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FEDERAL REGISTER

Vol. 80 Thursday,
No. 88 May 7, 2015

Pages 26181–26436

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 235

[FNS–2011–0030]

RIN 0584–AE19

Professional Standards for State and Local School Nutrition Programs Personnel as Required by the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published in the **Federal Register** on March 2, 2015, ''Professional Standards for State and Local School Nutrition Programs Personnel as Required by the Healthy, Hunger-Free Kids Act of 2010.''

DATES: *Effective date:* This document is effective July 1, 2015. Compliance with the final rule must begin July 1, 2015, except as noted in specific regulatory provisions.

FOR FURTHER INFORMATION CONTACT: Julie Brewer, School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, at (703) 305–2590.

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service published a final rule in the **Federal Register**, 80 FR 11077, on March 2, 2015, to establish professional standards for State and local school nutrition program personnel. The final rule omitted part of a criterion from the hiring standards established in 7 CFR 210.30(b) for local educational agencies with 2,499 or fewer enrolled students. This document corrects the oversight by providing the missing regulatory text for 7 CFR 210.30(b)(1)(i)(B) and the summary chart in 7 CFR 210.30(b)(2). This document also makes a technical correction in 7 CFR 210.30(b)(3) to ensure readers clearly understand the annual training standards for school nutrition program directors. All other information in the final rule remains unchanged.

Corrections

■ 1. In § 210.30:
■ a. On page 11092, in the second column, revise paragraph (b)(1)(i)(B);
■ b. On page 11093, in the third column, revise the chart in paragraph (b)(2); and
■ c. On page 11094, in the first column, amend the fourth sentence in paragraph (b)(3) by removing the word ''cover'' and adding in its place the words ''include, but is not limited to,''.

The revisions read as follows:

§ 210.30 School nutrition program professional standards.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* either a State-recognized certificate for school nutrition directors or at least one year of relevant school nutrition program experience;

* * * * *

(2) * * *

SUMMARY OF SCHOOL NUTRITION PROGRAM DIRECTOR PROFESSIONAL STANDARDS BY LOCAL EDUCATIONAL AGENCY SIZE

Minimum requirements for directors	Student enrollment 2,499 or less	Student enrollment 2,500–9,999	Student enrollment 10,000 or more
Minimum Education Standards (required) *(new directors only).*	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field. OR Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* either a State-recognized certificate for school nutrition directors or at least 1 year of relevant school nutrition program experience; OR	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; OR Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate for school nutrition directors; OR	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; OR Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate for school nutrition directors; OR

SUMMARY OF SCHOOL NUTRITION PROGRAM DIRECTOR PROFESSIONAL STANDARDS BY LOCAL EDUCATIONAL AGENCY SIZE—Continued

Minimum requirements for directors	Student enrollment 2,499 or less	Student enrollment 2,500–9,999	Student enrollment 10,000 or more
	Associate's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; *and* at least 1 year of relevant school nutrition program experience; OR High school diploma (or GED) *and* 3 years of relevant school nutrition program experience.	Bachelor's degree in any academic major *and* at least 2 years of relevant school nutrition program experience. OR Associate's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; *and* at least 2 years of relevant school nutrition program experience.	Bachelor's degree in any major *and* at least 5 years of experience in management of school nutrition programs.
Minimum Education Standards (preferred) *(new directors only)*.	Directors hired without an associate's degree are strongly encouraged to work toward attaining associate's degree upon hiring.	Directors hired without a bachelor's degree strongly encouraged to work toward attaining bachelor's degree upon hiring.	Master's degree, or willingness to work toward master's degree, preferred. At least 1 year of management experience, preferably in school nutrition, strongly recommended. At least 3 credit hours at the university level in food service management plus at least 3 credit hours in nutritional sciences at time of hiring strongly preferred.
Minimum Prior Training Standards (required) *(new directors only)*.	At least 8 hours of food safety training is required either not more than 5 years prior to their starting date or completed within 30 calendar days of employee's starting date.		

* * * * *

Dated: April 30, 2015.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2015–10621 Filed 5–6–15; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0351]

Drawbridge Operation Regulation; Lewis and Clark River, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Oregon State (Lewis and Clark River) Highway Bridge across the Lewis and Clark River, mile 1.0, at Astoria, OR. The deviation is necessary to accommodate bridge maintenance activities on the bridge. This deviation allows the bridge to remain in the closed-to-navigation position and need not open to maritime traffic.

DATES: This deviation is effective from 7 a.m. on May 11, 2015 to 5 p.m. on August 30, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0351] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Steven M. Fischer, Thirteenth Coast Guard District Bridge Program Administrator, telephone 206–220–7282, email *d13-pf-d13bridgesuscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Oregon Department of Transportation (ODOT) has requested that the Lewis and Clark River Bridge, mile 1.0, remain in the closed-to-navigation position, and need not open to vessel traffic Tuesday through Saturday. The bascule span will be available to open on Mondays from 7 a.m. to 4 p.m. when given 3 hours advanced notice. The deviation is necessary to facilitate bridge maintenance activities to include repairing and preserving the bascule drawbridge structural steel. The Lewis and Clark Bridge provides a vertical clearance of 17.3 feet above mean high water when in the closed-to-navigation position. The normal operating schedule of the Oregon State highway bridge can be found in 33 CFR 117.899(c). This deviation period is from 7 a.m. on May 11, 2015 to 5 p.m. on August 30, 2015. The deviation allows the bascule span of the Lewis and Clark Bridge to remain in the closed-to-navigation position

Tuesdays through Saturdays throughout the deviation period. In addition, the span will be in the closed position on Mondays, but available to open from 7 a.m. to 4 p.m. when given 3 hours advanced notice. The bridge will operate as normal on Sundays. Waterway usage on the Lewis and Clark River is primarily small recreational boaters and fishing vessels transiting to and from Fred Wahl Marine Construction Inc.

The bascule span of the bridge will have a containment system installed which will reduce the vertical clearance by 5 feet from 17.3 feet above mean high water to 12.3 feet above mean high water. Vessels able to pass through the bridge in the closed positions may do so at anytime. The bridge will be able to open for any emergency if a three-hour notice is given from 7 a.m. to 4 p.m. Monday through Saturday; on Sundays the bridge will be able to open in accordance with 33 CFR 117.899(c), and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: May 1, 2015.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2015–10635 Filed 5–6–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0334]

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway (NJICW), Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the US 40–322 (Albany Avenue) Bridge across Inside Thorofare, NJICW mile 70.0, at Atlantic City, NJ. The deviation is necessary to facilitate the American Cancer Society Bike-a-thon. The deviation allows the bridge to remain in the closed position to vessels requesting a bridge opening to ensure the biker's safety and that there are no delays.

DATES: This deviation is effective from 8 a.m. to 4 p.m. on June 14, 2015.

ADDRESSES: The docket for this deviation [USCG–2015–0334] is available at *http://www.regulations.gov.* Type the docket number in the ''Search'' box and click ''Search.'' Click on the Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140, on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Kashanda Booker, Bridge Management Specialist, Fifth Coast Guard District, telephone (757) 398–6227, email *Kashanda.l.booker@uscg.mil.* If you have questions on reviewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The American Cancer Society on behalf of the New Jersey Department of Transportation has requested a temporary deviation from the current operating regulation of the US 40–322 (Albany Avenue) Bridge across Inside Thorofare, NJICW mile 70.0, at Atlantic City, NJ. The closure has been requested to ensure the safety of the bikers and spectators that will be participating in the American Cancer Society Bike-a-thon. Under this temporary deviation, the US 40–322 (Albany Avenue) Bridge will remain in the closed position from 8 a.m. to 4 p.m. on June 14, 2015.

The vertical clearance of this bascule bridge is 10 feet above mean high water in the closed position and unlimited in the open position. The current operating regulation is outlined at 33 CFR 117.733(f), which requires that the bridge shall open on signal, except that from 9 a.m. to 4 p.m. the draw need only open on the hour and half hour.

The majority of the vessels that transit the bridge this time of year are recreational boats. Vessels able to pass through the bridge in the closed positions may do so at any time. The bridge will be able to open for emergencies. The Atlantic Ocean is an alternate route for vessels with mast heights greater than 10 feet. The Coast Guard will inform the users of the waterway through our Local and Broadcast Notice to Mariners' of the closure periods so that vessels can plan their transits to minimize any impact caused by the temporary deviation. At all other times during the affected period, the bridge will operate as outlined at 33 CFR 117.733(f).

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

Dated: April 28, 2015.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2015–11017 Filed 5–6–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2015–0071; FRL–9926–98–OAR]

RIN 2060–AS57

Prevention of Significant Deterioration Permitting for Greenhouse Gases: Providing Option for Rescission of EPA-Issued Tailoring Rule Step 2 Prevention of Significant Deterioration Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to amend the federal Prevention of Significant Deterioration (PSD) program regulations to allow for rescission of certain PSD permits issued by the EPA and delegated reviewing authorities under Step 2 of the Prevention of Significant Deterioration and Title V Greenhouse Gas (GHG) Tailoring Rule (Tailoring Rule). We are taking this action in order to provide a mechanism for the EPA and delegated reviewing authorities to rescind PSD permits that are no longer required in light of the United States (U.S.) Supreme Court's decision in *Utility Air Regulatory Group (UARG)* v. *EPA* and the amended appeals court judgment in *Coalition for Responsible Regulation (Coalition)* v. *EPA,* vacating that rule. These decisions determined that Step 2 of the Tailoring Rule was not required under the Clean Air Act (CAA or Act)

and vacated the EPA regulations implementing Step 2. When effective, this action will authorize the EPA and delegated reviewing authorities to rescind Step 2 PSD permits in response to requests from applicants who can demonstrate that they are eligible for permit rescission.

DATES: This rule is effective on July 6, 2015 without further notice, unless the EPA receives adverse comment by June 8, 2015. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. If anyone contacts the EPA requesting to speak at a public hearing by May 18, 2015, the EPA will hold a public hearing on May 22, 2015 in Research Triangle Park, North Carolina.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0071, by one of the following methods:

- *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov*. Include docket ID No. EPA–HQ–OAR–2015–0071 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Mail Code 28221T, Attention Docket ID No. EPA–HQ–OAR–2015–0071, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, Room 3334, EPA William Jefferson Clinton West Building, 1301 Constitution Avenue NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2015–0071. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2015–0071. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any CD you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA William Jefferson Clinton West Building, 1301 Constitution Avenue NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Questions concerning this direct final should be addressed to Mrs. Jessica Montañez, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division, (C504–03), Research Triangle Park, NC 27711, telephone number (919) 541–3407, email at *montanez.jessica@epa.gov*. To request a public hearing or questions concerning a public hearing, please contact Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division, (C504–01), Research Triangle Park, NC 27711, telephone number (919) 541–0641, email at *long.pam@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in this **SUPPLEMENTARY INFORMATION** section of this preamble is organized as follows:

I. Why is the EPA using a direct final rule?
II. Does this action apply to me?
III. Background
A. What is the PSD program?
B. What is the Tailoring Rule?
C. What is the *UARG* v. *EPA* decision and why does the EPA need to revise the permit rescission provisions under 40 CFR 52.21(w) in light of the decision?
1. What is the *UARG* v. *EPA* U.S. Supreme Court decision?
2. Why are we revising the permit rescission provisions under 40 CFR 52.21(w) in light of the Supreme Court decision in *UARG* v. *EPA* and the amended appeals court judgment in *Coalition*?
IV. Direct Final Action
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A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
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H. Executve Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution and Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)
L. Determination Under Section 307(d)
VII. Judicial Review

I. Why is the EPA using a direct final rule?

The EPA is publishing this rule without a prior proposed rule because we view this as a non-controversial amendment and anticipate no adverse comment. This action narrowly amends the permit rescission provisions in the federal PSD regulations found in 40 CFR 52.21(w) to allow for the rescission of EPA-issued PSD permits [1] that were

[1] For purposes of this rule, the phrases ''EPA-issued PSD permits that were issued under Step 2 of the Tailoring Rule'' and ''EPA-issued Step 2 PSD permits'' are intended to have the same meaning. The use of the term ''EPA-issued'' in both phrases includes PSD permits issued by the EPA as well as permits issued by state or local reviewing

issued under Step 2 of the Tailoring Rule [2] permitting regulations.

The U.S. Supreme Court determined the permitting requirements under Step 2 of the Tailoring Rule to be invalid in *UARG* v. *EPA,* 134 S. Ct. 2427 (2014). The Supreme Court affirmed in part and reversed in part an earlier decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Coalition for Responsible Regulation* v. *EPA,* 684 F.3d 102 (D.C. Cir. 2012). In further proceedings upon consideration of the Supreme Court decision, the D.C. Circuit amended its judgment in the *Coalition* case. The Amended Judgment vacated particular provisions of the EPA's regulations implementing Step 2 of the Tailoring Rule.

This direct final action does not itself rescind any permits; it only provides the regulatory mechanism through which the EPA or state or local program administering the PSD program through a delegation of federal authority from the EPA could rescind, upon request of a source, an EPA-issued Step 2 PSD permit consistent with the U.S. Supreme Court decision and the amended judgment of the D.C. Circuit vacating the regulations. However, in the ''Proposed Rules'' section of this **Federal Register** publication, we also are publishing a separate document that will serve as the proposed rule to amend the same federal PSD regulations at 40 CFR 52.21(w) if adverse comments are received on this direct final rule. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. In that case, we would address all public comments in any subsequent final rule based on the proposed rule. We will not institute a second comment period on the proposed rule, and any parties interested in commenting must do so at this time. For further information about commenting on the proposed rule, see the **ADDRESSES** section in that separate document in this **Federal Register** publication.

II. Does this action apply to me?

The entities potentially affected by this rule include new and modified stationary sources that obtained an EPA-issued Step 2 PSD permit under the federal PSD regulations found at 40 CFR 52.21 solely because the source or a modification of the source was expected to emit or increase GHG emissions over the applicable thresholds. This includes (1) sources classified as major for PSD purposes solely on the basis of their potential GHG emissions; and (2) sources emitting major amounts of other pollutants that experienced a modification resulting in an increase of only GHG emissions above the applicable levels in the EPA regulations. Entities affected by this rule may also include state or local reviewing authorities that have been delegated federal authority to implement the federal PSD regulations under 40 CFR 52.21(u) and that have issued Step 2 PSD permits to sources within their jurisdiction. This rule does not address the requirements for approval of a PSD program into a state implementation plan (40 CFR 51.166) or the rescission of PSD permits issued by states and local programs with such approved programs. Stationary sources with questions on the PSD permitting obligations arising from Step 2 PSD permits issued by state or local reviewing authorities under the permitting programs approved into state implementation plans should review the governing statutory provisions and provisions in the applicable approved state or local permitting program to determine how to address any Step 2 PSD permitting issues and consult with the EPA as necessary.

III. Background

A. What is the PSD program?

Part C of title I of the Act contains the requirements for a component of the major New Source Review (NSR) program known as the PSD program. This program sets forth procedures for the construction review and permitting of new and modified stationary sources of air pollution locating in areas meeting the National Ambient Air Quality Standards (NAAQS) (''attainment'' areas) and areas for which there is insufficient information to classify an area as either attainment or nonattainment (''unclassifiable'' areas).

The applicability of PSD to a particular source must be determined in advance of construction of a new source or major modification of an existing source and is pollutant-specific. Once a source is determined to be subject to PSD, among other requirements, the source must demonstrate that it will not cause or contribute to a violation of any NAAQS or PSD increment,[3] and that it will use the Best Available Control Technology (BACT).[4]

The reviewing authority must provide notice of its preliminary decision on a source's application for a PSD permit, and must provide an opportunity for comment by the public, industry, and other interested persons. After considering and responding to comments, the reviewing authority must issue a final determination on the permit.

B. What is the Tailoring Rule?

On June 3, 2010, the EPA issued a final rule, known as the Tailoring Rule, which phased in permitting requirements for GHG emissions from stationary sources under the CAA PSD and title V permitting programs (75 FR 31514).

For Step 1 of the Tailoring Rule, which began on January 2, 2011, PSD or title V requirements applied to sources' GHG emissions only if the sources were subject to PSD or title V ''anyway'' due to their emissions of non-GHG pollutants. These sources are referred to as ''anyway sources.'' Step 2 of the Tailoring Rule, which began on July 1, 2011, applied the PSD and title V permitting requirements under the CAA to sources that were classified as major, and, thus, required to obtain a permit, based solely on their potential GHG emissions and to modifications of otherwise major sources that required a PSD permit because they increased only GHG above applicable levels in the EPA regulations.

C. What is the UARG v. EPA decision and why does the EPA need to revise the permit rescission provisions under 40 CFR 52.21(w) in light of the decision?

1. What is the *UARG* v. *EPA* U.S. Supreme Court decision?

On June 23, 2014, the U.S. Supreme Court issued a decision in *UARG* v. *EPA,* 134 S. Ct. 2427, addressing the application of stationary source permitting requirements to GHGs. In summary, the U.S. Supreme Court said that the EPA may not treat GHGs as an air pollutant for the specific purpose of determining whether a source (or a modification thereof) is required to obtain a PSD or title V permit,[5] and

authorities exercising federal law authority delegated by an EPA Regional Office under 40 CFR 52.21(u).

[2] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (75 FR 31514, June 3, 2010); 40 CFR 52.21(b)(49)(v).

[3] CAA section 165(a)(3).

[4] CAA section 165(a)(4).

[5] Among other things, title V of the CAA requires all major stationary sources of air pollution and certain other sources to apply for a title V operating permit that includes emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA. The title V operating permit program is a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and for assuring compliance with such requirements, but does not generally impose new substantive air quality control requirements. The title V program is implemented through regulations promulgated

Continued

declared that the EPA regulations implementing that approach for determining permitting applicability are invalid. However, the U.S. Supreme Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of conventional pollutants (*i.e.,* non-GHG pollutants), contain limitations on GHG emissions based on the application of BACT. That is, the ruling effectively upheld PSD permitting requirements for GHG emissions under Step 1 of the Tailoring Rule for ''anyway sources,'' and invalidated PSD permitting requirements for Step 2 sources.

To describe the EPA's preliminary views on the U.S. Supreme Court decision, on July 24, 2014, the EPA issued a memorandum titled, ''Next Steps and Preliminary Views on the Application of Clean Air Act Permitting Programs to Greenhouse Gases Following the Supreme Court's Decision in *UARG* v. *EPA*'' (Preliminary Views Memo).[6] In that memorandum, the EPA explained that it ''will no longer require PSD . . . permits for Step 2 sources'' (Preliminary Views Memo at 2) and that the EPA expected ''to provide additional views in the future with respect to Step 2 sources that had already obtained a PSD permit . . .'' (Preliminary Views Memo at 4).

