where:

$K_{I,ON}$ = as defined in section 4.2.2 of this appendix

70 = as defined in section 4.2.3 of this appendix

45 = as defined in section 4.2.3 of this appendix

For vented heaters equipped with two stage thermostats, calculate $L_{I,ON}$ defined as:

$L_{I,ON} = X_1 K_{I,ON\text{-}Max}(70 - T_{OA*}) + X_2 K_{I,ON,red}(70 - T_{OA})$

where:

X_1 = as defined in section 4.1.14 of this appendix

$K_{I,ON\text{-}max}$ = as defined as $K_{I,ON}$ in section 4.2.2 of this appendix at the maximum heat input rate

70 = as defined in section 4.2.3 of this appendix

T_{OA*} = as defined in section 4.3.4 of this appendix

$K_{I,ON,red}$ = as defined as $K_{I,ON}$ in section 4.2.2 of this appendix at the minimum heat input rate

T_{OA} = as defined in section 4.3.4 of this appendix

X_2 = as defined in section 4.1.15 of this appendix

For vented heaters equipped with step-modulating thermostats, calculate $L_{I,ON}$ defined as:

$L_{I,ON} = X_1 K_{I,ON\text{-}avg}(70 - T_{OA*}) + X_2 K_{I,ON,red}(70 - T_{OA})$

where:

X_1 = as defined in section 4.1.14 of this appendix

$$K_{I,on,avg} = \frac{\left[K_{I,on,max} + K_{I,on,red}\right]}{2}$$

70 = as defined in section 4.2.3 of this appendix

T_{OA*} = as defined in section 4.3.4 of this appendix

X_2 = as defined in section 4.1.15 of this appendix

T_{OA} = as defined in section 4.3.4 of this appendix

4.3.3 *Off-cycle sensible heat loss.* For vented heaters equipped with single-stage thermostats, calculate the off-cycle sensible heat loss ($L_{S,OFF}$) at the maximum fuel input rate. For vented heaters equipped with step-modulating thermostats, calculate $L_{S,OFF}$ defined as:

$L_{S,OFF} = X_1 L_{S,OFF,red}$

where:

X_1 = as defined in section 4.1.14 of this appendix, and

$L_{S,OFF,red}$ = as defined as $L_{S,OFF}$ in section 4.3.3 of this appendix at the reduced fuel input rate.

For vented heaters equipped with two stage controls, calculate $L_{S,OFF}$ defined as:

$L_{S,OFF} = X_1 L_{S,OFF,red} + X_2 L_{S,OFF,Max}$

where:

X_1 = as defined in section 4.1.14 of this appendix,

$L_{S,OFF,red}$ = as defined as $L_{S,OFF}$ in section 4.3.3 of this appendix at the reduced fuel input rate,

X_2 = as defined in section 4.1.15 of this appendix, and

$L_{S,OFF,Max}$ = as defined as $L_{S,OFF}$ in section 4.3.3 of this appendix at the maximum fuel input rate.

Calculate the off-cycle sensible heat loss ($L_{S,OFF}$) expressed as a percent and defined as:

$$L_{s,OFF} = \frac{100\ (0.24)}{Q_{in} t_{on}} \sum m_{s,OFF}(T_{s,OFF} - T_{RA})$$

where:

100 = conversion factor for percent,

0.24 = specific heat of air in Btu per pound—°F,

Q_{in} = fuel input rate, as defined in section 3.1 of this appendix in Btu per minute (as appropriate for the firing rate),

t_{on} = average burner on-time per cycle and is 20 minutes,

$\Sigma\, m_{S,OFF}\,(T_{S,OFF} - T_{RA})$ = summation of the ten values (for single-stage or step-modulating models) or twenty values (for two tage models) of the quantity, $m_{S,OFF}\,(T_{S,OFF} - T_{RA})$, measured in accordance with section 3.3 of this appendix, and

$m_{S,OFF}$ = stack gas mass flow rate pounds per minute.

$$m_{s,OFF} = \frac{1.325 P_B V_T (C_{T*} - C_T)}{C_T (T_T + 460)}$$

$T_{S,OFF}$ = stack gas temperature measured in accordance with section 3.3 of this appendix,

T_{RA} = average room temperature measured in accordance with section 3.3 of this appendix,

P_B = barometric pressure in inches of mercury,

V_T = flow rate of the tracer gas through the stack in cubic feet per minute,

C_{T*} = concentration by volume of the active tracer gas in the mixture in percent and is 100 when the tracer gas is a single component gas,

C_T = concentration by volume of the active tracer gas in the diluted stack gas in percent,

T_T = temperature of the tracer gas entering the flow meter in degrees Fahrenheit, and

$(T_T + 460)$ = absolute temperature of the tracer gas entering the flow meter in degrees Rankine.