The EPA provided additional views regarding EPA-issued Step 2 permits when it issued two memoranda on December 19, 2014. In the memorandum issued by the Office of Air and Radiation (OAR) and titled, ''Next Steps for Addressing EPA-Issued Step 2 Prevention of Significant Deterioration Greenhouse Gas Permits and Associated Requirements'' (OAR Next Steps Memo),[7] the EPA explained that it intended to complete this rulemaking ''authorizing the rescission of Step 2 PSD permits.'' In the second memorandum, which was issued by the Office of Enforcement and Compliance Assurance (OECA) and titled, ''No Action Assurance Regarding EPA-Issued Step 2 Prevention of Significant Deterioration Permits and Related Title V Requirements Following *Utility Air Regulatory Group* v. *Environmental Protection Agency''* (OECA No Action Assurance Memo),[8] OECA issued a narrowly tailored No Action Assurance for sources with EPA-issued Step 2 PSD permits. The OECA No Action Assurance Memo establishes that the EPA will exercise its enforcement discretion not to pursue enforcement of the terms and conditions relating to GHGs in a source's EPA-issued Step 2 PSD permit, and for related GHG terms and conditions that are contained in the source's title V permit, if any.

The Supreme Court decisions affirmed in part and reversed in part an earlier decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Coalition for Responsible Regulation* v. *EPA,* 684 F.3d 102 (D.C. Cir. 2012). In further proceedings upon consideration of the opinion in *UARG,* on April 10, the D.C. Circuit in *Coalition* issued an amended judgment in accordance with that decision. *Coalition for Responsible Regulation, Inc.* v. *EPA,* Nos. 09–1322, 10–073, 10–1092 and 10–1167 (D.C. Cir. April 10, 2015) (Amended Judgment). As relevant to this rulemaking action, the court ordered that the EPA regulations under review (including 40 CFR 52.21(b)(49)(v)) be vacated to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emissions increase from a modification.

We are aware that between the effective date of Step 2 (July 1, 2011) and the date of the *UARG* v. *EPA* decision (June 23, 2014), several sources obtained EPA-issued Step 2 PSD permits either directly from the EPA or from state or local agencies with delegated PSD programs under 40 CFR 52.21 because the sources (or modifications thereof) were classified as ''major'' solely on the basis of their GHG emissions. For some of these sources, the appropriate reviewing authorities also issued title V permits that incorporated the terms and conditions of the EPA-issued Step 2 PSD permits. To ensure this rule covers all stationary sources eligible for rescission of EPA-issued Step 2 PSD permits, this action provides that owners or operators of stationary sources with EPA-issued Step 2 PSD permits with final permit issuance dates from July 1, 2011 to 60 days after the effective date of this rule would be able to request a permit rescission from EPA or delegated reviewing authorities as applicable. For more information on the process for requesting a permit rescission for EPA-issued Step 2 PSD permits, see section V of this action titled, ''Direct Final Action.''

2. Why are we revising the permit rescission provisions under 40 CFR 52.21(w) in light of the U.S. Supreme Court decision in *UARG* v. *EPA* and the amended appeals court judgment in *Coalition*?

To implement the U.S. Supreme Court's decision and the amended appeals court judgment vacating the regulations implementing Step 2 of the Tailoring Rule, it is necessary to undertake a process to rescind PSD Step 2 permits. The EPA's implementing permitting regulations at 40 CFR 52.21 provide that ''[a]ny [PSD] permit issued under this section or a prior version of this section shall remain in effect, unless and until it expires . . . or is rescinded'' (40 CFR 52.21(w)(l)).

Section 52.21(w) provides authority for a source holding a PSD permit to request rescission of the permit and for the EPA to ''grant an application for rescission if the applicant shows that this section [40 CFR 52.21] would not apply to the source or modification.'' However, as currently written, the scope of this rescission authority is limited to permits issued under 40 CFR 52.21 as in effect on or before July 30, 1987. Since any EPA-issued Step 2 PSD permits were issued under regulations effective after July 30, 1987, the rescission authority in 40 CFR 52.21(w) is not currently available to sources with EPA-issued Step 2 PSD permits. This rulemaking action is a narrow revision to 52.21(w) solely to enable the rescission of Step 2 PSD permits consistent with the U.S. Supreme Court decision and the D.C. Circuit amended judgment.

This rule does not address any issues concerning the federal PSD permit rescission regulations at 40 CFR 52.21(w) that are not related to the Supreme Court decision in *UARG* v. *EPA* and the amended appeals court judgment vacating the Step 2 regulations. We recognize, however, that other circumstances may arise in the future where the appropriate course of action may be permit rescission. We would expect these circumstances to be rare. Under the current rules, a rulemaking would need to be undertaken in each such circumstance as we are doing here. Therefore, the EPA is developing a separate rulemaking action that will provide an opportunity for the public to comment on any other situations where the July 30, 1987 date in 52.21(w) may be an impediment to the rescission of PSD permits under particular circumstances where that might be appropriate.

under 40 CFR part 70, for programs implemented by state or local agencies and tribes, and 40 CFR part 71, for programs generally implemented by the EPA.

[6] *http://epa.gov/nsr/documents/20140724memo.pdf.*

[7] *http://epa.gov/nsr/ghgdocs/Step2PermitRescissinsMemoFinal_12-19-14.pdf.*

[8] *http://epa.gov/nsr/ghgdocs/OECANoActionAssuranceMemo_December192014.pdf.*

IV. Direct Final Action

In this action, the EPA is revising 40 CFR 52.21(w)(2) by adding references to 40 CFR 52.21(49)(b)(v)(a) and (b) to allow for rescission of any EPA-issued Step 2 PSD permits upon request by the permitted source, which is consistent with the EPA's understanding of the Supreme Court decision and the amended appeals court judgment vacating the regulations. In addition, the EPA is adding the following sentence to 40 CFR 52.21(w)(3) to make clear that PSD requirements no longer apply to Step 2 sources: ''As a result of a decision of the U.S. Supreme Court, this section does not apply to sources or modifications that meet only the applicability criteria in 40 CFR 52.21(b)(49)(v).''

This regulatory action does not make any change to 40 CFR 52.21(w)(1) or (4). In addition, it does not affect the standard for determining whether a source is eligible for permit rescission under 40 CFR 52.21(w)(3). It serves only to revise 40 CFR 52.21(w)(2)–(3) of the EPA's federal PSD regulations to authorize the EPA to undertake permit rescissions for EPA-issued Step 2 PSD permits. As the EPA previously explained in its December 19, 2014, OAR Next Steps Memo, once this rule is final, sources with EPA-issued Step 2 PSD permits will be able to seek a permit rescission from the EPA or delegated state or local reviewing authority.

Specifically, consistent with the 2014 OAR Next Steps Memo at page 3, the EPA expects that PSD permit-holders interested in qualifying for the rescission of an EPA-issued Step 2 PSD permit under 40 CFR 52.21(w) will need to provide information to demonstrate that either (1) the source did not, at the time the source obtained its EPA-issued Step 2 PSD permit, emit or have the potential to emit any regulated pollutant other than GHGs above the major source threshold applicable to that type of source; or (2) a modification at a source emitting major amounts of a regulated NSR pollutant other than GHGs did not result in an increase in emissions of any regulated pollutant other than GHGs in an amount equal to or greater than the applicable significance level for that pollutant. Furthermore, the EPA intends to consider whether the EPA or another reviewing authority is relying on the EPA-issued Step 2 PSD permit for any other regulatory purpose. Rescission of a PSD permit that is no longer required should not extend to eliminate regulatory obligations that remain regarding non GHG-pollutants or inadvertently place the permitted source in a situation where it may be out of compliance with other requirements that the PSD permit satisfied. For example, as noted in the memoranda mentioned previously, a source with an EPA-issued Step 2 PSD permit may now have other regulatory or permitting obligations (*e.g.,* minor NSR requirements), which generally concern sources emitting pollutants subject to a NAAQS. The source may have previously not needed to obtain a minor source permit because it used its Step 2 permit to satisfy its preconstruction permitting obligations, but it might now need to obtain a minor NSR permit. Until such time as the source and the permitting authority can determine whether and how to replace Step 2 PSD permit conditions for such pollutants with a permit satisfying minor NSR requirements, continued compliance with PSD permit terms and conditions for such permits is important to protect the NAAQS, and rescission may, thus, be premature. Further, if the GHG condition in an EPA-issued Step 2 PSD permit has been used to satisfy another state or federal requirement, rescission may not be appropriate without assurances that another method will be established for complying with other federal, state, and local requirements (*e.g.,* if the state is presuming the source builds consistent with the efficiency requirement in the EPA-issued Step 2 permit in order to satisfy other state air pollution requirements). In sum, the rescission of any EPA-issued Step 2 PSD permits should not proceed without an understanding of how minor source construction permitting requirements and other legal obligations will be met going forward. Since the EPA generally does not issue construction permits for minor sources except in Indian country, the EPA Regional Offices and sources holding EPA-issued Step 2 PSD permits should consult with the appropriate state or local reviewing authorities and develop a plan to ensure that sources remain in compliance with applicable minor source and other legal requirements after rescission of EPA-issued Step 2 PSD permits.

As part of the rescission process for EPA-issued Step 2 PSD permits, the EPA anticipates that some sources will also want to seek revisions to title V operating permits that include the EPA-issued Step 2 PSD permit terms and conditions. Therefore, once an EPA-issued Step 2 PSD permit is formally rescinded by the EPA or delegated reviewing authority, the EPA or delegated reviewing authority will encourage the applicable title V state or local permitting authorities to take appropriate actions with the sources to resolve any issues related to the incorporation of the EPA-issued PSD Step 2 permit requirements into title V permits that have already been issued and as further described in the OAR Next Steps Memo at page 4. The EPA is not revising its title V regulations in this action because the EPA believes that its existing title V regulations contain sufficient procedures for the actions discussed in the OAR Next Steps Memo and no revisions to EPA's title V regulations are necessary to enable these steps to proceed.

This action only contains the regulatory revisions necessary to allow for rescission of EPA-issued Step 2 PSD permits in order to conform to the U.S. Supreme Court decision and the amended judgment of the D.C. Circuit. In this action, the EPA is not making any other regulatory changes in response to the U.S. Supreme Court's decision or the amended judgment of the D.C. Circuit. The EPA intends to take additional rulemaking action to remove the vacated provisions from the Code of Federal Regulations and make further revisions to its PSD and title V regulations, as appropriate.

V. Environmental Justice Considerations

This action amends one provision of the federal PSD program regulations to allow for the rescission of EPA-issued Step 2 PSD permits in order to conform to a decision by the U.S. Supreme Court that declared invalid regulations that implemented the requirement that Step 2 sources obtain PSD permits and an amended judgment by the D.C. Circuit vacating those regulations. When effective, this action will authorize the EPA and delegated reviewing authorities to rescind Step 2 PSD permits in response to requests from applicants who can demonstrate that they are eligible for permit rescission. Therefore, this action itself does not compel any specific permit action that will affect the fair treatment and meaningful involvement of all people. Rather, it ensures that the EPA has the authority to implement the U.S. Supreme Court's decision and the amended judgment of the D.C. Circuit. Rescission of any EPA-issued Step 2 PSD permits under this rule revision would follow all applicable permitting requirements.

VI. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0003.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule relieves regulatory burden by providing a mechanism for the EPA and delegated reviewing authorities to rescind PSD permits that are no longer required in light of the U.S. Supreme Court decision in *UARG* v. *EPA,* which invalidates Step 2 of the Tailoring Rule and of the amended judgment of the D.C. Circuit vacating that rule. We have, therefore, concluded that this action will relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector to rescind these EPA-issued Step 2 PSD permits. Sources can ask for rescission of their EPA-issued Step 2 PSD permits at their discretion.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175. Although the Tribal Air Rule (76 FR 38748, July 1, 2011) under the CAA gives tribes the opportunity to request and be granted delegation of the federal PSD program found at 40 CFR 52.21 to issue PSD permits, there are no tribal agencies currently implementing the federal PSD permitting program. As a result, this action will not affect any tribal reviewing authorities. In addition, any tribally-owned sources with EPA-issued Step 2 PSD permits have the discretion to request the EPA to rescind their permit. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The results of this evaluation are contained in the section VI titled, ''Environmental Justice Considerations'' for this action.

K. Congressional Review Act (CRA)

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

L. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this action is subject to provisions of section 307(d). Section 307(d) establishes procedural requirements specific to rulemaking under the CAA. Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.''

VII. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the D.C. Circuit within 60 days from May 7, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2) of the CAA).

Parties with objections to this direct final rule are encouraged to file any comment in response to the parallel notice of proposed rulemaking for this action published in the ''Proposed Rules'' section of this **Federal Register** publication, rather than file an immediate petition for judicial review of this direct final rule to allow the EPA to withdraw this direct final rule and address the comment(s) in the proposed rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, National ambient air quality standards, New source review, Nitrogen dioxide, Ozone, Particulate matter, Permit rescissions, Preconstruction permitting, Sulfur oxides, Tailoring rule, Volatile organic compounds.

Dated: April 30, 2015.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTAION PLANS

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

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

Subpart A—General Provisions

■ 2. Section 52.21 is amended by revising paragraphs (w)(2) and (3) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(w) * * *

(2) Any owner or operator of a stationary source or modification who holds a permit for the source or modification may request that the Administrator rescind the permit or a particular portion of the permit if the permit for the source or modification was issued:

(i) Under § 52.21 as in effect on July 30, 1987 or any earlier version of this section;

(ii) Under § 52.21 between July 1, 2011 and July 6, 2015 to a source that was classified as a major stationary source under paragraph (b)(1) of this section solely on the basis of potential emissions of greenhouse gases, which were defined as a regulated NSR pollutant through the application of paragraph (b)(49)(v)(a) of this section as in effect during this time period; or

(iii) Under § 52.21 between July 1, 2011 and July 6, 2015 for a modification that was classified as a major modification under paragraph (b)(2) solely on the basis of an increase in emissions of greenhouse gases, which were defined as a regulated NSR pollutant through the application of paragraph (b)(49)(v)(b) of this section as in effect during this time period.

(3) The Administrator shall grant an application for rescission if the application shows that this section would not apply to the source or modification. As a result of a decision of the United States Supreme Court, this section does not apply to sources or modifications that meet only the applicability criteria in paragraph (b)(49)(v) of this section.

* * * * *

[FR Doc. 2015–10628 Filed 5–6–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0636; FRL–9927–24–Region 6]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Revisions to Emissions Inventory Requirements, and General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving under the Federal Clean Air Act (CAA) revisions to the Albuquerque/Bernalillo County, New Mexico State Implementation Plan (SIP). These revisions add definitions and clarifying changes to the general provisions and add a new emissions inventory regulation that establishes reporting requirements for stationary sources in Albuquerque/Bernalillo County.

DATES: This rule is effective on June 8, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2008–0636. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mr. John Walser (6PD–L), Air Planning Section, telephone (214) 665–7128, email: *walser.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means EPA.

I. Background

The background for today's action is discussed in detail in our February 2, 2015 direct final rule and proposal (80 FR 5471). The rule and proposal stated that if any relevant adverse comments were received by the end of the public comment period on March 4, 2015, the direct final rule would be withdrawn and we would respond to the comments in a subsequent final action. A relevant adverse comment was received during the comment period, and the direct final rule was withdrawn on March 26, 2015 (80 FR 15901). Our February 2, 2015 proposal provides the basis for today's final action. The SIP revisions proposed for approval add definitions and clarifying changes to the general provisions and add a new emissions inventory regulation that establishes reporting requirements for stationary sources in Albuquerque/Bernalillo County.

II. Response to Comments

We received one comment letter dated February 20, 2015, from the Sierra Club, regarding our direct final rule.

Comment: ''Acting regional administrator Sam Coleman cannot sign approvals, disapprovals, or any combination of approvals or disapproval, in whole or in part, due to the fact that agency actions on state implementation plans are required to be signed by the regional administrator, Ron Curry, not the current deputy regional administrator as stated in the agency's delegations manual. The manual specifically states that SIP actions can't be redelegated from the regional administrator.''

Response: As the Acting Regional Administrator, Deputy Regional Administrator Sam Coleman had authority to sign the proposal and direct final action on this State Implementation Plan. On January 15, 2015, the day that the proposal and direct final action were signed, Sam Coleman was acting in the capacity of the Regional Administrator for Ron Curry, who was absent from Region 6 at the time. The following language is listed in the Region 6 Deputy Regional Administrator's position description ''In the absence of the Regional Administrator, the Deputy Regional Administrator will perform the duties of the Regional Administrator.'' A copy of the Deputy Regional Administrator's position description is included in the docket for this rulemaking. Further, EPA Region 6 Order 1110.11 establishes a line of succession to perform the duties of the Regional Administrator should the Regional Administrator be absent from the office. The Deputy Regional Administrator is the first person listed on that line of succession. A copy of EPA Region 6 Order 1110.11 is included in the docket for this rulemaking.

The heads of administrative agencies are statutorily vested with the authority to delegate authorities to subordinate officials, 5 U.S.C. 302. Federal Courts have held that rules, including internal

delegations and appointments of authority are effective regardless of publication in the **Federal Register** or the Code of Federal Regulations. The EPA Delegations Manual, more specifically Chapter 1–21, provides that the EPA Regional Administrators are delegated the authority, in relevant part, to sign and submit proposed State Implementation Plans, including revisions and compliance schedules. Chapter 1–21 of the EPA Delegations Manual specifically allows the redelegation of these authorities to the Deputies of the Regional Administrators. A copy of Chapter 1–21 of the EPA Delegations Manual is included in the docket for this rulemaking.

The comment only challenged the Deputy Regional Administrator's authority to sign the Direct Final Action. EPA received no other comments or challenges as to the substance of the proposal or direct final. Therefore, we are finalizing our action to approve this SIP amendment.

III. Final Action

Pursuant to section 110 of the Act, EPA is approving five revisions to the New Mexico SIP that were submitted on May 6, 2008, November 6, 2009,[1] December 15, 2010 and October 18, 2012. We evaluated the state's submittals and determined that they meet the applicable requirements of the CAA section 110 and applicable EPA guidance. In accordance with CAA section 110(l), these revisions will not interfere with attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA.

IV. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.4, we are finalizing the incorporation by reference of the revisions to the Albuquerque/Bernalillo County regulations as described in the Final Action of this rule. We have made, and will continue to make, these documents generally available electronically through *www.regulation.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

[1] There are two SIP submittals that were submitted on the same date, November 6, 2009—one revising 20.11.1 NMAC and one revising 20.11.47 NMAC.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 27, 2015.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart GG—New Mexico

■ 2. In § 52.162(c), the second table titled ''EPA Approved Albuquerque/Bernalillo County, NM Regulations'' is

amended by revising the entry for Part 1 (20.11.1 NMAC) and adding in sequential order an entry for Part 47 (20.11.47 NMAC) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
New Mexico Administrative Code (NMAC) Title 20—Environmental Protection Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board				
Part 1 (20.11.1 NMAC)	General Provisions	12/15/2010	5/7/2015 [***Insert Federal Register citation***].	
* *	*	*	*	* *
Part 47 (20.11.47 NMAC)	Emissions Inventory Requirements.	10/18/2012	5/7/2015 [***Insert Federal Register citation***].	
* *	*	*	*	* *

[FR Doc. 2015–10481 Filed 5–6–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2014–0905; FRL 9927–16–OAR]

RIN 2060–AS58

Approval of Alabama's Request To Relax the Federal Reid Vapor Pressure Gasoline Volatility Standard for Birmingham, Alabama

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a request from the state of Alabama for the EPA to relax the Reid Vapor Pressure (RVP) standard applicable to gasoline introduced into commerce from June 1 to September 15 of each year for Jefferson and Shelby counties (''the Birmingham area''). Specifically, the EPA is approving amendments to the regulations to change the RVP standard for the Birmingham area from 7.8 pounds per square inch (psi) to 9.0 psi for gasoline. The EPA has determined that this change to the federal RVP regulation is consistent with the applicable provisions of the Clean Air Act (CAA). This action is being taken without prior proposal because the EPA believes that this rulemaking is noncontroversial for the reasons set forth in this preamble, and due to the limited scope of this action.

DATES: This rule is effective on July 6, 2015 without further notice unless the EPA receives adverse comment by June 8, 2015. If the EPA receives such comments, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0905, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.*
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–OAR–2014–0905. Please include a total of two copies.
- *Hand Delivery:* Air and Radiation Docket, EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. Attention Docket ID No. EPA–HQ–OAR–2014–0905. Please include two copies. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2014–0905. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means that the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Patty Klavon, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan, 48105; telephone number: (734) 214–4476; fax number: (734) 214–4052; email address: *klavon.patty@epa.gov.*

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. General Information
II. Action Being Taken
III. History of the Gasoline Volatility Requirement
IV. The EPA's Policy Regarding Relaxation of Volatility Standards in Ozone Nonattainment Areas That Are Redesignated as Attainment Areas
V. Alabama's Request To Relax the Federal RVP Requirement for the Birmingham Area
VI. Final Action
VII. Statutory and Executive Order Reviews
VIII. Legal Authority and Statutory Provisions

I. General Information

A. Why is the EPA issuing a direct final rule?

The EPA is making this revision as a direct final rule without prior proposal because the EPA views this revision as noncontroversial and anticipates no adverse comment. The rationale for this rulemaking is described in detail below. In the Proposed Rules section of this **Federal Register**, the EPA is publishing a separate document that will serve as the proposal to approve this revision to the RVP standard that applies in the Birmingham area should adverse comments be filed. If the EPA receives no adverse comment, the EPA will not take further action on the proposed rule. If the EPA receives adverse comment on this rule or any portion of this rule, the EPA will withdraw the direct final rule or the portion of the rule that received adverse comment. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rulemaking. Any parties interested in commenting must do so at this time.

B. Does this action apply to me?

Entities potentially affected by this rule are fuel producers and distributors who do business in Alabama.

Examples of potentially regulated entities	NAICS [1] codes
Petroleum refineries	324110
Gasoline Marketers and Distributors	424710 424720
Gasoline Retail Stations	447110
Gasoline Transporters	484220 484230

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. The table lists the types of entities of which the EPA is aware that potentially could be affected by this rule. Other types of entities not listed on the table could also be affected by this rule. To determine whether your organization could be affected by this rule, you should carefully examine the regulations in 40 CFR 80.27. If you have questions regarding the applicability of this action to a particular entity, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

C. What should I consider as I prepare my comments?

1. Submitting CBI

Do not submit CBI to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

3. Docket Copying Costs

You may be required to pay a reasonable fee for copying docket materials.

II. Action Being Taken

This direct final rule approves a request from the state of Alabama to change the summertime RVP standard for Jefferson and Shelby counties (''the Birmingham area'') from 7.8 psi to 9.0 psi by amending the EPA's regulations at 40 CFR 80.27(a)(2). In a previous rulemaking, the EPA approved a state implementation plan (SIP) revision from the state of Alabama which provided a technical demonstration that relaxing the federal RVP requirement from 7.8 psi to 9.0 psi for gasoline sold from June 1 to September 15 of each year in the Birmingham area would not interfere with maintenance of the national ambient air quality standards (NAAQS) in the Birmingham area. For more information on Alabama's SIP revision, please refer to the April 17, 2015 rulemaking (80 FR 21170).

The preamble for this rulemaking is organized as follows: Section III. provides the history of the federal gasoline volatility regulation. Section IV. describes the policy regarding relaxation of volatility standards in ozone nonattainment areas that are redesignated as attainment areas. Section V. provides information specific to Alabama's request for the Birmingham area. Finally, Section VI. presents the final action in response to Alabama's request.

III. History of the Gasoline Volatility Requirement

On August 19, 1987 (52 FR 31274), the EPA determined that gasoline nationwide was becoming increasingly volatile, causing an increase in

[1] North American Industry Classification System.

evaporative emissions from gasoline-powered vehicles and equipment. Evaporative emissions from gasoline, referred to as volatile organic compounds (VOC), are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground-level ozone can reduce lung function, thereby aggravating asthma and other respiratory conditions, increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is RVP. Under CAA section 211(c), the EPA promulgated regulations on March 22, 1989 (54 FR 11868) that set maximum limits for the RVP of gasoline sold during the regulatory control periods that were established on a state-by-state basis in the final rule. The regulatory control periods addressed the portion of the year when peak ozone concentrations were expected. These regulations constituted Phase I of a two-phase nationwide program, which was designed to reduce the volatility of gasoline during the high ozone season. On June 11, 1990 (55 FR 23658), the EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the state, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone NAAQS).

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

On December 12, 1991 (56 FR 64704), the EPA modified the Phase II volatility regulations to be consistent with CAA section 211(h). The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, effective January 13, 1992. For areas designated as nonattainment, the regulations retained the original Phase II standards published on June 11, 1990 (55 FR 23658), which included the 7.8 psi ozone season limitation for certain areas. As stated in the preamble to the Phase II volatility controls and reiterated in the proposed change to the volatility standards published in 1991, the EPA will rely on states to initiate changes to their respective volatility programs. The EPA's policy for approving such changes is described below in Section IV. of this action.

The state of Alabama has initiated this change by requesting that the EPA relax the 7.8 psi RVP standard to 9.0 psi for the Birmingham area, which is subject to the 7.8 psi RVP requirement during the summertime ozone season. Accordingly, the state of Alabama provided a technical demonstration showing that relaxing the federal RVP requirement in the Birmingham area from 7.8 psi to 9.0 psi would not interfere with maintenance of the NAAQS or any other applicable requirement of the CAA. See Section V. of this action for information specific to Alabama's request for the Birmingham area.

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

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

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

Alabama did not request relaxation of the federal RVP standard from 7.8 psi to 9.0 psi when the Birmingham area was redesignated to attainment for either the 1-hour ozone NAAQS or the 1997 ozone NAAQS. However, Alabama took a conservative approach in developing maintenance plans associated with those redesignation requests by estimating emissions using a federal RVP requirement of 9.0 psi.

V. Alabama's Request To Relax the Federal RVP Requirement for the Birmingham Area

In a May 12, 2006 final rule, the EPA approved the Birmingham area's redesignation request and maintenance plan for the 1997 ozone NAAQS. See 71 FR 27631 (May 12, 2006).[2] As required, the CAA section 175A maintenance plan provides for continued attainment and maintenance of the 1997 ozone NAAQS for at least ten years from the effective date of the Birmingham area's redesignation to attainment for the 1997 ozone NAAQS. This maintenance plan also includes components demonstrating how the Birmingham area will continue to attain the 1997 ozone NAAQS, and provides contingency measures should the Birmingham area violate that NAAQS. The state of Alabama's ozone redesignation request and maintenance plan for the Birmingham area did not remove the state-level 7.0 psi RVP requirement that was in place for the Birmingham area.[3]

On March 2, 2012, the state of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted a proposed revision to Alabama's SIP

[2] The Birmingham area (*i.e.,* Jefferson and Shelby counties) was designated as unclassifiable/attainment for the 2008 ozone NAAQS effective July 20, 2012. See 77 FR 30088 (May 21, 2012).

[3] In 2001, the EPA approved a state fuel program that imposed a more stringent 7.0 psi requirement for the Birmingham area, per CAA section 211(c)(4)(C). The low-RVP fuel program required that all gasoline sold during the summertime ozone season (June 1–September 15 of each year) in the Birmingham area contain a maximum RVP of 7.0 psi. See 66 FR 56218 (November 7, 2001).

removing the state-level RVP requirement to use 7.0 psi RVP gasoline in the Birmingham area during the summertime ozone season. The EPA approved the revision in an April 20, 2012 final rule. See 77 FR 23619. The revision to the Alabama SIP resulted in the federal RVP requirement of 7.8 psi applying to the Birmingham area.

On November 14, 2014, the state of Alabama submitted a proposed revision to its SIP demonstrating that removal of the federal RVP requirement of 7.8 psi for gasoline during the summer ozone season in the Birmingham area would not interfere with maintenance of any NAAQS. Specifically, the state provided a technical demonstration showing that relaxing the federal RVP requirements in the Birmingham area from 7.8 psi to 9.0 psi would not interfere with maintenance of the NAAQS or with any other applicable requirement of the CAA.

The EPA evaluated and approved Alabama's November 14, 2014 SIP revision in a previous rulemaking that was subject to public notice-and-comment. The EPA received two comments on that rulemaking, and those comments were addressed in the final rule for that rulemaking. See 80 FR 21170 (April 17, 2015). The comments received can be found in the docket for that rulemaking (EPA–R04–OAR–2014–0867).

In this action, the EPA is approving Alabama's request to relax the summertime ozone season RVP standard for the Birmingham area from 7.8 psi to 9.0 psi. This is based on the previous approval of Alabama's November 14, 2014 SIP revision, and the fact that the Birmingham area is currently in attainment for all ozone NAAQS.

VI. Final Action

The EPA is taking direct final action to approve the request from Alabama for the EPA to relax the RVP applicable to gasoline introduced into commerce from June 1 to September 15 of each year in the Birmingham area. Specifically, this action amends the applicable RVP standard from 7.8 psi to 9.0 psi provided at 40 CFR 80.27(a)(2) for the Birmingham area (*i.e.,* Jefferson and Shelby counties, Alabama).

The EPA is making this revision without prior proposal because the EPA views the revision as noncontroversial and anticipates no adverse comment. However, in the Proposed Rules section of this **Federal Register**, the EPA is publishing a separate document that will serve as the proposal to approve this revision to the RVP standard that applies in the Birmingham area should adverse comments be filed. This rule will become effective July 6, 2015 without further notice unless the EPA receives adverse comments by June 8, 2015.

If the EPA receives adverse comments on the rule or any portion of the rule, the EPA will withdraw the direct final rule or the portion of the rule that received adverse comment. The EPA will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the subsequent final action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised that this rule will become effective on July 6, 2015 and no further action will be taken on the proposed rule.

VII. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* and therefore is not subject to these requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The small entities subject to the requirements of this action are refiners, importers or blenders of gasoline that choose to produce or import low RVP gasoline for sale in the Birmingham area and gasoline distributers and retail stations in the Birmingham area. This action relaxes the federal RVP standard for gasoline sold in the Birmingham area during the summertime ozone season (June 1 to September 15 of each year) from 7.8 psi to 9.0 psi. This rule does not impose any requirements or create impacts on small entities beyond those, if any, already required by or resulting from the CAA section 211(h) Volatility Control program. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This final rule does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action implements mandates specifically and explicitly set forth in CAA section 211(h) without the exercise of any policy discretion by the EPA.

E. Executive Order 13132 (Federalism)

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

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule affects only those refiners, importers or blenders of gasoline that choose to produce or import low RVP gasoline for sale in the Birmingham area and gasoline distributers and retail stations in the Birmingham area. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

I. National Technology Transfer Advancement Act

This action does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will *not* have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the applicable ozone NAAQS which establish the level of protection provided to human health or the environment. This rule will relax the applicable volatility standard of gasoline during the summer, possibly resulting in slightly higher mobile source emissions. However, the state of Alabama has demonstrated in the Birmingham area's approved maintenance plan that this action will not interfere with attainment of the ozone NAAQS. Therefore, disproportionately high and adverse human health or environmental effects on minority or low-income populations are not an anticipated result. The results of this evaluation are contained in Section V. of this direct final rule. A copy of Alabama's November 14, 2014 letter requesting that the EPA relax the RVP standard, including the technical analysis demonstrating that the less stringent RVP in the Birmingham area would not interfere with continued maintenance of the 1997 ozone NAAQS or any other applicable standard, has been placed in the public docket for this action.

K. Congressional Review Act (CRA)

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

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 8, 2015. Filing a petition for reconsideration by the Administrator of this direct final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel document of proposed rulemaking for this action published in the Proposed Rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

VIII. Legal Authority and Statutory Provisions

The statutory authority for this action is granted to the EPA by Sections 211(h) and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7545(h) and 7601(a).

List of Subjects in 40 CFR Part 80

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

Dated: April 30, 2015.

Gina McCarthy,

Administrator.

For the reasons discussed in the preamble, the Environmental Protection Agency is amending 40 CFR part 80 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

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

■ a. Revising the entry for Alabama; and

■ b. Adding footnote 8.

The revisions and additions read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

(2) * * *

(ii) * * *

APPLICABLE STANDARDS[1] 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	September
Alabama[8]	9.0	9.0	9.0	9.0	9.0
* * * * * * *					

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

* * * * * * *

[8] The standard for Jefferson and Shelby Counties from June 1 until September 15 in 1992 through July 6, 2015 was 7.8 psi.

* * * * * * *

[FR Doc. 2015–10616 Filed 5–6–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 27 and 37

[Docket No. OST–2006–23985]

RIN 2105–AE15

Transportation for Individuals With Disabilities; Reasonable Modification of Policies and Practices; Correction

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: This document corrects two typographical errors in the final rule that appeared in the **Federal Register** on March 13, 2015, entitled ''Transportation for Individuals With Disabilities; Reasonable Modification of Policies and Practices.''

DATES: This document is effective July 13, 2015.

FOR FURTHER INFORMATION CONTACT: Jill Laptosky, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590, Room W96–488, (202) 493–0308, *jill.laptosky@dot.gov.* For questions related to transit, you may contact Bonnie Graves, Office of Chief Counsel, Federal Transit Administration, same address, Room E56–306, (202) 366–0944, *bonnie.graves@dot.gov;* and, for rail, Linda Martin, Office of Chief Counsel, Federal Railroad Administration, same address, Room W31–304, (202) 493–6062, *linda.martin@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2015–05646 of March 13, 2015 (80 FR 13253), there were two typographical errors, which are identified and corrected in the Correction of Errors section below. The provisions in this correction document are effective as if they had been included in the document that appeared in the March 13, 2015 **Federal Register**. Accordingly, the corrections are effective July 13, 2015.

II. Correction of Errors

In FR Doc. 2015–05646 of March 13, 2015 (80 FR 13253), make the following corrections:

§ 37.169 [Corrected]

■ 1. On page 13261, in the second column, in the first paragraph of § 37.169, in the fourth line, remove ''§ 37.5(g)(1)'' and add ''§ 37.5(i)(3)'' in its place.

Appendix E to Part 37 [Corrected]

■ 2. On page 13261, in the third column, in the first paragraph of Appendix E to Part 37, in the second line, remove ''§§ 37.5(g)'' and add ''§§ 37.5(i)'' in its place.

Issued this 28th day of April, 2015, at Washington, DC under authority delegated in 49 CFR 1.27(c).

Kathryn B. Thomson,

General Counsel.

[FR Doc. 2015–10991 Filed 5–6–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–BC09

Atlantic Highly Migratory Species (HMS); 2006 Consolidated HMS Fishery Management Plan (FMP); Amendment 7

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

ACTION: Announcement of location for installation of electronic monitoring equipment.

SUMMARY: NMFS is announcing that the final location for the May 2015 installations of electronic monitoring (EM) systems required by Amendment 7 will be Fairhaven, MA, in addition to the previously-announced Barnegat Light, NJ. NMFS is also informing vessel owners with Atlantic tunas permits that funding for such EM installation and training is now available on a 'first come, first served' basis for a limited number of pelagic longline vessels that were not eligible for Individual Bluefin Quota (IBQ) based on criteria in Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7). Funding for EM installation and training originally was limited to the 135 vessels eligible for IBQ shares.

DATES: See **SUPPLEMENTARY INFORMATION** for installation dates, times, and locations.

ADDRESSES: Installation of EM systems and equipment during May 2015 is scheduled at the following ports: Fairhaven, MA, and Barnegat Light, NJ. See **SUPPLEMENTARY INFORMATION** for specific dates.

FOR FURTHER INFORMATION CONTACT: Thomas Warren or Brad McHale at 978–281–9260; or Craig Cockrell at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic tuna fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Under the Magnuson-Stevens Act, NMFS must manage fisheries to maintain optimum yield on a continuing basis while preventing overfishing. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to carry out recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS. Management of these species is described in the 2006 Consolidated HMS FMP, which is implemented by regulations at 50 CFR part 635. Amendment 7 to the 2006 Consolidated HMS FMP may be found online at: *http://www.nmfs.noaa.gov/sfa/hms/documents/fmp/am7/index.html.*

On December 2, 2014, NMFS published the final rule for Amendment 7 to the 2006 Consolidated HMS FMP to, among other things, take actions related to the operation and management of the Atlantic bluefin tuna fishery, including measures applicable to the pelagic longline fishery, such as establishing IBQs and expanding monitoring requirements, including electronic monitoring by camera (79 FR 71510). The regulations implementing the final rule require that an owner or operator of a commercial vessel permitted or required to be permitted in the Atlantic Tunas Longline category and that has pelagic longline gear on board have installed, operate, and maintain an EM system on the vessel. Although most Amendment 7 measures were effective as of January 1, 2015, EM installation must be completed by June 1, 2015, to fish with pelagic longline gear. To facilitate compliance with these requirements and ease any burden on vessel owners, NMFS identified funding for EM equipment, installation and training for the 135 vessels eligible for IBQ under Amendment 7 criteria. NMFS scheduled multiple dates and locations for installation and training on the operation of EM equipment during the months of January through May (79 FR 78310; December 30, 2014). The dates and locations were chosen to reduce the potential for interference with fishing trips and to minimize the distances vessels may have to travel. One of the two locations during the scheduled May time periods (May 11–17; and 19–25) was left undetermined to provide

flexibility to consider status of installations from January to the present, and the location of vessels still requiring installation. Based on input from vessel owners, NMFS has determined that the final location will be Fairhaven, MA.