4.3.4 *Average outdoor temperature.* For vented heaters equipped with single-stage thermostats, the average outdoor temperature (T_{OA}) is 45 °F. For vented heaters equipped with either two stage thermostats or step-modulating thermostats, T_{OA} during the reduced operating mode is obtained from Table 3 or Figure 1 of this appendix. For vented heaters equipped with two stage thermostats, T_{OA*} during the maximum operating mode is obtained from Table 3 or Figure 1 of this appendix.

4.3.5 *Off-cycle infiltration heat loss.* For vented heaters equipped with single stage thermostats, calculate the off-cycle infiltration heat loss ($L_{I,OFF}$) at the maximum fuel input rate. For vented heaters equipped with step-modulating thermostats, calculate $L_{I,OFF}$ defined as:

$L_{I,OFF} = X_1 L_{I,OFF,red}$

where:

X_1 = as defined in section 4.1.14 of this appendix

$L_{I,OFF,red}$ = as defined in $L_{I,OFF}$ in section 4.3.5 of this appendix at the reduced fuel input rate

For vented heaters equipped with two stage thermostats, calculate $L_{I,OFF}$ defined as:

$L_{I,OFF} = X_1 L_{I,OFF,red} + X_2 L_{I,OFF,max}$

where:

X_1 = as defined in section 4.1.14 of this appendix

$L_{I,OFF,red}$ = as defined as $L_{I,OFF}$ in section 4.3.5 of this appendix at the reduced fuel input rate

X_2 = as defined in section 4.1.15 of this appendix

$L_{I,OFF,Max}$ = as defined as $L_{I,OFF}$ in section 4.3.5 of this appendix at the maximum fuel input rate

Calculate the off-cycle infiltration heat loss ($L_{I,OFF}$) expressed as a percent and defined as:

$$L_{I,OFF} = \frac{100(0.24)(1.3)(0.7)(70 - T_{OA})}{Q_{in} t_{on}} \sum m_{S,OFF}$$

where:

100 = conversion factor for percent

0.24 = specific heat of air in Btu per pound—°F

1.3 = dimensionless factor for converting laboratory measured stack flow to typical field conditions

0.7 = infiltration parameter

70 = assumed average indoor air temperature, °F

T_{OA} = average outdoor temperature as defined in section 4.3.4 of this appendix

Q_{in} = fuel input rate, as defined in section 3.1 of this appendix in Btu per minute (as appropriate for the firing rate)

t_{on} = average burner on-time per cycle and is 20 minutes

$\Sigma\, m_{S,OFF}$ = summation of the twenty values of the quantity, $m_{S,OFF}$, measured in accordance with section 3.3 of this appendix

$m_{S,OFF}$ = as defined in section 4.3.3 of this appendix

4.3.6 *Part-load fuel utilization efficiency.* Calculate the part-load fuel utilization efficiency (η_u) expressed as a percent and defined as:

$$\eta_u = 100 - L_{L,A} - C_j L_j - \left[\frac{t_{on}}{t_{on} + P_F\, t_{off}}\right] \times \left[L_{S,ON} + L_{S,OFF} + L_{I,ON} + L_{I,OFF}\right]$$

where:

C_j = 2.8, adjustment factor,

L_j = jacket loss as defined in section 4.1.5,

$L_{L,A}$ = Latent heat loss, as defined in section 4.1.6 of this appendix (for condensing vented heaters $L_{L,A}$* for cyclic conditions),

t_{on} = Average burner on time which is 20 minutes,

$L_{S,ON}$ = On-cycle sensible heat loss, as defined in section 4.3.1 of this appendix,

$L_{S,OFF}$ = Off-cycle sensible heat loss, as defined in section 4.3.3 of this appendix,

$L_{I,ON}$ = On-cycle infiltration heat loss, as defined in section 4.3.2 of this appendix,

$L_{I,OFF}$ = Off-cycle infiltration heat loss, as defined in section 4.3.5 of this appendix,

P_F = Pilot fraction, as defined in section 4.1.4 of this appendix, and

t_{OFF} = average burner off-time per cycle, which is 20 minutes.