To encourage vessels to sign up for installation and determine how many of the eligible 135 vessels intended to have an EM system installed, NMFS notified the pelagic longline fleet and set an administrative deadline of April 20, 2015, for eligible vessels to sign up for installation. Based on the number of vessels that already installed EM systems or signed up for installation by the deadline, NMFS has determined that funds are available to pay for installation of EM equipment on a limited number of vessels with a valid Atlantic Tunas Longline permit that were not eligible for IBQ shares under Amendment 7 (''non-eligible vessels''). Funding for non-eligible vessels is not guaranteed and will be available on a 'first come-first served' basis, as determined by the date scheduled and agreed upon by the vessel owner/operator and Saltwater, Inc. All vessel owners and/or operators must call Saltwater, Inc., the NMFS-approved contractor, at 800–770–3241, to schedule EM installation and training for their vessels at one of the ports specified in Table 1, and to discuss logistics (time, precise location, etc.) with the contractor. All vessel owners and/or operators must call at least a week in advance of the desired date of installation, but are encouraged to contact Saltwater Inc. as soon as possible.

If a vessel owner and/or operator of a pelagic longline vessel is not able to coordinate installation with the NMFS-approved contracter, Saltwater, Inc., on one of the dates and locations listed in Table 1, the vessel operator is advised to contact Saltwater, Inc., as soon as possible to determine whether another mutually-agreed upon location and date is possible for installation and training. NMFS cannot guarantee that an alternate date will be possible given the limited funding and time available to complete installation of and training on the operation of the EM equipment. Therefore, vessel owners and/or operators will be advised make a concerted effort to adhere to the EM installation schedule in Table 1.

TABLE 1—DATES AND LOCATIONS OF REMAINING PRE-SCHEDULED ELECTRONIC MONITORING INSTALLATIONS

Date range (2015)	Name of port
May 11 through 17, and May 19 through 25	Fairhaven, Massachusetts.
May 11 through 17, and May 19 through 25	Barnegat Light, New Jersey.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 1, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–10960 Filed 5–6–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 80, No. 88

Thursday, May 7, 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–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: Notice of petition to extend test procedure compliance date and request for comment.

SUMMARY: This notice announces a petition from Williams Furnace Company (Williams) requesting that the Department of Energy (DOE) extend the compliance date for the direct home heating equipment and pool heaters test procedure final rule published on January 6, 2015 by 180 days, with respect to Williams. The compliance date for the direct home heating equipment and pool heaters test procedure final rule is July 6, 2015. Williams states in its petition that due to a clarification in the vented home heating equipment test procedure, this timeframe for compliance does not provide Williams sufficient time to conduct further testing and complete any required design modifications to meet the standard using the new test procedure. DOE seeks comment on Williams' petition to extend the compliance date, with respect to Williams, for the direct heating equipment test procedure by 180 days.

DATES: DOE will accept comments with respect to Williams' petition until May 22, 2015.

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 notice 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.*

Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

DOE published a final rule on January 6, 2015 amending the test procedures for vented home heating equipment and pool heaters (referred to hereafter as ''2015 test procedure final rule''). 80 FR 792. 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, the mandatory compliance date for the 2015 test procedure final rule is July 6, 2015. The Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (codified at 42 U.S.C. 6291–6309) provides that on the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period may be extended by the Secretary with respect to the petitioner (but in no event for more than an additional 180 days) if the Secretary determines that the requirements under 42 U.S.C. 6293(c)(2) would impose an undue hardship on such petitioner. (42 U.S.C. 6293(c)(3))

On March 19, 2015, DOE received a petition from Williams requesting that DOE extend the compliance date of the 2015 test procedure final rule by 180 days, with respect to Williams. The basis of the petition is DOE's clarification that section 4.3, ''Annual fuel utilization efficiency by the tracer gas method,'' of the vented home heating equipment test procedure located at Appendix O to Subpart B of Part 430 (section 4.3), applies only to vented home heating equipment equipped with thermal stack dampers. Under the amended test procedure, only vented home heating equipment equipped with thermal stack dampers may use the tracer gas method to test annual fuel utilization efficiency (AFUE). Williams states in the petition that based on its observations at a third party lab, it has been using the tracer gas test method to test vented home heating equipment not equipped with thermal stack dampers since 2011. According to the petition, due to the clarification to section 4.3, the compliance time frame to transition to the amended test procedure does not provide Williams sufficient time to conduct further testing and complete any necessary design modifications to its models of vented home heating equipment without thermal stack dampers. Williams states that without the 180-day extension of the July 6, 2015 compliance date, it could potentially be at a competitive disadvantage in the heater marketplace. Williams states that granting the extension will remove the burden of conducting the aforementioned testing and possible design modifications by July 6, 2015 and will allow Williams the necessary time to manage the transition to the amended vented home heating equipment test procedure.

DOE seeks comment on Williams' petition to extend the July 6, 2015 compliance date for the 2015 test procedure final rule by 180 days, with respect to Williams.

Issued in Washington, DC, on April 29, 2015.

Kathleen B. Hogan,

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

Williams Furnace Company PETITION Before the United States Department of Energy

Office of Energy Efficiency and Renewable Energy
In the Matter of: Docket No. EERE–2011–BT–TP–0042, RIN: 1904–AC94, Energy Conservation Program for Consumer Products: Test Procedures for Direct Heating Equipment and Pool Heaters; Final Rule.
10 CFR part 430

Petition for Reconsideration
Via Email: *john.cymbalsky@ee.doe.gov*
Mr. John Cymbalsky
Office of Energy Efficiency and Renewable Energy
Building Technologies Program, EE–2J
U.S. Department of Energy
1000 Independence Ave. SW.
Washington, DC 20585

Re: Petition to Extend Implementation Date of July 6, 2015 Test Procedure

Dear Mr. Cymbalsky:

This firm represents Williams Furnace Company (Williams) and respectfully submits this Petition to Extend Implementation Date of July 6, 2015 on behalf of Williams.

In the Energy Conservation Program for Consumer Products: Test Procedures for Direct Heating Equipment and Pool Heaters; Final Rule, FR, Vol. 80, No. 3 (6 Jan. 2015), pp. 792–815, the U.S. Department of Energy (DOE) issued a notice of a Final Rule revising the annual flue utilization efficiency (AFUE) test procedures for vented direct heating equipment and pool heaters. The Final Rule became effective February 5, 2015 and compliance becomes mandatory starting July 6, 2015. For the following reasons, Williams requests a 180-day extension of the July 6, 2015 effective date, which is the maximum allowed by statute.

Section 4.3 of the Final Rule, ''Annual fuel utilization efficiency by the tracer gas method'' has been changed to apply only to vented heaters equipped with thermal stack dampers. FR, Vol. 80, No. 3 (6 Jan. 2015), p. 811. Prior to the recent change, the AFUE test procedures stated that ''All other types of vented heaters can elect to use the following tracer gas method, as an optional procedure.'' It appears that DOE believes that heater manufacturers do not use the tracer gas method to test heaters without thermal stack dampers and do not use such testing results to calculate the AFUE for such units. Therefore, it appears that the DOE considers this a clarification of the AFUE test procedure and not a change to the AFUE test procedure.

In FR, Vol. 80, No. 3, Section III.C.3. Other Issues, page 798, the DOE states the following:

''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, the 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 method.''

Though Williams agrees with the concept of the DOE's ''clarification'' of the AFUE test procedures for vented heaters without thermal stack dampers, the Final Rule clarification presents a significant issue for Williams and places an unnecessary burden on our company. Williams is a long-time furnace manufacturer which has been in business nearly 100 years. All of Williams' vented heaters are manufactured without thermal stack dampers. Williams has used the tracer gas method for testing AFUE in its vented heaters without thermal stack dampers since May 2011.

Williams began to use the tracer gas method to test the AFUE in its vented heaters without thermal stack dampers after visiting Intertek Testing Services, Inc. (Intertek) in Cortland, NY, on March 15, 2011. Jesus Rios of Williams met with Intertek's Gregory King and Daniel Bilodeau to discuss and to confirm that Williams' test method for AFUE testing for vented heaters without thermal stack dampers was identical to Intertek's test method for AFUE testing for vented heaters without thermal stack dampers. As you know, Intertek Testing Services, Inc. is the facility approved by and utilized by the DOE.

While at Intertek, Jesus Rios noticed that Intertek was using a different test method for AFUE testing of vented heaters without thermal stack dampers than Williams was using. Jesus Rios asked Intertek what test method Intertek was using for AFUE testing of vented heaters without thermal stack dampers. Intertek confirmed to Jesus Rios that Intertek was using the tracer gas method to test the AFUE in vented heaters without thermal stack dampers. Subsequently, upon Jesus Rios' return to Williams' facility in Colton, CA, he researched the tracer gas method and contacted Intertek to find out what equipment was necessary to perform the tracer gas method to test the AFUE in vented heaters without thermal stack dampers. Thereafter, Williams purchased the necessary equipment to perform the trace gas method to test the AFUE in vented heaters without thermal stack dampers.

In May 2011, Williams began using the tracer gas method to test the AFUE in vented heaters without thermal stack dampers after conducting some test runs to make sure Williams was performing the tracer gas method test properly and could confirm that the Williams' tracer as method test results were similar to the tracer gas method test results achieved by Intertek on March 15, 2011, when Intertek tested the Williams' vented heaters without thermal stack dampers. Williams has been using the tracer gas method to test the AFUE in vented heaters without thermal stack dampers continuously since May 2011 up to the present time. The tracer gas method procedure allows for an actual measurement of the draft factor using carbon monoxide, instead of using a standard draft factor of one. Williams believes that the tracer gas method is a more accurate measurement of the AFUE.

The time frame from now to July 6, 2015, does not provide Williams sufficient time to conduct further testing of and to complete any required design modification to any models of Williams' vented heaters without thermal stack dampers that might be marginally close to passing the required AFUE standards because of the implementation of the Final Rule disallowing the tracer gas method to test the AFUE in vented heaters without thermal stack dampers. Without the 180-day extension of the July 6, 2015 effective date in order to perform the afore-stated testing of and any necessary design modification to its products, Williams could potentially be at a competitive disadvantage in the heater marketplace.

An extension of the July 6, 2015 date does not disadvantage consumers or hamper the DOE's regulatory activities. Granting the extension of time will allow Williams to improve its products where necessary and to ensure Williams' compliance with the required AFUE standards. Delaying the July 6, 2015 date by 180 days will remove the unnecessary burden on Williams of having to conduct testing on all of models of Williams' vented heaters without thermal stack dampers in the next three and one-half months and will allow Williams the necessary time to manage the transition to the Final Rule revising the AFUE test procedures. For the foregoing reasons, Williams requests that the DOE grant Williams a 180-day extension of the July 6, 2015 effective date of the Final Rule.

Respectfully submitted,

WIEZOREK & PAYNE

ANTHONY F. WIEZOREK

AFW/le

[FR Doc. 2015–11025 Filed 5–6–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2013–BT–STD–0007; EERE–2013–BT–STD–0021]

Commercial Package Air Conditioners and Commercial Warm Air Furnaces Working Group: Notice of Open Meetings and Webinar

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

ACTION: Notice of open meetings and webinars.

SUMMARY: This document announces a series of meetings of the Commercial Package Air Conditioners and Commercial Warm Air Furnaces Working Group (CAUC CWAF Working Group). The Federal Advisory Committee Act requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: Unless otherwise specified in the **SUPPLEMENTARY INFORMATION**

section, the meetings will be held at U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. Individuals will also have the opportunity to participate by webinar. To register for the webinar and receive call-in information, please register at *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=59* .

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024. Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

The meetings will be held:

- May 11, 2015;
- May 12, 2015 (Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201);
- May 20, 2015;
- May 21, 2015 (950 L'Enfant Plaza SW., Washington, DC, Room 7140);
- June 1–2, 2015;
- June 9–10, 2015; and
- June 15, 2015 (Webinar only)

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS) recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, Louisiana, New York, American Samoa, Maine, Oklahoma, Arizona, Massachusetts, Washington, and Minnesota.

Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; An Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); A military ID or other Federal government issued Photo-ID card.

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

Issued in Washington, DC, on May 1, 2015.

Kathleen B. Hogan,

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

[FR Doc. 2015–11012 Filed 5–6–15; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 32

RIN 3038–AE26

Trade Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'' or the ''CFTC'') is proposing to amend the trade option exemption in its regulations, as described herein, in the following subject areas: Reporting requirements for trade option counterparties that are not swap dealers or major swap participants; recordkeeping requirements for trade option counterparties that are not swap dealers or major swap participants; and certain non-substantive amendments.

DATES: Comments must be received on or before June 8, 2015.

ADDRESSES: You may submit comments, identified by RIN 3038–AE26, by any one of the following methods:

- *CFTC Web site: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on 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.

Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe 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 established in § 145.9 of the CFTC's regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of a 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 the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: David N. Pepper, Special Counsel, Division of Market Oversight, at (202) 418–5565 or *dpepper@cftc.gov;* or Elise Pallais, Counsel, Office of the General Counsel, at (202) 418–5577 or *epallais@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

In April 2012, pursuant to section 4c(b) of the Commodity Exchange Act

(the ''CEA'' or the ''Act''),[1] the Commission issued a final rule to repeal and replace part 32 of its regulations concerning commodity options.[2] The Commission undertook this effort to address section 721 of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'' or ''Dodd-Frank''),[3] which, among other things, amended the CEA to define the term ''swap'' to include commodity options.[4] Notably, § 32.2(a) provides the general rule that commodity option transactions must be conducted in compliance with any Commission rule, regulation, or order otherwise applicable to any other swap.[5]

In response to requests from commenters, the Commission added a limited exception to this general rule for physically delivered commodity options purchased by commercial users of the commodities underlying the options (the ''trade option exemption'').[6] Adopted as an interim final rule, § 32.3 provides that qualifying commodity options are generally exempt from the swap requirements of the CEA and the Commission's regulations, subject to certain specified conditions. To qualify for the trade option exemption, a commodity option transaction must meet the following requirements: (1) The offeror is either an eligible contract participant (''ECP'')[7] or a producer, processor, commercial user of, or merchant handling the commodity that is the subject of the commodity option transaction, or the products or byproducts thereof (a ''commercial party'') that offers or enters into the commodity option transaction solely for purposes related to its business as such; (2) the offeree is, and the offeror reasonably believes the offeree to be, a commercial party that is offered or enters into the transaction solely for purposes related to its business as such; and (3) the option is intended to be physically settled so that, if exercised, the option would result in the sale of an exempt or agricultural commodity[8] for immediate or deferred shipment or delivery.[9]

Commodity option transactions that meet these requirements are generally exempt from the provisions of the Act and any Commission rule, regulation, or order promulgated or issued thereunder, otherwise applicable to any other swap, subject to the conditions enumerated in § 32.3(b)–(d).[10] These conditions include: Recordkeeping and reporting requirements;[11] large trader reporting requirements in part 20;[12] position limits under part 151;[13] certain recordkeeping, reporting, and risk management duties applicable to swap dealers (''SDs'') and major swap participants (''MSPs'') in subparts F and J of part 23;[14] capital and margin requirements for SDs and MSPs under CEA section 4s(e);[15] and any applicable antifraud and anti-manipulation provisions.[16]

In adopting § 32.3, the Commission stated that the trade option exemption is generally intended to permit parties to hedge or otherwise enter into commodity option transactions for commercial purposes without being subject to the full Dodd-Frank swaps regime.[17] This limited exemption continued the Commission's longstanding practice of providing commercial participants in trade options with relief from certain requirements that would otherwise apply to commodity options.[18]

The Commission further explained that the applicable conditions in § 32.3(b)–(d) were primarily intended to preserve a level of visibility into the market for trade options while still reducing the regulatory compliance burden for trade option participants.[19] The Commission invited market participants to comment on the trade option exemption, and provided a list of specific questions for commenters' consideration.[20]

In the year following the Commission's adoption of the trade option exemption, the Commission's Division of Market Oversight (''DMO'') issued a series of no-action letters granting relief from certain conditions

[1] 7 U.S.C. 6c(b) (providing that ''[n]o person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as an 'option' . . . contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe'').

[2] *See Commodity Options,* 77 FR 25320 (Apr. 27, 2012) (''Commodity Options Release''). The Commission also issued certain conforming amendments to parts 3 and 33 of its regulations. *See id.* The Commission's regulations are set forth in Chapter I of Title 17 of the Code of Federal Regulations.

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

[4] *See* 7 U.S.C. 1a(47)(A)(i) (defining ''swap'' to include ''[an] option of any kind that is for the purchase or sale, or based on the value, of 1 or more . . . commodities . . .''); 7 U.S.C. 1a(47)(B)(i) (excluding options on futures from the definition of ''swap''); 7 U.S.C. 1a(36) (defining an ''option'' as ''an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an 'option' . . .''). The Commission defines ''commodity option'' or ''commodity option transaction'' as ''any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an 'option,' 'privilege,' 'indemnity,' 'bid,' 'offer,' 'call,' 'put,' 'advance guaranty' or 'decline guaranty' and which is subject to regulation under the Act and these regulations.'' *See* 17 CFR 1.3(hh).

[5] *See* 17 CFR 32.2.

[6] *See* 77 FR at 25326–29. *See also* 17 CFR 32.2(b); 32.3. The interim final rule continued the Commission's long history of providing special treatment to ''trade options'' dating back to the Commission's original trade option exemption in 1976. *See Regulation and Fraud in Connection with Commodity and Commodity Option Transactions,* 41 FR 5108 (Nov. 18, 1976).

[7] *See* 7 U.S.C. 1a(18) (defining ''eligible contract participant''); 17 CFR 1.3(m) (further defining ''eligible contract participant'').

[8] *See* 7 U.S.C. 1a(20) (defining ''exempt commodity'' to mean a commodity that is not an agricultural commodity or an ''excluded commodity,'' as defined in 7 U.S.C. 1a(19)); 17 CFR 1.3(zz)(defining ''agricultural commodity''). Examples of exempt commodities include energy commodities and metals.

[9] *See* 17 CFR 32.3(a).

[10] *See* 17 CFR 32.3(a), (b)–(d).

[11] *See* 17 CFR 32.3(b).

[12] *See* 17 CFR 32.3(c)(1). Applying § 32.3(c)(1), reporting entities as defined in part 20—swap dealers and clearing members—must consider their counterparty's trade option positions just as they would consider any other swap position for the purpose of determining whether a particular counterparty has a consolidated account with a reportable position. *See* 17 CFR 20.1. A trade option counterparty would not be responsible for filing large trader reports unless it qualifies as a ''reporting entity,'' as that term is defined in § 20.1.

[13] *See* 17 CFR 32.3(c)(2). *See also Int'l Swaps & Derivatives Ass'n* v. *U.S. Commodity Futures Trading Comm'n,* 887 F. Supp. 2d 259, 270 (D.D.C. 2012), vacating the part 151 rulemaking, *Position Limits for Futures and Swaps,* 76 FR 71626 (Nov. 18, 2011).

[14] *See* 17 CFR 32.3(c)(3)–(4). Note that § 32.3(c)(4) explicitly incorporates §§ 23.201 and 23.204, which require counterparties that are SD/MSPs to comply with part 45 recordkeeping and reporting requirements, respectively, in connection with all their swaps activities (including all their trade option activities). *See* 17 CFR 23.201(c), 23.204(a).

[15] *See* 17 CFR 32.3(c)(5).

[16] *See* 17 CFR 32.3(d). Note that § 32.2 also preserves the continued application of § 32.4, which specifically prohibits fraud in connection with commodity option transactions, to commodity options subject to the trade option exemption. *See* 17 CFR 32.2, 32.4.

[17] *See* 77 FR at 25326, n.39. For example, trade options do not factor into the determination of whether a market participant is an SD or MSP; trade options are exempt from the rules on mandatory clearing; and trade options are exempt from the rules related to real-time reporting of swaps transactions. The provisions identified in this list are not intended to constitute an exclusive or exhaustive list of the swaps requirements from which trade options are exempt.

[18] *See Regulation and Fraud in Connection with Commodity and Commodity Option Transactions,* 41 FR 51808 (Nov. 24, 1976) (adopting an exemption from the general requirement that commodity options be traded on-exchange for commodity option transaction for certain transactions involving commercial parties); *Suspension of the Offer and Sale of Commodity Options,* 43 FR 16153, 16155 (Apr. 17, 1978) (adopting a rule suspending all trading in commodity options other than such exempt trade options); *Trade Options on the Enumerated Agricultural Commodities,* 63 FR 18821 (Apr. 16, 1998) (authorizing the off-exchange trading of trade options in agricultural commodities).

[19] *See* 77 FR at 25326–27.

[20] *See* 77 FR 25329–30. Comments were due on or before June 26, 2012. The comment file is available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1196.*

in the trade option exemption.[21] CFTC No-Action Letter No. 13–08 (''No-Action Letter 13–08''), which remains in effect, provides that DMO will not recommend that the Commission commence an enforcement action against a market participant that is not an SD or an MSP (a ''Non-SD/MSP'') for failing to comply with the part 45 reporting requirements, as required by § 32.3(b)(1), provided that such Non-SD/MSP meets certain conditions, including reporting such exempt commodity option transactions via Form TO[22] and notifying DMO no later than 30 days after entering into trade options having an aggregate notional value in excess of $1 billion during any calendar year (the ''$1 Billion Notice'').[23]

Based on DMO's experience with the trade option exemption following the issuance of No-Action Letter 13–08, and after a review of comments from market participants,[24] the Commission is proposing several amendments to the trade option exemption in § 32.3. Generally, these proposed amendments are intended to facilitate use of trade options by commercial market participants to hedge against commercial and physical risks.

The Commission is proposing modifications to the recordkeeping and reporting requirements in § 32.3(b) that are applicable to trade option counterparties that are Non-SD/MSPs, as well as a non-substantive amendment to § 32.3(c) to eliminate the reference to the now-vacated part 151 position limits requirements. These proposed amendments are generally intended to relax reporting and recordkeeping requirements where two commercial parties enter into trade options with each other in connection with their respective businesses while maintaining regulatory insight into the market for unreported trade options. The Commission requests comment on all aspects of its proposal.

II. Explanation of the Proposed Rules

A. Reporting Requirements for Non-SD/MSPs

Pursuant to § 32.3(b)(1), the determination as to whether a trade option must be reported pursuant to part 45 is based on the status of the parties to the trade option and whether or not they have previously reported swaps to an appropriate swap data repository (''SDR'') pursuant to part 45.[25] If a trade option involves at least one counterparty (whether as buyer or seller) that has (1) become obligated to comply with the reporting requirements of part 45, (2) as a reporting party, (3) during the twelve month period preceding the date on which the trade option is entered into, (4) in connection with any non-trade option swap trading activity, then such trade option must also be reported pursuant to the reporting requirements of part 45. If only one counterparty to a trade option has previously complied with the part 45 reporting provisions, as described above, then that counterparty shall be the part 45 reporting counterparty for the trade option. If both counterparties have previously complied with the part 45 reporting provisions, as described above, then the part 45 rules for determining the reporting counterparty will apply.[26]

To the extent that neither counterparty to a trade option has previously submitted reports to an SDR as a result of its swap trading activities as described above, then such trade option is not required to be reported pursuant to part 45. Instead, § 32.3(b)(2) requires that each counterparty to an otherwise unreported trade option (*i.e.,* a trade option that is not required to be reported to an SDR by either counterparty pursuant to § 32.3(b)(1) and part 45) complete and submit to the Commission an annual Form TO filing providing notice that the counterparty has entered into one or more unreported trade options during the prior calendar year.[27] Form TO requires an unreported trade option counterparty to: (1) Provide its name and contact information; (2) identify the categories of commodities (agricultural, metals, energy, or other) underlying one or more unreported trade options which it entered into during the prior calendar year; and (3) for each commodity category, identify the approximate aggregate value of the underlying physical commodities that it either delivered or received in connection with the exercise of unreported trade options during the prior calendar year. Counterparties to otherwise unreported trade options must submit a Form TO filing by March 1 following the end of any calendar year during which they entered into one or more unreported trade options.[28] In adopting § 32.3, the Commission stated that Form TO was intended to provide the Commission with a level of visibility into the market for unreported trade options that is ''minimally intrusive,'' thereby allowing it to identify market participants from whom it should collect additional information, or whom it should subject to additional reporting obligations in the future.[29]

Commenters have generally expressed the opinion that the reporting requirements in § 32.3(b) are overly burdensome for Non-SD/MSPs. Commenters have argued that these costs have discouraged commercial end users from entering into trade options to meet their commercial and risk management needs, thereby reducing liquidity and raising prices.[30]

[21] *See* CFTC No-Action Letter No. 12–06 (Aug. 14, 2012), *available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-06.pdf*; CFTC No-Action Letter No. 12–41 (Dec. 5, 2012), *available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-41.pdf*; CFTC No-Action Letter No. 13–08 (Apr. 5, 2013), *available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-08.pdf.*

[22] *See* notes 28–29 and accompanying text, *infra.*

[23] No-Action Letter 13–08, at 3–4. No-Action Letter 13–08 also grants relief from certain swap recordkeeping requirements in part 45 for a Non-SD/MSP that complies with the recordkeeping requirements set forth in § 45.2, provided that if the counterparty to the trade option at issue is an SD or an MSP, the Non-SD/MSP obtains a legal entity identifier (''LEI'') pursuant to § 45.6. *Id.* at 4–5. Should the Commission adopt this proposal without significant revision, the relief provided in No-Action Letter 13–08 would be terminated.

[24] In addition to seeking comment following adoption of the trade option exemption itself, *see supra* note 21, the Commission has sought comment relating to the trade option exemption in connection with other related Commission actions. *See e.g., Further Definition of ''Swap,'' Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* 77 FR 48207 (Aug. 13, 2012); *Agency Information Collection Activities: Proposed Collection, Comment Request: Form TO, Annual Notice Filing for Counterparties to Unreported Trade Options,* 77 FR 74647 (Dec. 17, 2012); *Agency Information Collection Activities under OMB Review,* 78 FR 11856 (Feb. 20, 2013); *Forward Contracts With Embedded Volumetric Optionality,* 79 FR 69073 (Nov. 20, 2014). CFTC staff also invited comment in connection with an April 2014 public roundtable regarding issues concerning end users and the Dodd-Frank Act. The Commission has reviewed these comment letters and taken into account any significant issues raised therein in issuing this proposal. The related comment files are available at *http://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx.*

[25] *See* 17 CFR 32.3(b)(1).

[26] *See* 17 CFR 45.8. As discussed above, No-Action Letter 13–08 provides non-time-limited, conditional no-action relief for Non-SD/MSP counterparties to trade options from part 45 reporting requirements. *See supra* note 22 and accompanying text.

[27] Form TO is set out in appendix A to part 32 of the Commission's regulations.

[28] In 2014, approximately 330 Non-SD/MSPs submitted Form TO filings to the Commission, approximately 200 of which indicated delivering or receiving less than $10 million worth of physical commodities in connection with exercising unreported trade options in 2013.

[29] *See* 77 FR at 25327–28.

[30] *See* American Gas Association (''AGA'') (Dec. 22, 2013) at 3, 16–17 (observing that ''widespread concern'' regarding the regulatory risk posed by Form TO has led some counterparties to avoid entering into trade options, leading to a rise in the cost of contracting); American Public Power Association, National Rural Electric Cooperative Association, Edison Electric Institute, Electric Power Supply Association (''APPA/NRECA/EEI/EPSA'') (Feb. 15, 2013) at 7–8 (stating that

With respect to the part 45 reporting requirements, commenters have noted that Non-SD/MSPs may be required to comply with part 45 solely on the basis of the ''unusual circumstance'' of having had to report a single historical or inter-affiliate swap during the same twelve-month period.[31] Commenters have further noted that Non-SD/MSPs may not have the infrastructure in place to support part 45 reporting to an SDR and that instituting such infrastructure would impose a costly burden, particularly for small end users.[32]

With respect to Form TO reporting, commenters have argued that it is costly and burdensome for Non-SD/MSPs, particularly for small end users, to track, calculate and assemble the requisite data. Commenters have explained that the systems and processes used by many Non-SD/MSPs to create, store, and track their trade options are separate and distinct from their financial systems and are typically not designed to track the kind of information required by Form TO.[33] Recent comments offer specific monetary estimates that suggest the costs involved with preparing the Form TO filing may be significant.[34]

1. Proposed Action: Eliminate Part 45 Reporting for Non-SD/MSPs

As discussed above, Commission regulation § 32.3(b)(1) requires that a Non-SD/MSP counterparty to a trade option that has become obligated to report a non-trade option swap within the past calendar year must comply with part 45 reporting requirements. The Commission proposes to amend § 32.3(b) such that a Non-SD/MSP will under no circumstances be subject to part 45 reporting requirements with respect to its trade option activities.[35] This amendment is intended to reduce burdens for Non-SD/MSP trade option counterparties, many of whom, as commenters explained, face technical and logistical impediments that prevent timely compliance with part 45 reporting requirements.

2. Proposed Action: Eliminate the Form TO Notice Filing Requirement

The Commission proposes to amend Commission regulation § 32.3(b) such that a Non-SD/MSP would not be required to report otherwise unreported trade options on Form TO. The Commission further proposes to delete Form TO from appendix A to part 32. These amendments are intended to reduce reporting burdens for Non-SD/MSP trade option counterparties, which, commenters have explained, may face significant costs in preparing Form TO.

The Commission preliminarily believes that there are surveillance benefits from Form TO data but recognizes that completing Form TO imposes costs and burdens on Non-SD/MSPs, especially small end users. Moreover, Non-SD/MSPs would, under the proposal, remain subject, via § 32.3(b), to the recordkeeping requirements in § 45.2, which require market participants to maintain full and complete records and to open their records to inspection upon the Commission's request.[36] Consequently, the Commission would remain able to collect additional information concerning unreported trade options as necessary to fulfill its regulatory mission.[37]

3. Proposed Action: New $1 Billion Notice Provision for Non-SD/MSPs

The Commission proposes to amend § 32.3(b) by adding a requirement that Non-SD/MSP trade option counterparties must provide notice by email to DMO within 30 days after entering into trade options, whether reported or unreported, that have an aggregate notional value in excess of $1 billion in any calendar year (the ''1 Billion Notice'').[38] In the alternative, a Non-SD/MSP may provide notice by email to DMO that it reasonably expects to enter into trade options, whether reported or unreported, having an aggregate notional value in excess of $1 billion during any calendar year (the ''Alternative Notice'').[39]

For purposes of the proposed Notice Requirement, the aggregate notional value of trade options entered into, or expected to be entered into, should be calculated by multiplying (1) the maximum volume of the commodities that could be bought or sold pursuant to the trade options entered into by (2) the strike or exercise price per unit of the commodity. If the strike or exercise price is not a fixed number in the trade option agreement and, instead, is to be determined pursuant to a reference price source that is not determinable at the time the trade option is entered into,

§ 32.3(b)'s application of the part 45 reporting requirement ''imposes a regulatory burden on the non-SD/MSP and may discourage parties from entering into any ''swaps'' for which it is a reporting party, and from entering into nonfinancial commodity option hedging transactions with parties that are not SD/MSPs.'').

[31] *See* International Energy Credit Association (''IECA'') (Feb. 15, 2013) at 3; AGA (June 26, 2012) at 8; APPA/NRECA/EEI/EPSA (June 26, 2012) at 7–8; Coalition of Physical Energy Companies (''COPE'') (June 25, 2012) at 9; Commercial Energy Working Group (''CEWG'') (Jun 26, 2012) at 4.

[32] *See, e.g.,* APPA/NRECA/EEI/EPSA (Feb. 15, 2013) at 2 (stating that only SDs and MSPs should be required to report trade options under part 45 out of concern that part 45 would impose an ''increased regulatory burden, particularly for small entities''); IECA (Feb. 15, 2013) at 2–3 (stating that, for Non-SD/MSPs, the burden of reporting trade options under part 45 would be ''extremely onerous, if not a practical impossibility''); AGA (June 26, 2012) at 9 (recommending that the part 45 reporting requirements not apply to Non-SD/MSPs with respect to their trade option transactions).

[33] *See, e.g.,* CEWG (Feb. 6, 2013) at 1 (''Unlike systems designed to capture and report data for financial transactions, physical systems are primarily designed to manage logistics related to deliveries and inventory quantities at trade locations. Some physical systems of record do not contain market price information, execution venues, or other option characteristics, such as premiums and strike prices, which make reporting under Part 45 additionally challenging.''). *See also* Coalition for Derivative End Users (''Coalition'') (Dec. 22, 2014) at 10; Commercial Energy Working Group and Commodity Markets Council (''CEWG/CMC'') (Dec. 22, 2014) at 5; ICEA (Dec. 22, 2012) at 9; American Public Power Association, National Rural Electric Cooperative Association, Large Public Power Council (''APPA/NRECA/LPPC'') (Apr. 17, 2014) at 4; AGA (June 26, 2012) at 7.

[34] *See* American Public Power Association, National Rural Electric Cooperative Association, Edison Electric Institute, Electric Power Supply Association, Large Public Power Council (''APPA/NRECA/EEI/EPSA/LPPC'') (Dec. 22, 2014) at 9 (stating that one of its members spent more than $100,000 in information technology costs to implement a mechanism to track exercises of nonfinancial commodity options); IECA (Dec. 22, 2014) at 8 (estimating, based on its survey of market participants, that completing Form TO and complying with No-Action Letter 13–08 requires 80 minutes per contract); Southern Company Services, Inc., acting on behalf of and as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company (''Southern'') at 8–9 (estimating that, for Southern, two full-time employees require 30 minutes to two hours per contract to complete Form TO, at an average cost of $200 per contract and a total annual cost of about $12,000); Transcript of Staff End-User Roundtable (James Allison, ConocoPhillips) at 161 (estimating the marginal cost of Form TO is ''on the order of'' one full-time employee and possibly higher for smaller entities with less in the way of compliance systems and procedures), transcript available at *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/transcript040314.pdf.*

[35] Note that trade option counterparties that are SD/MSPs would continue to comply with the swap data reporting requirements of part 45, including where the counterparty is a Non-SD/MSP, as they would in connection with any other swap. *See* 17 CFR 32.3(b)(4).

[36] *See* 17 CFR 45.2(b), 45.2(h). As discussed *infra* at notes 53–55 and accompanying text, the Commission proposes to maintain recordkeeping requirements in § 32.3(b)–(c) for trade option participants, subject to certain clarifying amendments.

[37] *See* 17 CFR 1.31(a)(2), 45.2(h).

[38] As discussed above, the no-action relief provided by No-Action Letter 13–08 to Non-SD/MSP trade option counterparties from part 45 reporting requirements is also conditioned on the Non-SD/MSP providing DMO with a $1 Billion Notice. *See supra* note 24 and accompanying text. In 2013 and 2014, DMO received $1 Billion Notices from nine and sixteen Non-SD/MSPs, respectively. Most of these $1 Billion Notices were filed on behalf of large energy companies.