* * * * *

4.5.1 *Optional procedure for determining D_P for vented home heating equipment.* Calculate the ratio (D_P) of the rate of flue gas mass through the vented heater during the off-period, $M_{F,OFF}(T_{F,SS})$, to the rate of flue gas mass flow during the on-period, $M_{F,SS}(T_{F,SS})$, and defined as:

$D_P = M_{F,OFF}(T_{F,SS})/M_{F,SS}(T_{F,SS})$

For vented heaters in which no draft is maintained during the steady-state or cool down tests, $M_{F,OFF}(T_{F,SS})$ is defined as:

$$M_{F,OFF}(T_{F,SS}) = M_{F,OFF}(T^*_{F,OFF}) \left[\frac{(T_{F,SS} - T_{RA})}{(T^*_{F,OFF} - T_{RA})}\right]^{.56} \left[\frac{(T^*_{F,OFF} + 460)}{(T_{F,SS} + 460)}\right]^{1.19}$$

For oil fueled vented heaters in which an imposed draft is maintained, as described in section 3.6 of this appendix, $M_{F,OFF}(T_{F,SS})$ is defined as:

$M_{F,OFF}(T_{F,SS}) = M_{F,OFF}(T^*_{F,OFF})$

where:

$T_{F,SS}$ = as defined in section 3.1.1 of this appendix,

$T^*_{F,OFF}$ = flue gas temperature during the off-period measured in accordance with section 3.6 of this appendix in degrees Fahrenheit, and

T_{RA} = as defined in section 2.9 of this appendix.

$$M_{F,OFF}(T^*_{F,OFF}) = \frac{1.325 P_B V_T (C_{T*} - C_T)}{C_T (T_T + 460)}$$

P_B = barometric pressure measured in accordance with section 3.6 of this appendix in inches of mercury,

V_T = flow rate of tracer gas through the vented heater measured in accordance with section 3.6 of this appendix in cubic feet per minute,

C_T = concentration by volume of tracer gas present in the flue gas sample measured in accordance with section 3.6 of this appendix in percent,

C_{T*} = concentration by volume of the active tracer gas in the mixture in percent and is 100 when the tracer gas is a single component gas,

T_T = the temperature of the tracer gas entering the flow meter measured in accordance with section 3.6 of this appendix in degrees Fahrenheit, and

$(T_T + 460)$ = absolute temperature of the tracer gas entering the flow meter in degrees Rankine.

$M_{F,SS}(T_{F,SS}) = Q_{in}[R_{T,F}(A/F)+1]/[60HHV_A]$

Q_{in} = as defined in section 3.1 of this appendix,

$R_{T,F}$ = as defined in section 4.1.7 of this appendix,

A/F = as defined in section 4.2.2 of this appendix, and

HHV_A = as defined in section 4.2.2 of this appendix.

4.5.2 *Optional procedure for determining off-cycle draft factor for flue gas flow for vented heaters.* For systems numbered 1 through 10, calculate the off-cycle draft factor for flue gas flow (D_F) defined as:

$D_F = D_P$

For systems numbered 11 or 12: $D_F = D_P D_O$

For systems complying with section 3.6.1 or 3.6.2, $D_F = 0.05$

Where:

D_P = as defined in section 4.5.1. of this appendix, and

D_O = as defined in section 4.4 of this appendix.