[39] Non-SD/MSPs who provide the Alternative Notice would not be required to demonstrate that they actually entered into trade options with an aggregate notional value of $1 billion or more in the applicable calendar year. Collectively, the $1 Billion Notice and the Alternative Notice are referred to as the ''Notice Requirement.''

then the foregoing calculation should be based on a current market price of the reference commodity at the time the option is entered into. For example, if the trade option involves crude oil that is deliverable on, or similar to, crude oil that is deliverable on the New York Mercantile Exchange (''NYMEX''), then the price of the nearby NYMEX crude oil futures contract may be used as the market price of the commodity at the time the trade option is entered into.[40]

In light of the other proposed amendments that would generally remove reporting requirements for Non-SD/MSP counterparties to trade options, the proposed Notice Requirement would provide the Commission insight into the size of the market for unreported trade options and the identities of the most significant market participants. Additionally, the proposed Notice Requirement would help guide the Commission's efforts to collect additional information through its authority to obtain copies of books or records required to be kept pursuant to the CEA and the Commission's regulations should market circumstances dictate.[41]

B. Recordkeeping requirements for Non-SD/MSPs

Commission regulation § 32.3(b) provides that in connection with any commodity option transaction that is eligible for the trade option exemption, every counterparty shall comply with the swap data recordkeeping requirements of part 45, as otherwise applicable to any swap transaction.[42] In discussing the trade option exemption conditions, however, the Commission noted in the preamble to the Commodity Options Release that ''[t]hese conditions include a recordkeeping requirement for any trade option activity, *i.e.,* the recordkeeping requirements of 17 CFR 45.2,'' and did not reference or discuss any other provision of part 45 that contains recordkeeping requirements.[43]

Pursuant to Commission regulation § 45.2, records must be maintained by all trade option participants and made available to the Commission as specified therein.[44] However, § 45.2 applies different recordkeeping requirements, depending on the nature of the counterparty. For example, if a trade option counterparty is an SD/MSP, it would be subject to the recordkeeping provisions of § 45.2(a). If a counterparty is a Non-SD/MSP, it would be subject to the less stringent recordkeeping requirements of § 45.2(b).[45] In adopting § 32.3(b), the Commission stated that the recordkeeping condition was intended to ensure that trade option participants are able to provide pertinent information regarding their trade options activity to the Commission, if requested.[46]

Additional recordkeeping requirements in part 45, separate and apart from those specified in § 45.2 and which would apply to all trade option counterparties by operation of § 32.3(b) include:[47]

- each swap must be identified in all recordkeeping by the use of a unique swap identifier (''USI'');[48]
- each counterparty to any swap must be identified in all recordkeeping by means of a single LEI;[49] and
- each swap must be identified in all recordkeeping by means of a unique product identifier (''UPI'') and product classification system.[50]

1. Proposed Action: Modify the Recordkeeping Requirements for Non-SD/MSPs

The Commission proposes to amend § 32.3(b) to clarify that trade option counterparties that are Non-SD/MSPs need not identify their trade options in all recordkeeping by means of either a USI or UPI, as required by §§ 45.5 and 45.7.[51] Rather, with respect to part 45 recordkeeping requirements, trade option counterparties that are Non-SD/MSPs must only comply with the applicable recordkeeping provisions in § 45.2,[52] with the following qualification: The Non-SD/MSP trade option counterparty must obtain an LEI pursuant to § 45.6 and provide such LEI to its counterparty if that counterparty is an SD/MSP.[53]

These amendments are intended to reduce recordkeeping burdens for Non-SD/MSP trade option counterparties, while allowing a trade option counterparty that is an SD/MSP to comply with applicable part 45 reporting obligations by properly identifying its Non-SD/MSP trade option counterparty by that counterparty's LEI in all recordkeeping as well as all swap data reporting, just as the SD/MSP would for any other swap.[54]

C. Non-substantive amendment to Commission regulation § 32.3(c)

Commission regulation § 32.3(c)(2) subjects trade options to part 151 position limits, to the same extent that part 151 would apply in connection with any other swap.[55] However, as stated above, part 151 has been vacated.[56] Furthermore, trade options are not subject to position limits under the Commission's current part 150 position limit regime.[57]

Therefore, since position limits do not currently apply to trade options, the Commission proposes to amend § 32.3(c) by deleting § 32.3(c)(2), including the reference to vacated part 151. This would not be a substantive change. Although commenters have requested assurance that position limits will not apply to trade options in the future,[58] the Commission preliminarily believes that any future application of

[40] The forgoing guidance with regard to how to calculate the notional value of trade options is similar to that provided in No-Action Letter 13–08 but has been revised to clarify that the focus of the $1 Billion Notice is the value of the trade option at time of contract initiation, not at exercise.

[41] *See supra* note 38 and accompanying text.

[42] *See* 17 CFR 32.3(b).

[43] *See* 77 FR at 25327.

[44] 17 CFR 32.3(b); 45.2(h).

[45] In the case of Non-SD/MSPs, the primary recordkeeping requirements are set out in § 45.2(b), which essentially requires keeping basic business records—*i.e.,* ''full, complete and systematic records, together with all pertinent data and memoranda, with respect to each swap in which they are a counterparty.'' Non-SD/MSPs are also subject to the other general recordkeeping requirements of § 45.2, such as the requirement that records must be maintained for 5 years and must be retrievable within 5 days. *See* 17 CFR 45.2(b).

[46] *See* 77 FR at 25327.

[47] As discussed above, No-Action Letter 13–08 provides no-action relief from certain swap recordkeeping requirements in part 45 for a Non-SD/MSP that complies with the recordkeeping requirements set forth in § 45.2, provided that if the counterparty to the trade option at issue is an SD or an MSP, the Non-SD/MSP obtains an LEI pursuant to § 45.6 and also provides DMO with a $1 Billion Notice. *See supra* note 24 and accompanying text.

[48] 17 CFR 45.5.

[49] Each counterparty to any swap subject to the Commission's jurisdiction must be identified in all recordkeeping and all swap data reporting pursuant to part 45 by means of a single LEI as specified in § 45.6. *See* 17 CFR 45.6.

[50] 17 CFR 45.7.

[51] *See supra* notes 49 and 49 and accompanying text.

[52] Trade option counterparties that are SD/MSPs would continue to comply with the swap data recordkeeping requirements of part 45, as they would in connection with any other swap. *See* 17 CFR 32.3(b)(4).

[53] For the avoidance of doubt, Non-SD/MSPs would not otherwise be required to comply with § 45.6.

[54] An SD/MSP that otherwise would report the trade option at issue pursuant to § 32.3(b)(1) is required to identify its counterparty to the trade option by that counterparty's LEI in all recordkeeping as well as all swap data reporting. *See, e.g.,* 17 CFR 23.201, 23.204, and 45.6. *See supra* note 36 and 17 CFR 45.6.

[55] *See* 17 CFR 32.3(c)(2).

[56] *See supra* note 13 and accompanying text.

[57] Under current § 150.2, position limits apply to agricultural futures in nine listed commodities and options on those futures. Since trade options are not options on futures, § 150.2 position limits do not currently apply to such transactions. *See* 17 CFR 150.2.

[58] *See, e.g.,* Coalition (Dec. 22, 2014) at 11; AGA (Apr. 17, 2014) at 4; IECA (Apr. 17. 2014) at 28; Intercontinental Exchange, Inc. (April 17, 2014) at 5; CEWG (Feb. 6, 2013) at 3; COPE (June 26, 2012) at 6.

position limits would be best addressed in the context of the pending position limits rulemaking, which remains in the proposed rulemaking stage.[59]

III. Related Matters

A. Cost Benefit Analysis

1. Background

As discussed above, the Commission is proposing amendments to the trade option exemption in § 32.3 that would: (1) Eliminate the part 45 reporting requirement for Non-SD/MSPs; (2) eliminate the Form TO filing requirement; (3) require those Non-SD/MSPs that have the most significant volume in trade options to provide DMO with either (i) the $1 Billion Notice or (ii) the Alternate Notice; and (4) clarify that Non-SD/MSPs are required to comply with the swap data recordkeeping requirements of § 45.2 only, as opposed to all part 45 recordkeeping requirements; (5) require Non-SD/MSPs that enter into exempt trade options with SD/MSPs to obtain an LEI pursuant to § 45.6 and provide it to their SD/MSP counterparties; (6) eliminate reference to the now-vacated part 151 position limits.[60] In issuing this proposal, the Commission has reviewed all relevant comment letters and taken into account significant issues raised therein.[61]

The Commission believes that the baseline for this cost and benefit consideration is existing § 32.3. Although No-Action Letter 13–08, as discussed above, currently offers no-action relief that is substantially similar to the relief that the proposed amendments would grant certain market participants and end users, as a no-action letter, it only represents the position of the issuing Division or Office and cannot bind the Commission or other Commission staff.[62] Consequently, the Commission believes that No-Action Letter 13–08 should not set or affect the baseline against which the Commission considers the costs and benefits of the proposal.

2. Costs

The Commission believes that the proposal would, overall, reduce the regulatory burdens and associated costs imposed by the conditions for relief in § 32.3(b). Although the Commission understands that some Non-SD/MSPs may experience costs associated with tracking the aggregate notional value of their trade option transactions for purposes of the $1 Billion Notice,[63] Non-SD/MSPs that reasonably expect to enter into trade options in excess of $1 billion could opt to avoid those tracking costs by instead submitting the Alternative Notice. The Commission also believes that many Non-SD/MSPs may avoid any costs associated with the $1 Billion Notice because they would fall significantly below the $1 billion threshold and thus would not need to track and calculate their aggregate trade option activity.[64] Furthermore, the Commission believes that the proposal would otherwise significantly reduce the regulatory burdens imposed by § 32.3(b), particularly through the elimination of part 45 reporting requirements for trade option counterparties that are Non-SD/MSPs and the Form TO filing requirement, each of which commenters have described as burdensome.[65] The Commission preliminarily believes that the proposal would not impose any additional costs on any other market participants, the markets themselves, or the general public. The Commission invites comment regarding the nature and extent of these and any other costs that could result from adoption of the proposal and, to the extent they can be quantified, monetary and other estimates thereof.

3. Benefits

The Commission believes that the proposal would provide relief for Non-SD/MSPs entering into trade options by eliminating the part 45 and Form TO reporting obligations. The Commission believes that the proposed Notice Requirement would also support the regulatory goals of ensuring market integrity and protecting the public by allowing the Commission insight into the size of the market for unreported trade options and the ability to identify significant market participants, who the Commission may wish to contact if concerns about the market for trade options arise. The Commission invites comment regarding the nature and extent of these and any other benefits that could result from adoption of the proposal—including benefits to other market participants, the market itself or the general public—and, to the extent they can be quantified, monetary and other estimates thereof.

4. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[66] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

a. Protection of Market Participants and the Public

The Commission recognizes that there may be trade-offs between reducing regulatory burdens and ensuring that the Commission has sufficient information to fulfill its regulatory mission. The proposed amendments to § 32.3 are intended to reduce some of the regulatory burdens on end users while still maintaining insight into the market for trade options to protect the public.

[59] On December 12, 2013, the Commission published in the **Federal Register** a notice of proposed rulemaking to establish speculative position limits for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts, including trade options. *See Position Limits for Derivatives, Proposed Rules,* 78 FR 75680 (Dec. 12, 2013) (''Position Limits Proposal''). Therein, the Commission proposed replacing the cross-reference to vacated part 151 in § 32.3(c)(2) with a cross-reference to amended part 150 position limits. *See* 78 FR at 75711. As an alternative in the Position Limits Proposal, the Commission proposed to exclude trade options from speculative position limits and proposed an exemption for commodity derivative contracts that offset the risk of trade options. Also note that under the Position Limits Proposal, trade options based on commodities or delivery points other than those underlying the core referenced futures contracts specified in the Position Limits Proposal would not be subject to speculative position limits. The Commission recently extended the comment period for the Position Limits Proposal until March 28, 2015. *See* 80 FR 10022 (Feb. 25, 2015).

[60] As stated above, Non-SD/MSPs would not otherwise be required to comply with § 45.6.

[61] *See supra* note 24. *See also* note 59 (stating that the Commission has determined to address the application of position limits to trade options in the pending position limits rulemaking).

[62] *See* 17 CFR 140.99(a)(2). *See also* No-Action Letter 13–08 at 5.

[63] *See* Coalition for Derivatives End-Users (Dec. 22, 2014) at 10; American Public Power Association, Edison Electric Institute, Electric Power Supply Association, Large Public Power Council, National Rural Electric Cooperative Association (Dec. 22, 2014) at 9.

[64] As stated in note 38, *supra,* of the 330 Non-SD/MSPs who submitted Form TO filings in 2014, only sixteen also submitted a $1 Billion Notice to DMO.

[65] *See supra* note 34 (citing recent comment letters offering costs estimates for compliance with the Form TO reporting requirement).

[66] 7 U.S.C. 19(a).

b. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission believes that the proposed amendments to § 32.3 could increase efficiency for participants in the market for trade options by reducing the reporting burdens on Non-SD/MSPs, allowing them to reallocate those resources to other more efficient purposes. The Commission also believes that the proposed Notice Requirement would promote market integrity by providing the Commission with information to use in its market oversight role, thereby fulfilling the purposes of the CEA.[67] The Commission preliminarily believes that the proposed amendments to § 32.3 will not have any competitiveness impact.

c. Price Discovery

The Commission preliminarily believes that the proposed amendments to § 32.3 would likely not have a significant impact on price discovery. Given that trade options are not subject to the real-time reporting requirements applicable to other swaps, meaning that current prices of consummated trade options are likely not available to many market participants, the Commission preliminarily believes any effect on price discovery would be negligible.

d. Sound Risk Management Practices

The Commission preliminarily believes that the proposed amendments would not have a meaningful effect on the risk management practices of the affected market participants and end users. Although the proposal is intended, in part, to reduce some of the regulatory burdens on certain market participants and end users, affected Non-SD/MSPs would still be required to maintain complete and accurate records in a manner that is readily available for production to regulators.

e. Other Public Interest Considerations

The Commission has not identified any other public interest considerations for this rulemaking.

5. Request for Comment

The Commission invites comment on all aspects of its preliminary consideration of the costs and benefits associated with the proposal and the five factors the Commission is required to consider under CEA section 15(a). In addressing these areas and any other aspect of the Commissions preliminary cost-benefit considerations, the Commission encourages commenters to submit any data or other information they may have quantifying and/or qualifying the costs and benefits of the proposal.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (the ''RFA'')[68] requires that Federal agencies consider whether the rules they propose will have a significant economic impact on a substantial number of ''small entities''[69] and, if so, the agencies must provide a regulatory flexibility analysis reflecting the impact. Whenever an agency publishes a general notice of proposed rulemaking for any rule, pursuant to the notice-and-comment provisions of the Administrative Procedure Act,[70] a regulatory flexibility analysis or certification typically is required.[71]

As discussed above, the proposed amendments would affect the recordkeeping and reporting requirements for Non-SD/MSP counterparties relying on the trade option exemption in § 32.3. Pursuant to the eligibility requirements in § 32.3(a), such a Non-SD/MSP may be an ECP and/or a commercial party (*i.e.,* a producer, processor, or commercial user of, or a merchant handling the exempt or agricultural commodity that is the subject of the commodity option transaction, or the products or by-products thereof) offering or entering into the trade option solely for purposes related to its business as such. Although the Commission has previously determined that ECPs are not small entities for RFA purposes,[72] the Commission is not in a position to determine whether non-ECP commercial parties affected by the amendments would include a substantial number of small entities on which the rule would have a significant economic impact because § 32.3 does not subject such entities to a minimum net worth requirement, allowing commercial entities of any economic status to enter into exempt trade options. Therefore, pursuant to 5 U.S.C. 603, the Commission offers for public comment this initial regulatory flexibility analysis addressing the impact of the proposal on small entities:

1. A description of the reasons why action by the agency is being considered.

The Commission is proposing to modify the trade option exemption in § 32.3 in response to comments from Non-SD/MSPs that the regulatory burdens currently imposed by § 32.3 are unnecessarily burdensome.

2. A succinct statement of the objectives of, and legal basis for, the proposal.

The objective of the proposal is to reduce the recordkeeping and reporting obligations for Non-SD/MSPs while still providing the Commission insight into the size of the market for unreported trade options and the identities of the most significant participants in the market. As stated above, the legal basis for the proposed rule is the Commission's plenary options authority in CEA section 4c(b).

3. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

The small entities to which the proposed amendments may apply are those commercial parties that would not qualify as ECPs and/or that fall within the definition of a ''small entity'' under the RFA, including size standards established by the Small Business Administration.[73] Although more than 300 Non-SD/MSPs have reported their use of trade options to the Commission through Form TO, the limited information provided by Form TO is not sufficient for the Commission to determine whether and how many of those Non-SD/MSPs qualify as small entities under the RFA.

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The proposed amendments would relieve Non-SD/MSPs, which may include small entities, from certain recordkeeping and reporting requirements that would otherwise apply to them. While the proposal would impose a new requirement on certain Non-SD/MSPs to provide DMO by email with either the $1 Billion Notice or the Alternative Notice

[67] *See, e.g.,* CEA section 3(b), 7 U.S.C. 5 (stating that it is a purpose of the CEA to deter disruptions to market integrity).

[68] 5 U.S.C. 601 *et seq.*

[69] *See* 5 U.S.C. 601(6) (defining ''small entity'' to include a ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' as those terms are defined in the RFA and by reference to the Small Business Act, 15 U.S.C. 632 *et seq.*).

[70] 5 U.S.C. 553. The Administrative Procedure Act is found at 5 U.S.C. 551 *et seq.*

[71] *See* 5 U.S.C. 601(2), 603–605.

[72] *See Opting Out of Segregation,* 66 FR 20740, 20743 (Apr. 25, 2001).

[73] *See id. See also* 5 U.S.C. 601(3) (defining ''small business'' to have the same meaning as the term ''small business concern'' in the Small Business Act); 15 U.S.C. 632(a)(1) (defining ''small business concern'' to include an agricultural enterprise with annual receipts not in excess of $750,000); 13 CFR 121.201 (establishing size standards for small business concerns).

annually, the Commission does not believe that this requirement would impact many small entities, if any at all. Given the significant volume of trade options required to trigger the proposed Notice Requirement, the Commission expects that it would apply to only a small number of entities and that such entities would likely not be small entities.[74] The Commission's view is supported by DMO's experience with the $1 Billion Notice provision in No-Action Letter 13–08: As indicated above, DMO received a $1 Billion Notice from only sixteen of the more than 300 Non-SD/MSPs that filed a Form TO in 2014, and all such entities are generally well-known in their respective industries.[75]

Filing the $1 Billion Notice would require affected Non-SD/MSPs to track and aggregate the notional values of their trade options. The Commission expects that this general information should be readily compiled and aggregated using a spreadsheet or other existing software and would not require any professional skills beyond those typically held by any commercial party. Furthermore, Non-SD/MSPs that reasonably expect to enter into trade options with an aggregate notional value in excess of $1 billion during the calendar year may, in line with the Alternative Notice, simply send an email to DMO to that effect, thereby avoiding having to track the notional values of their trade options.

5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule.

The Commission is unaware of any Federal rules that could duplicate, overlap, or conflict with the proposal.

6. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. These may include, for example, (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 and reporting requirements under the rule for such 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 such small entities.

A potential alternative to relieving Non-SD/MSPs, which may include small entities, from certain recordkeeping and reporting requirements would be to either (1) not amend the current rule, which would maintain recordkeeping and reporting requirements that Non-SD/MSPs have represented are onerous, or (2) create a rule with more specific reporting parameters for specific entities. While the proposal would impose the new annual Notice Requirement on certain Non-SD/MSPs, overall, the Commission believes that the proposed amendments would have a positive economic impact on Non-SD/MSPs that are small entities because they would generally relax reporting requirements across all trade option counterparties that are Non-SD/MSPs. Although the proposal could expressly limit application of the Notice Requirement to entities that do not meet the RFA definition of a small entity, the Commission does not believe that is necessary because, as stated above, the Commission does not expect many small entities to be affected by that requirement, if any at all. Furthermore, even if a small entity were to enter into trade options with an aggregate notional value in excess of $1 billion during a calendar year, the Commission believes that such information would nevertheless be important to the Commission's insight into the market for otherwise unreported trade options and may cause the Commission to adjust the threshold for notice reporting above $1 billion.

C. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (''PRA'') are, among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government.[76] The PRA applies to all information, ''regardless of form or format,'' whenever the government is ''obtaining, causing to be obtained [or] soliciting'' information, and includes required ''disclosure to third parties or the public, of facts or opinions,'' when the information collection calls for ''answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.'' [77] The PRA requirements have been determined to include not only mandatory but also voluntary information collections, and include both written and oral communications.[78] Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (''OMB''). The Commission seeks to amend the OMB control number 3038–0106—Form TO, Annual Notice Filing for Counterparties to Unreported Trade Option. Therefore the Commission is submitting this proposal to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

With the exception of the proposed Notice Requirement, the Commission believes that these proposed rules will not impose any new information collection requirements that require approval of OMB under the PRA. As a general matter, the proposed rules would relax reporting and recordkeeping requirements for Non-SD/MSPs entering into trade options with each other in connection with their respective businesses, including the withdrawal and removal of Form TO. As such, the proposed rules will not result in the creation of any new information collection subject to OMB review or approval under the PRA, except for the annual Notice Requirement. Therefore, these proposed rules do not, by themselves, impose any new information collection requirements other than those that already exist in connection with trade options pursuant to part 32 of the Commission's regulations, except for the proposed Notice Requirement.

As noted above, the Commission proposes to add the Notice Requirement for trade option counterparties that are Non-SD/MSPs, which requirement is considered to be a collection of information within the meaning of the PRA. Accordingly, the Commission is amending OMB control number 3038–0106 and submitting to OMB an information collection request for review and approval. If approved, this new collection of information will be mandatory.

The Commission anticipates that affected Non-SD/MSPs may incur certain costs in complying with the proposed $1 Billion Notice, including those related to calculating the aggregate notional value of trade options entered into, and to drafting the notice email and submitting it to DMO. There are no additional capital costs associated with this collection because all respondents are already required to create and store detailed records of their trade option transactions pursuant to § 32.3(b). The

[74] *See* 15 U.S.C. 632(a) (defining a ''small business concern'' generally to include an enterprise that is ''not dominant in its field of operation'').

[75] See *supra* note 37 and accompanying text.

[76] *See* 44 U.S.C. 3501.

[77] *See* 44 U.S.C. 3502.

[78] *See* 5 CFR 1320.3(c)(1).

Commission estimates that twenty respondents will file a total of one response each annually, and the estimated average number of hours per response would be two. Therefore, the Commission estimates the total burden hours associated with OMB control number 3038–0106 to be 40 hours.

The Commission notes that the proposed amendments would relieve trade option counterparties that are Non-SD/MSPs from certain recordkeeping and reporting requirements under part 45. The Commission believes that these proposed amendments would not cause a material net reduction in the current part 45 PRA burden estimates (OMB control number 3038–0096) to the extent that such reduced recordkeeping and reporting burdens for trade option counterparties that are Non-SD/MSPs would be insubstantial when compared to the overall part 45 PRA burden estimate as it relates to Non-SD/MSPs.

The Commission specifically invites public comment on the accuracy of its estimate that no additional information collection requirements or changes to existing collection requirements, other than the proposed Notice Requirement, would result from the proposal.

List of Subjects in 17 CFR Part 32

Commodity futures, consumer protection, fraud, reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 32 as set forth below:

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6c, and 12a, unless otherwise noted.

■ 2. Revise § 32.3 to read as follows:

§ 32.3 Trade options.

(a) Subject to paragraphs (b), (c), and (d) of this section, the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap shall not apply to, and any person or group of persons may offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to, any transaction in interstate commerce that is a commodity option transaction, provided that:

(1) Such commodity option transaction must be offered by a person that has a reasonable basis to believe that the transaction is offered to an offeree as described in paragraph (a)(2) of this section. In addition, the offeror must be either:

(i) An eligible contract participant, as defined in section 1a(18) of the Act, as further jointly defined or interpreted by the Commission and the Securities and Exchange Commission or expanded by the Commission pursuant to section 1a(18)(C) of the Act; or

(ii) A producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof, and such offeror is offering or entering into the commodity option transaction solely for purposes related to its business as such;

(2) The offeree must be a producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof, and such offeree is offered or entering into the commodity option transaction solely for purposes related to its business as such; and

(3) The commodity option must be intended to be physically settled, so that, if exercised, the option would result in the sale of an exempt or agricultural commodity for immediate or deferred shipment or delivery.

(b) In connection with any commodity option transaction entered into pursuant to paragraph (a) of this section, every counterparty that is not a swap dealer or major swap participant shall:

(1) Comply with the swap data recordkeeping requirements of § 45.2 of this chapter, as otherwise applicable to any swap transaction;

(2) Obtain a legal entity identifier pursuant to § 45.6 of this chapter if the counterparty to the transaction involved is a swap dealer or major swap participant, and provide such legal entity identifier to the swap dealer or major swap participant counterparty; and

(3) Notify the Division of Market Oversight through an email to *TOreportingrelief@cftc.gov:*

(i) No later than 30 days after entering into trade options, whether reported or unreported, having an aggregate notional value in excess of $1 billion during any calendar year, or

(ii) Provide notice that the Non-SD/MSP reasonably expects to enter into trade options, whether reported or unreported, having an aggregate notional value in excess of $1 billion during any calendar year.

(c) In connection with any commodity option transaction entered into pursuant to paragraph (a) of this section, the following provisions shall apply to every trade option counterparty to the same extent that such provisions would apply to such person in connection with any other swap:

(1) Part 20 of this chapter (Swaps Large Trader Reporting);

(2) Subpart J of part 23 of this chapter (Duties of Swap Dealers and Major Swap Participants);

(3) Sections 23.200, 23.201, 23.203, and 23.204 of this chapter (Reporting and Recordkeeping Requirements for Swap Dealers and Major Swap Participants); and

(4) Section 4s(e) of the Act (Capital and Margin Requirements for Swap Dealers and Major Swap Participants).

(d) In addition, any person or group of persons offering to enter into, entering into, confirming the execution of, maintaining a position in, or otherwise conducting activity related to a commodity option transaction in interstate commerce pursuant to paragraph (a) of this section shall remain subject to part 180 of this chapter (Prohibition Against Manipulation) and § 23.410 of this chapter (Prohibition on Fraud, Manipulation, and other Abusive Practices) and the antifraud, anti-manipulation, and enforcement provisions of sections 2, 4b, 4c, 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6, 6c, 6d, 9, and 13 of the Act.

(e) The Commission may, by order, upon written request or upon its own motion, exempt any person, either unconditionally or on a temporary or other conditional basis, from any provisions of this part, and the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap, other than § 32.4 of this chapter, part 180 of this chapter (Prohibition Against Manipulation), and § 23.410 of this chapter (Prohibition on Fraud, Manipulation, and other Abusive Practices), and the antifraud, anti-manipulation, and enforcement provisions of sections 2, 4b, 4c, 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6, 6c, 6d, 9, and 13 of the Act, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

Issued in Washington, DC, on May 4, 2015, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Trade Options—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Wetjen, Bowen, and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

I am pleased to support the staff's recommendation to issue a proposed rulemaking to revise the rules regarding trade options, which are a subset of commodity options. Specifically, the Commission is proposing to reduce reporting and recordkeeping requirements for end-users that transact in trade options in connection with their businesses, including by eliminating the requirement to file form TO. These products are commonly used by commercial participants, so this action should help those participants continue to do so cost-effectively.

We will continue to look at ways that we can make sure commercial end-users can use these markets effectively and to make sure that the new regulatory framework for swaps does not impose unintended consequences or burdens for them. An important part of this effort has been, and shall continue to be, fine-tuning our rules so that commercial companies can continue to conduct their daily operations efficiently.

This proposed rulemaking would relax reporting and recordkeeping requirements where two commercial parties enter into trade options with each other in connection with their respective businesses. These proposed amendments are generally intended to reduce burdens for end-users, many of whom, as commenters explained, face logistical impediments and significant costs in connection with reporting their trade options.

This proposed rulemaking reduces and clarifies requirements for end-users that use trade options in connection with their businesses, and the proposed amendments would allow the Commission to maintain regulatory insight into the market for otherwise unreported trade options. End-users would remain subject to the recordkeeping requirements in § 45.2, which require market participants to maintain full and complete records and to open their records to inspection upon the Commission's request. Additionally, the proposed $1 billion notice requirement would provide the Commission insight into the size of the market for unreported trade options and the identities of the most significant market participants.

I look forward to receiving public comment on this proposed rulemaking.

Appendix 3—Concurring Statement of Commissioner Sharon Y. Bowen

Today, we are approving a proposed rule that would implement changes to the Commission's Trade Option exemption to reduce the burden on commercial entities seeking to hedge risks associated with their physical businesses. I support these changes. However, based upon comments the Commission has received and meetings that I have had with members of the public, I believe the Commission should consider additional clarifications to better ensure legal certainty for the manufacturing, energy and agricultural industries' ability to address their commercial risks.

In the manufacturing, agriculture and energy sectors, a wide variety of physically-delivered instruments are used to secure companies' commercial needs for a physical commodity. These instruments, although they call for physical delivery, often contain some element of optionality that can lead to questions about their appropriate regulatory treatment. These contracts, particularly in the energy sector, are all commonly referred to as physical contracts, and they, according to what I have been told, often receive similar treatment from both a business operations and an accounting standpoint within the entities that use them.

Further, these physical contracts are often handled and accounted for separately from other derivatives, such as futures contracts or cash-settled swaps, according to market participants. Treating some portion of these physical contracts as swaps simply because they may contain some characteristics of commodity options can lead to significant costs and difficulties. For instance, companies may have to reconfigure their business systems to parse transactions where there was, before Dodd Frank, no need to undertake such a reconfiguration.

Many commenters and people I have met have expressed particular concerns regarding how instruments having elements of both forward contracts and some volumetric optionality should be regulated. In a separate release, the Commission plans to finalize guidance on how forward contracts with embedded volumetric optionality relate to the forward contract exclusion from the swap definition. While that release will help address the circumstances under which volumetric optionality embedded in a forward contract do not cause the forward contract to be a ''swap'', my understanding is that additional relief may still be helpful to commercial market participants seeking to hedge their physical needs with instruments that contain a forward contract with volumetric optionality.

Market participants have also expressed concerns about the appropriate treatment of ''peaking supply contracts'' which are often used by companies to manage the risks attendant to their need for physical commodities that may be used to generate electricity, run an operating plant, or manufacture or supply other goods and services.

For both types of instruments, I think, the Commission could benefit from getting comments on potential avenues for addressing concerns that have been raised about their appropriate treatment.

Instruments Containing a Forward Contract With Volumetric Variability

As noted in the proposal, the trade option exemption is intended to permit parties to hedge or otherwise enter into commodity option transactions for commercial purposes without being subject to the general Dodd-Frank swaps regime. The exemption continues the long Commission policy of exempting them from requirements of the Commodity Exchange Act that would otherwise apply to commodity options. It provides an exemption for contracts meeting the requirements of the trade option exemption from regulation as swaps to the extent they would otherwise be subject to regulation by virtue of being a ''commodity option''.

Both forward contracts and trade options play an important role in managing the physical commodity risks attendant to commercial operations. According to industry participants, there can be difficulty in separating out, for regulatory purposes, the ''option'' component of an instrument containing both a forward contract and an element that might be considered a commodity option. My understanding is that these overall instruments are typically used to address a commercial entity's physical requirements for a particular commodity as part of its ongoing commercial operation and that the commodity option component is often used to manage uncertainty in the commercial supply and demand factors that affect a commercial entities' need for a particular physical commodity. Additionally, these instruments are often highly customized and the various components not always easy to separate and classify, according to industry participants.

Given these concerns, I think it would be helpful to get comment upon whether the Commission should consider a new § 32.3(f) as part of the trade option exemption being proposed today. Such an exemption would exempt qualifying trade options from the swap reporting and recordkeeping requirements that would otherwise apply to them as trade options so long as they: (1) Are not severable nor separately marketable from the forward contract component of overall instrument, (2) are related to and entered into concurrently with the forward contract component of overall instrument, and (3) for which the physical commodity underlying the trade option component is the same as that underlying the forward contract component of the overall instrument.

The text of such additional exemption would read as follows:

''*§ 32.3(f) Instruments Containing a Forward Contract with Volumetric Variability.* In the case of an instrument containing a forward contract with volumetric variability that meets the definition of a trade option (as defined by paragraph (a)), the component of such instrument that is a trade option shall be subject to only the requirements of paragraph (d) provided:

(1) The volumetric variability is not severable nor separately marketable from the forward contract component,

(2) the volumetric variability is related to and entered into concurrently with the forward contract component, and

(3) the physical commodity underlying the volumetric variability is the same as that underlying the forward contract component.''

Supply Contracts for a Specified Portion of an Entity's Physical Need for a Commodity (e.g., peaking supply contracts)

As noted above, concerns have also been raised about the appropriate treatment of peaking supply contracts which are often used by companies to manage the risks attendant to their need for physical commodities that may be used to generate electricity, run an operating plant, or manufacture or supply other goods and services.

Market participants have raised concerns about whether or not these contracts could be considered commodity options. In instances where these contracts represent a reservation of a portion of supplier's capacity to provide a particular commodity and not a transaction for the commodity itself, it seems possible these contracts may not be commodity options. One test that has been proposed to determine whether or not such contracts are commodity options is whether:

1. The subject of the agreement, contract or transaction is a binding, sole-source, obligation of a supplier of a physical commodity to stand ready to meet a specified portion of a commercial consumer's physical need for a commodity through providing for the physical delivery of that commodity to the specified commercial consumer or its designee in connection with the physical obligation,

2. The payment provided by the commercial consumer to the commercial supplier for such agreement, contract or transaction is in the nature of a reservation charge to provide the service of standing ready to meet the physical needs of the commercial consumer,

3. Payment for any commodity delivered under such agreement, contract or transaction is at the market price for that commodity at the time of delivery (*i.e.,* the agreement, contract, or transaction is not used to hedge price risk), and

4. The agreement, contract or transaction is necessary to meet the commercial consumer's projected physical needs or is required by regulation.

I think the Commission would benefit from receiving comments on this proposed test and peaking supply contracts more generally as it appears to be one of the significant outstanding issues regarding instruments that may or may not be trade options.

Together, these two additional items may help address outstanding concerns that have been expressed by commercial market participants, and I think the Commission would benefit by getting comment upon them.

Appendix 4—Statement of Commissioner J. Christopher Giancarlo

I support the Commission's proposed amendments to the interim final trade options rule. These are common sense reforms that will alleviate certain recordkeeping and reporting burdens that § 32.3 currently imposes on end-users that use trade options to manage commercial risk. The deletion of the reference in § 32.3(c)(2) to part 151 position limits is also appropriate in light of the fact that part 151 was vacated by the court in *Int'l Swaps & Derivatives Ass'n* v. *U.S. Commodity Futures Trading Comm'n,* 887 F. Supp. 2d 259 (D.D.C. 2012).

I strongly disagree, however, with the Commission's statement that it preliminarily believes that any future application of position limits would be best addressed in the context of the pending position limits rulemaking. Simply put, position limits for trade options are not ''necessary to diminish, eliminate, or prevent'' excessive speculation. Section 4a(a)(1) of the Commodity Exchange Act (CEA). The final trade options rule should make clear that trade options are exempt from position limits.

As the Commission recognized in promulgating the interim final rule establishing the trade options exemption, ''position limits apply only to speculative positions. . . . Trade options, which are commonly used as hedging instruments or in connection with some commercial function, would normally qualify as hedges, exempt from the speculative position limit rules.'' *Commodity Options,* 77 FR 25320, 25328 n.50 (Apr. 27, 2012).

By definition, the offeree to a trade option ''must be a producer, commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof,'' and must restrict the use of trade options ''solely for purposes related to its business as such.'' § 32.3(a)(2). Moreover, the ''option must be intended to be physically settled, so that, if exercised, [it] would result in the sale of an exempt or agricultural commodity for immediate or deferred shipment or delivery.'' § 32.3(a)(3). Given these parameters, the risk that trade options could be used to engage in speculation, much less excessive speculation, is so remote as to be virtually non-existent.

Applying a position limits regime to trade options and requiring commercial end-users to seek bona fide hedge treatment for those transactions, which was floated as a possibility in the pending proposed position limits rule, would not be an acceptable outcome. *See Position Limits for Derivatives,* 78 FR 75680, 75711 (Dec. 12, 2013). As commenters to the proposed position limits rule have pointed out, there is no regulatory benefit to imposing position limits on instruments that inherently are not speculative in nature, and doing so ''will distort commodity markets and impede economically efficient behavior'' by discouraging the use of trade options. Natural Gas Supply Association Comment Letter dated Aug. 4, 2014 at 13. A comment letter filed by the Edison Electric Institute and the Electric Power Supply Association (Joint Associations) cites persuasive examples of how application of the proposed position limits rule would eliminate the ability of market participants to enter into multi-month and multi-year trade options. *See* Joint Associations Comment Letter dated Feb. 7, 2014 at 6–7; *see also* American Gas Association Comment Letter dated Feb. 10, 2014 at 5 (the lack of a contractual upper limit in the way that natural gas options are structured make position limit reporting impossible).

The Commission has the authority in section 4a(a)(7) of the CEA to exempt ''any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish . . . with respect to position limits.''

As long as the specter of position limits hangs over trade options, market participants that have used these instruments for decades as a cost effective means of ensuring a reliable supply of a physical commodity and to hedge commercial risk will be reluctant to use them. As I have said before, commercial end-users, including commercial end-users of everyday trade options, were not the cause of the financial crisis and the federal government should stop treating them like they were.

I urge my fellow Commissioners to eliminate this regulatory uncertainty sooner, rather than later, by exercising our section 4a(a)(7) authority in connection with this trade options rulemaking. I encourage further public comment on the issue.

[FR Doc. 2015–11020 Filed 5–6–15; 8:45 am]

BILLING CODE 6351–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2015–0071; FRL–9926–97–OAR]

RIN 2060–AS57

Prevention of Significant Deterioration Permitting for Greenhouse Gases: Providing Option for Rescission of EPA-Issued Tailoring Rule Step 2 Prevention of Significant Deterioration Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the federal Prevention of Significant Deterioration (PSD) program regulations to allow for rescission of certain PSD permits issued by the EPA and delegated reviewing authorities under Step 2 of the Prevention of Significant Deterioration and Title V Greenhouse Gas (GHG) Tailoring Rule (Tailoring Rule). We are proposing to take this action in order to provide a mechanism for the EPA and delegated reviewing authorities to rescind PSD permits that are no longer required in light of the United States (U.S.) Supreme Court's decision in *Utility Air Regulatory Group (UARG)* v. *EPA* and the amended appeals court judgment in *Coalition for Responsible Regulation (Coalition)* v. *EPA,* vacating that rule. These decisions determined that Step 2 of the Tailoring

Rule was not required by the Clean Air Act (CAA or Act) and vacated the EPA regulations implementing Step 2. When effective, this action would authorize the EPA and delegated reviewing authorities to rescind Step 2 GHG PSD permits in response to requests from applicants who can demonstrate that they are eligible for permit rescission. In the ''Rules and Regulations'' section of this **Federal Register**, we are amending the federal PSD program regulations as a direct final rule without a prior proposed rule. If we receive no adverse comment in response to the direct final rule, we will not take further action on this proposed rule.