4.5.3 *Optional procedure for determining off-cycle draft factor for stack gas flow for vented heaters.* Calculate the off-cycle draft factor for stack gas flow (D_S) defined as:

For systems numbered 1 or 2: $D_S = 1.0$

For systems numbered 3 or 4: $D_S = (D_P+0.79)/1.4$

For systems numbered 5 or 6: $D_S = D_O$

For systems numbered 7 or 8 and if $D_O(S/F)<1$:$D_S = D_O D_P$

For systems numbered 7 or 8 and if $D_O(S/F)>1$:

$D_S = D_O D_P+[0.85 - D_O D_P] [D_O(S/F) - 1]/[S/F - 1]$

where:

D_P = as defined in section 4.5.1 or 3.6.1 of this appendix, as applicable

D_O = as defined in section 4.4 of this appendix

* * * * *

TABLE 1—OFF–CYCLE DRAFT FACTORS FOR FLUE GAS FLOW (D_F) AND FOR STACK GAS FLOW (D_S) FOR VENTED HOME HEATING EQUIPMENT EQUIPPED WITHOUT THERMAL STACK DAMPERS

System number	(D_F)	(D_S)	Burner type	Venting system type [1]
1	1.0	1.0	Atmospheric	Draft hood or diverter.
2	0.4	1.0	Power	Draft hood or diverter.
3	1.0	1.0	Atmospheric	Barometric draft regulator.
4	0.4	0.85	Power	Barometric draft regulator.
5	1.0	D_O	Atmospheric	Draft hood or diverter with damper.
6	0.4	D_O	Power	Draft hood or diverter with damper.
7	1.0	D_O	Atmospheric	Barometric draft regulator with damper.
8	0.4	$D_O D_P$	Power	Barometric draft regulator with damper.
9	1.0	0	Atmospheric	Direct vent.
10	0.4	0	Power	Direct vent.
11	D_O	0	Atmospheric	Direct vent with damper.
12	0.4 D_O	0	Power	Direct vent with damper.

[1] Venting systems listed with dampers means electromechanical dampers only.

* * * * *

■ 6. Revise Appendix P to subpart B of part 430 to read as follows:

Appendix P to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Pool Heaters

Note: On and after July 6, 2015, any representations made with respect to the energy use or efficiency of all pool heaters must be made in accordance with the results of testing pursuant to this appendix. On and after this date, if a manufacturer makes representations of standby mode and off mode energy consumption, then testing must also include the provisions of this appendix related to standby mode and off mode energy consumption. Until July 6, 2015, manufacturers must test gas-fired pool heaters in accordance with this appendix, or appendix P as it appeared at 10 CFR part 430, subpart B revised as of January 1, 2014. Any representations made with respect to the energy use or efficiency of such pool heaters must be in accordance with whichever version is selected. DOE notes that, because testing under this appendix P must be completed as of July 6, 2015, manufacturers may wish to begin using this test procedure immediately.

1. *Definitions.*

1.1 *Active mode* means the condition during the pool heating season in which the pool heater is connected to the power source, and the main burner, electric resistance element, or heat pump is activated to heat pool water.

1.2 *Coefficient of performance (COP)*, as applied to heat pump pool heaters, means the ratio of heat output in kW to the total power input in kW.

1.3 *Electric heat pump pool heater* means an appliance designed for heating nonpotable water and employing a compressor, water-cooled condenser, and outdoor air coil.

1.4 *Electric resistance pool heater* means an appliance designed for heating nonpotable water and employing electric resistance heating elements.

1.5 *Fossil fuel-fired pool heater* means an appliance designed for heating nonpotable water and employing natural gas or oil burners.

1.6 *Hybrid pool heater* means an appliance designed for heating nonpotable water and employing both a heat pump (compressor, water-cooled condenser, and outdoor air coil) and a fossil fueled burner as heating sources.

1.7 *Off mode* means the condition during the pool non-heating season in which the pool heater is connected to the power source,

and neither the main burner, nor the electric resistance elements, nor the heat pump is activated, and the seasonal off switch, if present, is in the ''off'' position.

1.8 *Seasonal off switch* means a switch that results in different energy consumption in off mode as compared to standby mode.

1.9 *Standby mode* means the condition during the pool heating season in which the pool heater is connected to the power source, and neither the main burner, nor the electric resistance elements, nor the heat pump is activated.

2. *Test method.*

2.1 *Active mode.*

2.1.1 *Fossil fuel-fired pool heaters.* The test method for testing fossil fuel-fired pool heaters in active mode is as specified in section 2.10 of ANSI Z21.56 (incorporated by reference, see § 430.3), with the following additional clarifications.

1. Burner input rate is adjusted as specified in section 2.3.3 of ANSI Z21.56,

2. Equilibrium is defined as in section 9.1.3 of ASHRAE 146 (incorporated by reference; see § 430.3)

3. Units are only to be tested using a recirculating loop and a pump if: the use of the recirculating loop and pump are listed as required; a minimum flow rate is specified in the installation or operation manual provided with the unit; the pump is packaged with the unit by the manufacturer; or such use is required for testing.

4. A water temperature rise of less than 40° F is allowed only as specified in the installation or operation manual(s) provided with the unit.

2.1.2 *Electric resistance pool heaters.* The test method for testing electric resistance pool heaters in active mode is as specified in ASHRAE 146 (incorporated by reference; see § 430.3).

2.1.3 *Electric heat pump pool heaters.* The test method for testing electric heat pump pool heaters in active mode is as specified in AHRI 1160 (incorporated by reference; see § 430.3), which references ASHRAE 146 (incorporated by reference; see § 430.3).

2.1.4 *Hybrid pool heaters.* [Reserved]

2.2 *Standby mode.* The test method for testing the energy consumption of pool heaters in standby mode is as described in sections 3 through 5 of this appendix.

2.3 *Off mode.*

2.3.1 *Pool heaters with a seasonal off switch.* For pool heaters with a seasonal off switch, no off mode test is required.

2.3.2 *Pool heaters without a seasonal off switch.* For pool heaters without a seasonal off switch, the test method for testing the energy consumption of the pool heater is as described in sections 3 through 5 of this appendix.

3. *Test conditions.*

3.1 *Active mode.*

3.1.1 *Fossil fuel-fired pool heaters.* Establish the test conditions specified in section 2.10 of ANSI Z21.56 (incorporated by reference; see § 430.3).

3.1.2 *Electric resistance pool heaters.* Establish the test conditions specified in section 9.1.4 of ASHRAE 146 (incorporated by reference; see § 430.3).

3.1.3 *Electric heat pump pool heaters.* Establish the test conditions specified in section 5 of AHRI 1160. The air temperature surrounding the unit shall be at the ''High Air Temperature—Mid Humidity (63% RH)'' level specified in section 6 of AHRI 1160 (incorporated by reference, see § 430.3) (80.6 °F [27.0 °C] Dry-Bulb, 71.2 °F [21.8 °C]).

3.1.4 *Hybrid pool heaters.* [Reserved]

3.2 *Standby mode and off mode.* After completing the active mode tests described in sections 3.1 and 4.1 of this appendix, reduce the thermostat setting to a low enough temperature to put the pool heater into standby mode. Reapply the energy sources and operate the pool heater in standby mode for 60 minutes.

4. *Measurements*

4.1 *Active mode*

4.1.1 *Fossil fuel-fired pool heaters.* Measure the quantities delineated in section 2.10 of ANSI Z21.56 (incorporated by reference; see § 430.3). The measurement of energy consumption for oil-fired pool heaters in Btu is to be carried out in appropriate units (*e.g.,* gallons).

4.1.2 *Electric resistance pool heaters.* Measure the quantities delineated in section 9.1.4 of ASHRAE 146 (incorporated by reference; see § 430.3) during and at the end of the 30-minute period when water is flowing through the pool heater.

4.1.3 *Electric heat pump pool heaters.* Measure the quantities delineated in section 9.1.1 and Table 2 of ASHRAE 146 (incorporated by reference; see § 430.3). Record the elapsed time, t_{HP}, from the start of electric power metering to the end, in minutes.

4.1.4 *Hybrid pool heaters.* [Reserved]

4.2 *Standby mode.* For all pool heaters, record the average electric power consumption during the standby mode test, $P_{W,SB,}$ in W, in accordance with section 5 of IEC 62301 (incorporated by reference; see § 430.3). For fossil fuel-fired pool heaters, record the fossil fuel energy consumption during the standby test, Q_p, in Btu. (Milli-volt electrical consumption need not be considered in units so equipped.) Ambient temperature and voltage specifications in section 4.1 of this appendix shall apply to this standby mode testing. Round the recorded standby power ($P_{W,SB}$) to the second decimal place, and for loads greater than or equal to 10 W, record at least three significant figures.

4.3 *Off mode.*

4.3.1 *Pool heaters with a seasonal off switch.* For pool heaters with a seasonal off switch, the average electric power consumption during the off mode, $P_{W,OFF}$ = 0, and the fossil fuel energy consumed during the off mode, Q_{off} = 0.

4.3.2 *Pool heaters without a seasonal off switch.* For all pool heaters without a seasonal off switch, record the average electric power consumption during the standby/off mode test, $P_{W,OFF} = P_{W,SB,}$ in W, in accordance with section 5 of IEC 62301 (incorporated by reference; see § 430.3). For fossil fuel-fired pool heaters without a seasonal off switch, record the fossil fuel energy consumption during the off mode test, Q_{off} (= Q_p), in Btu. (Milli-volt electrical consumption need not be considered in units so equipped.) Ambient temperature and voltage specifications in section 4.1 of this appendix shall apply to this off mode testing. Round the recorded off mode power ($P_{W,OFF}$) to the second decimal place, and for loads greater than or equal to 10 W, record at least three significant figures.

5. *Calculations.*

5.1 *Thermal efficiency.*

5.1.1 *Fossil fuel-fired pool heaters.* Calculate the thermal efficiency, E_t (expressed as a percent), as specified in section 2.10 of ANSI Z21.56 (incorporated by reference; see § 430.3). The expression of fuel consumption for oil-fired pool heaters shall be in Btu.

5.1.2 *Electric resistance pool heaters.* Calculate the thermal efficiency, E_t (expressed as a percent), as specified in section 11.1 of ASHRAE 146 (incorporated by reference; see § 430.3).

5.1.3 *Electric heat pump pool heaters.* Calculate the COP according to section 11.1 of ASHRAE 146. Calculate the thermal efficiency, E_t (expressed as a percent): E_t = COP.

5.1.4 *Hybrid pool heaters.* [Reserved]

5.2 *Average annual fossil fuel energy for pool heaters.* For electric resistance and electric heat pump pool heaters, the average annual fuel energy for pool heaters, E_F =0.

For fossil fuel-fired pool heaters, the average annual fuel energy for pool heaters, E_F, is defined as:

$$E_F = BOH\ Q_{IN} + (POH - BOH)Q_{PR} + (8760 - POH)\ Q_{off,R}$$

Where:

BOH = average number of burner operating hours = 104 h,

POH = average number of pool operating hours = 4,464 h,

Q_{IN} = rated fuel energy input as defined according to section 2.10.1 or section 2.10.2 of ANSI, Z21.56 (incorporated by reference; see § 430.3), as appropriate. (For electric resistance and electric heat pump pool heaters, Q_{IN} = 0.),

Q_{PR} = average energy consumption rate of continuously operating pilot light, if employed, = (Q_P/1 h),

Q_P = energy consumption of continuously operating pilot light, if employed, as measured in section 4.2 of this appendix, in Btu,

8760 = number of hours in one year,

$Q_{off,R}$ = average off mode fossil fuel energy consumption rate = Q_{off}/(1 h), and

Q_{off} = off mode energy consumption as defined in section 4.3 of this appendix.

5.3 *Average annual electrical energy consumption for pool heaters.* The average annual electrical energy consumption for pool heaters, E_{AE}, is expressed in Btu and defined as:

(1) $E_{AE} = E_{AE,active} + E_{AE,standby,off}$

(2) $E_{AE,active}$ = BOH * PE

(3) $E_{AE,standby,off}$ = (POH − BOH) $P_{W,SB}$(Btu/h) + (8760 − POH) $P_{W,OFF}$(Btu/h)

where:

$E_{AE,active}$ = electrical consumption in the active mode,

$E_{AE,standby,off}$ = auxiliary electrical consumption in the standby mode and off mode,

PE = $2E_c$, for fossil fuel-fired heaters tested according to section 2.10.1 of ANSI Z21.56 (incorporated by reference; see

§ 430.3) and for electric resistance pool heaters, in Btu/h,

= 3.412 PE_{rated}, for fossil fuel-fired heaters tested according to section 2.10.2 of ANSI Z21.56, in Btu/h,

= $E_{c,HP}$ * ($60/t_{HP}$), for electric heat pump pool heaters, in Btu/h.

E_c = electrical consumption in Btu per 30 min. This includes the electrical consumption (converted to Btus) of the pool heater and, if present, a recirculating pump during the 30-minute thermal efficiency test. The 30-minute thermal efficiency test is defined in section 2.10.1 of ANSI Z21.56 for fossil fuel-fired pool heaters and section 9.1.4 of ASHRAE 146 (incorporated by reference; see § 430.3) for electric resistance pool heaters.

2 = conversion factor to convert unit from per 30 min. to per h.

PE_{rated} = nameplate rating of auxiliary electrical equipment of heater, in Watts

$E_{c,HP}$ = electrical consumption of the electric heat pump pool heater (converted to equivalent unit of Btu), including the electrical energy to the recirculating pump if used, during the thermal efficiency test, as defined in section 9.1 of ASHRAE 146, in Btu.

t_{HP} = elapsed time of data recording during the thermal efficiency test on electric heat pump pool heater, as defined in section 9.1 of ASHRAE 146, in minutes.

BOH = as defined in section 5.2 of this appendix,

POH = as defined in section 5.2 of this appendix,

$P_{W,SB}$ (Btu/h) = electrical energy consumption rate during standby mode expressed in Btu/h = 3.412 $P_{W,SB}$, Btu/h,

$P_{W,SB}$ = as defined in section 4.2 of this appendix,

$P_{W,OFF}$ (Btu/h) = electrical energy consumption rate during off mode expressed in Btu/h = 3.412 $P_{W,OFF}$, Btu/h, and

$P_{W,OFF}$ = as defined in section 4.3 of this appendix.

5.4 *Integrated thermal efficiency.*

5.4.1 Calculate the seasonal useful output of the pool heater as:

$E_{OUT} = BOH[(E_t/100)(Q_{IN} + PE)]$

where:

BOH = as defined in section 5.2 of this appendix,

E_t = thermal efficiency as defined in section 5.1 of this appendix,

Q_{IN} = as defined in section 5.2 of this appendix,

PE = as defined in section 5.3 of this appendix, and

100 = conversion factor, from percent to fraction.

5.4.2 Calculate the annual input to the pool heater as:

$E_{IN} = E_F + E_{AE}$

where:

E_F = as defined in section 5.2 of this appendix, and

E_{AE} = as defined in section 5.3 of this appendix.

5.4.3 Calculate the pool heater integrated thermal efficiency (TE_I) (in percent).

$TE_I = 100(E_{OUT}/E_{IN})$

where:

E_{OUT} = as defined in section 5.4.1 of this appendix,

E_{IN} = as defined in section 5.4.2 of this appendix, and

100 = conversion factor, from fraction to percent.

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Part VI

The President

Executive Order 13687—Imposing Additional Sanctions With Respect To North Korea

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Presidential Documents

Title 3—

The President

Executive Order 13687 of January 2, 2015

Imposing Additional Sanctions With Respect To North Korea

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code; and in view of United Nations Security Council Resolution (UNSCR) 1718 of October 14, 2006, UNSCR 1874 of June 12, 2009, UNSCR 2087 of January 22, 2013, and UNSCR 2094 of March 7, 2013,

I, BARACK OBAMA, President of the United States of America, find that the provocative, destabilizing, and repressive actions and policies of the Government of North Korea, including its destructive, coercive cyber-related actions during November and December 2014, actions in violation of UNSCRs 1718, 1874, 2087, and 2094, and commission of serious human rights abuses, constitute a continuing threat to the national security, foreign policy, and economy of the United States, and hereby expand the scope of the national emergency declared in Executive Order 13466 of June 26, 2008, expanded in scope in Executive Order 13551 of August 30, 2010, and relied upon for additional steps in Executive Order 13570 of April 18, 2011. To address this threat and to take further steps with respect to this national emergency, I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to be an agency, instrumentality, or controlled entity of the Government of North Korea or the Workers' Party of Korea;

(ii) to be an official of the Government of North Korea;

(iii) to be an official of the Workers' Party of Korea;

(iv) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Government of North Korea or any person whose property and interests in property are blocked pursuant to this order; or

(v) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, the Government of North Korea or any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in this order apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order

13466, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 3. The prohibitions in this order include but are not limited to:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 4. I hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in section 1(a) of this order would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants or nonimmigrants, of such persons. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 5. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 6. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term ''Government of North Korea'' means the Government of the Democratic People's Republic of Korea and its agencies, instrumentalities, and controlled entities.

Sec. 7. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13466, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 9. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
January 2, 2015.

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