DATES: Written comments must be received by June 8, 2015.

Public Hearing: If anyone contacts the EPA by May 18, 2015, requesting to speak at a public hearing on this action, the EPA will hold a public hearing on May 22, 2015 in Research Triangle Park, North Carolina. The EPA will not hold a hearing if one is not requested. Please check the EPA's Web page at *http://www.epa.gov/nsr* on May 19, 2015 for the announcement of whether the hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0071, by mail to U.S. Environmental Protection Agency, EPA Docket Center, Mail Code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mrs. Jessica Montañez, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division, (C504–03), Research Triangle Park, NC 27711, telephone number (919) 541–3407, email at *montanez.jessica@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What are the details for the potential public hearing?

If there is a public hearing, it will be held at the EPA, Building C, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina, 27709; the room number will be announced on the NSR Web site at *http://www.epa.gov/nsr.* If requested, the hearing will provide interested parties the opportunity to present data, views or arguments concerning this action. The EPA will make every effort to accommodate all speakers who arrive and register. Because this hearing will be held at U.S. government facilities, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. These requirements took effect July 21, 2014. If your driver's license is issued by American Samoa, Arizona, Idaho, Louisiana, Maine, Minnesota, New Hampshire or New York, you must present an additional form of identification to enter the federal buildings where the public hearings will be held. Acceptable alternative forms of identification include: federal employee badges, passports, enhanced driver's licenses and military identification cards. For additional information for the status of your state regarding REAL ID, go to *http://www.dhs.gov/real-id-enforcement-brief.* In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building and demonstrations will not be allowed on federal property for security reasons. If held, the public hearing will begin at 10:00 a.m. and continue until 5:00 p.m., if necessary, depending on the number of speakers. The EPA may end the hearing early if all registered speakers have had an opportunity to speak, but no earlier than 2:00 p.m. Persons wishing to present oral testimony that have not made arrangements in advance should register by 2:00 p.m. the day of the hearing. Oral testimony will be limited to 5 minutes per commenter. The EPA encourages commenters to provide written versions of their oral testimonies either electronically (on computer disk or CD–ROM) or in paper copy. Verbatim transcripts and written statements will be included in the rulemaking docket.

If you want to request a hearing and present oral testimony at the hearing, you should notify, on or before May 18, 2015, Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, C504–01, Research Triangle Park, NC 27711, telephone (919) 541–0641, email *long.pam@epa.gov.* The hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below. Any member of the public may file a written comment by the close of the comment period. Written comments should be submitted to Docket ID No. EPA–HQ–OAR–2015–0071 at the addresses given above for submittal of comments. If a hearing is held, the hearing schedule, including the list of speakers, will be posted on the EPA's Web page at *http://www.epa.gov/nsr.* A verbatim transcript of the hearing, if held, and written comments will be made available for copying during normal working hours at the EPA Docket Center address given above for inspection of documents.

II. Why is the EPA issuing this proposed rule?

The EPA is proposing to take action to amend the federal PSD program regulation at 40 CFR 52.21 to allow existing PSD permits that were issued under Step 2 of the Tailoring Rule [1] for GHGs to be rescinded. This proposed action narrowly amends the permit rescission provisions in the federal PSD regulations found in 40 CFR 52.21(w) to allow for the rescission of EPA-issued PSD permits [2] that were issued under Step 2 of the Tailoring Rule permitting regulations.

The U.S. Supreme Court determined the permitting requirements under Step 2 of the Tailoring Rule to be invalid in *UARG* v. *EPA,* 134 S. Ct. 2427 (2014). The Supreme Court affirmed in part and reversed in part an earlier decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Coalition for Responsible Regulation* v. *EPA,* 684 F.3d 102 (D.C. Cir. 2012). In further proceedings upon consideration of the Supreme Court decision, the D.C. Circuit amended its judgment in the *Coalition* case. The Amended Judgment vacated particular provisions of the EPA's regulations implementing Step 2 of the Tailoring Rule.

This proposed action does not itself rescind any permits; it only proposes the regulatory mechanism through which the EPA could then rescind, upon request of a source, an EPA-issued Step 2 PSD permit consistent with the U.S. Supreme Court decision and the amended judgment of the D.C. Circuit. Furthermore, we have published a direct final rule amending these federal PSD program regulations in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a non-controversial amendment and anticipate

[1] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (75 FR 31514, June 3, 2010); 40 CFR 52.21(b)(49)(v).

[2] The terms ''EPA-issued PSD permits that were issued under Step 2 of the Tailoring Rule'' and ''EPA-issued Step 2 PSD permits'' both refer to PSD permits issued by the EPA as well as by delegated reviewing authorities under Step 2 of the Tailoring Rule.

no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If the EPA receives adverse comment in response to the direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. In that case, we would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, please see the information provided in the **ADDRESSES** section of this document.

The regulatory text for the proposal is identical to that for the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published in a separate part of this **Federal Register**.

Neither this rule or direct final rule address any issues concerning the federal PSD permit rescission regulations at 40 CFR 52.21(w) that are not related to the Supreme Court decision in *UARG* v. *EPA* and the amended judgment of the D.C. Circuit. The EPA is developing a separate rulemaking action that will provide an opportunity for the public to comment on others circumstances where 40 CFR 52.21(w) may limit the ability to rescind PSD permits that are no longer necessary.

III. Does this action apply to me?

The entities potentially affected by this rule include new and modified stationary sources that were required to obtain an EPA-issued Step 2 PSD permit under the federal PSD regulations found at 40 CFR 52.21 solely because the source or a modification of the source was expected to emit or increase GHG emissions over the applicable thresholds. This includes (1) sources classified as major for PSD purposes solely on the basis of their potential GHG emissions; and (2) sources emitting major amounts of other pollutants that experienced a modification resulting in an increase of only greenhouse gas emission above the applicable levels in the EPA regulations. Entities affected by this rule may also include state or local reviewing authorities that have been delegated federal authority to implement the federal PSD regulations under 40 CFR 52.21(u) and that have issued Step 2 PSD permits to sources within their jurisdiction. This rule does not address the requirements for approval of a PSD program into a state implementation plan (40 CFR 51.166) or the rescission of PSD permits issued by states and local programs with such approved programs. Stationary sources with questions on the PSD permitting obligations arising from Step 2 PSD permits issued by state or local reviewing authorities under the permitting programs approved into state implementation plans should review the governing statutory provisions and provisions in the applicable approved state or local permitting program to determine how to address any Step 2 PSD permitting issues and consult with the EPA as necessary.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, National ambient air quality standards, New source review, Nitrogen dioxide, Ozone, Particulate matter, Permit rescissions, Preconstruction permitting, Sulfur oxides, Tailoring rule, Volatile organic compounds.

Dated: April 30, 2015.

Gina McCarthy,

Administrator.

[FR Doc. 2015–10629 Filed 5–6–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2014–0905; FRL 9927–15–OAR]

RIN 2060–AS58

Relaxation of the Federal Reid Vapor Pressure Gasoline Volatility Standard for Birmingham, Alabama

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a request from the state of Alabama for the EPA to relax the Reid Vapor Pressure (RVP) standard applicable to gasoline introduced into commerce from June 1 to September 15 of each year for Jefferson and Shelby counties (''the Birmingham area''). Specifically, the EPA is proposing to amend the regulations to change the RVP standard for the Birmingham area from 7.8 pounds per square inch (psi) to 9.0 psi for gasoline. The EPA has preliminarily determined that this change to the federal RVP regulation is consistent with the applicable provisions of the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 8, 2015 unless a public hearing is requested by May 22, 2015. If the EPA receives such a request, we will publish information related to the timing and location of the hearing and a new deadline for public comment.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0905, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.*
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2014–0905. Please include a total of two copies.
- *Hand Delivery:* Air and Radiation Docket, EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. Attention Docket ID No. EPA–HQ–OAR–2014–0905. Please include two copies. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2014–0905. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means that the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made

available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Patty Klavon, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan 48105; telephone number: (734) 214–4476; fax number: (734) 214–4052; email address: *klavon.patty@epa.gov.*

SUPPLEMENTARY INFORMATION:

The contents of this preamble are listed in the following outline:

I. General Information
II. Public Participation
III. Background and Proposal
IV. Direct Final Rule
V. Statutory and Executive Order Reviews
VI. Legal Authority

I. General Information

A. This Proposed Rule Is Published Parallel to a Direct Final Rule

In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is making this revision as a direct final rule without prior proposal because the EPA views these revisions as noncontroversial and anticipates no adverse comment. The rationale for this rulemaking is described both in this proposal and in the direct final rule.

The regulatory text for this proposed rule is included in the direct final rule, and parties should review that rule for the regulatory text. If the EPA receives no adverse comment, the EPA will not take further action on this proposed rule. If the EPA receives adverse comment on this rule or any portion of this rule, the EPA will withdraw the direct final rule or the portion of the rule that received adverse comment. All public comments received will then be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this rulemaking. Any parties interested in commenting must do so at this time.

B. Does this action apply to me?

Entities potentially affected by this rule are fuel producers and distributors who do business in Alabama.

Examples of potentially regulated entities	NAICS [1] codes
Petroleum refineries	324110
Gasoline Marketers and Distributors	424710 424720
Gasoline Retail Stations	447110
Gasoline Transporters	484220 484230

[1] North American Industry Classification System.

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. The table lists the types of entities of which the EPA is aware that potentially could be affected by this rule. Other types of entities not listed on the table could also be affected by this rule. To determine whether your organization could be affected by this rule, you should carefully examine the regulations in 40 CFR 80.27. If you have questions regarding the applicability of this action to a particular entity, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

C. What should I consider as I prepare my comments?

1. Submitting CBI

Do not submit CBI to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

3. Docket Copying Costs

You may be required to pay a reasonable fee for copying docket materials.

II. Public Participation

The EPA will not hold a public hearing on this matter unless a request is received by the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble by May 22, 2015. If the EPA receives such a request, we will publish information related to the timing and location of the hearing and a new deadline for public comment.

III. Background and Proposal

A. Summary of the Proposal

The EPA is proposing to approve a request from the state of Alabama to change the summertime RVP standard for Jefferson and Shelby counties (''the Birmingham area'') from 7.8 psi to 9.0 psi by amending the EPA's regulations at 40 CFR 80.27(a)(2). In a previous rulemaking, the EPA approved a state implementation plan (SIP) revision from

the state of Alabama which provided a technical demonstration that relaxing the federal RVP requirement from 7.8 psi to 9.0 psi for gasoline sold from June 1 to September 15 of each year in the Birmingham area would not interfere with maintenance of the NAAQS in the Birmingham area or with any other applicable CAA requirement. For more information on Alabama's SIP revision, please refer to the April 17, 2015 rulemaking (80 FR 21170).

The preamble for this rulemaking is organized as follows: Section III.B. provides the history of the federal gasoline volatility regulation. Section III.C. describes the policy regarding relaxation of volatility standards in ozone nonattainment areas that are redesignated as attainment areas. Section III.D. provides information specific to Alabama's request for the Birmingham area. Finally, Section IV. briefly discusses the associated direct final rule.

B. History of the Gasoline Volatility Requirement

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

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is RVP. Under CAA section 211(c), the EPA promulgated regulations on March 22, 1989 (54 FR 11868) that set maximum limits for the RVP of gasoline sold during the regulatory control periods that were established on a state-by-state basis in the final rule. The regulatory control periods addressed the portion of the year when peak ozone concentrations were expected. These regulations constituted Phase I of a two-phase nationwide program, which was designed to reduce the volatility of gasoline during the high ozone season. On June 11, 1990 (55 FR 23658), the EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the state, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone NAAQS.)

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

On December 12, 1991 (56 FR 64704), the EPA modified the Phase II volatility regulations to be consistent with CAA section 211(h). The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, effective January 13, 1992. For areas designated as nonattainment, the regulations retained the original Phase II standards published on June 11, 1990 (55 FR 23658), which included the 7.8 psi ozone season limitation for certain areas. As stated in the preamble to the Phase II volatility controls and reiterated in the proposed change to the volatility standards published in 1991, the EPA will rely on states to initiate changes to their respective volatility programs. The EPA's policy for approving such changes is described below in Section III.C.

The state of Alabama has initiated this change by requesting that the EPA relax the 7.8 psi RVP standard to 9.0 psi for the Birmingham area, which is subject to the 7.8 RVP requirement during the summertime ozone season. Accordingly, the state of Alabama provided a technical demonstration showing that relaxing the federal RVP requirements in the Birmingham area from 7.8 psi to 9.0 psi would not interfere with maintenance of the NAAQS or with any other applicable CAA requirement.

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

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

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

Alabama did not request relaxation of the federal RVP standard from 7.8 psi to 9.0 psi when the Birmingham area was redesignated to attainment for either the 1-hour ozone NAAQS or the 1997 ozone NAAQS. However, Alabama took a conservative approach in developing maintenance plans associated with those redesignation requests by estimating emissions using a federal RVP requirement of 9.0 psi.

D. Alabama's Request to Relax the Federal RVP Requirement for the Birmingham Area

In a May 12, 2006 final rule, the EPA approved the Birmingham area's redesignation request and maintenance plan for the 1997 ozone NAAQS. See 71 FR 27631 (May 12, 2006).[2] As required, the CAA section 175A maintenance plan provides for continued attainment

[2] The Birmingham area (*i.e.,* Jefferson and Shelby counties) was designated as unclassifiable/attainment for the 2008 ozone NAAQS effective July 20, 2012. See 77 FR 30088 (May 21, 2012).

and maintenance of the 1997 ozone NAAQS for at least ten years from the effective date of the Birmingham area's redesignation to attainment for the 1997 ozone NAAQS. This maintenance plan also includes components demonstrating how the Birmingham area will continue to attain the 1997 ozone NAAQS, and provides contingency measures should the Birmingham area violate the 1997 ozone NAAQS. The state of Alabama's ozone redesignation request and maintenance plan for the Birmingham area did not remove the state-level 7.0 psi RVP requirement that was in place for the Birmingham area.[3]

On March 2, 2012, the state of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted a proposed revision to Alabama's SIP removing the state-level RVP requirement to use 7.0 psi RVP gasoline in the Birmingham area during the summertime ozone season. The EPA approved the revision in an April 20, 2012 final rule. See 77 FR 23619. The revision to the Alabama SIP resulted in the federal RVP requirement of 7.8 psi applying to the Birmingham area.

On November 14, 2014, the state of Alabama submitted a proposed revision to its SIP demonstrating that removal of the federal RVP requirement of 7.8 psi for gasoline during the summertime ozone season in the Birmingham area would not interfere with maintenance of any NAAQS. Specifically, the state provided a technical demonstration showing that relaxing the federal RVP requirement in the Birmingham area from 7.8 psi to 9.0 psi would not interfere with maintenance of the NAAQS or with any other applicable requirement of the CAA.

The EPA evaluated and approved Alabama's November 14, 2014 SIP revision in a previous rulemaking that was subject to public notice-and-comment. The EPA received two comments on that rulemaking, and those comments were addressed in the final rule for that rulemaking. See 80 FR 21170 (April 17, 2015). The comments received can be found in the docket for that rulemaking (EPA–R04–OAR–2014–0867).

In this action, the EPA is proposing to approve Alabama's request to relax the summertime ozone season RVP standard for the Birmingham area from 7.8 psi to 9.0 psi. Specifically, the EPA is proposing to amend the applicable RVP standard from 7.8 psi to 9.0 psi provided at 40 CFR 80.27(a)(2) for the Birmingham area. This is based on the previous approval of Alabama's November 14, 2014 SIP revision, and the fact that the Birmingham area is currently in attainment for all ozone NAAQS.

IV. Direct Final Rule

A direct final rule that would make the same changes as those proposed in this action appears in the Rules and Regulations section of this **Federal Register**. The EPA is taking direct final action on these revisions because the EPA views the revisions as noncontroversial and anticipates no adverse comment. The EPA has explained the reasons for the amendments in this proposal and in the direct final rule. If no adverse comments are received, no further action will be taken on the proposal, and the direct final rule will become effective as provided in that action.

If the EPA receives adverse comments on the rule or any portion of the rule, the EPA will withdraw the direct final rule or the portion of the rule that received adverse comment. The EPA will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn. All public comments received will then be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on the subsequent final action. Any parties interested in commenting must do so at this time.

The changes to the regulatory text proposed in this document are identical to those for the direct final rule published in the Rules and Regulations section of this **Federal Register**. For further information, including the regulatory revisions, see the direct final rule published in a separate part of this **Federal Register**.

V. Statutory and Executive Order Reviews

For a complete discussion of all the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of this **Federal Register**.

VI. Legal Authority

The statutory authority for this action is granted to the EPA by Sections 211(h) and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7545(h) and 7601(a).

List of Subjects in 40 CFR Part 80

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

Dated: April 30, 2015.

Gina McCarthy,

Administrator.

[FR Doc. 2015–10615 Filed 5–6–15; 8:45 am]

BILLING CODE 6560–50–P

[3] In 2001, the EPA approved a state fuel program that imposed a more stringent 7.0 psi requirement for the Birmingham area, per CAA section 211(c)(4)(C). The low-RVP fuel program required that all gasoline sold during the summertime ozone season (June 1–September 15 of each year) in the Birmingham area contain a maximum RVP of 7.0 psi. See 77 FR 23620 (April 20, 2012).

Notices

Federal Register

Vol. 80, No. 88

Thursday, May 7, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 1, 2015.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725—17th Street NW., Washington, DC, 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by June 8, 2015. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Specialty Crop Block Grant Program—2008 Farm Bill.

OMB Control Number: 0581–0248.

Summary of Collection: The Specialty Crop Block Grant Program—Farm Bill (SCBGP–FB) is authorized under section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note, amended under section 10109 of the Food, Conservation, and Energy Act of 2008, the Farm Bill). Section 10109 directs the Secretary of Agriculture to make grants to States to be used by State departments of agriculture solely to enhance the competitiveness of specialty crops.

Need and Use of the Information: The information collected is needed for the implementation of the SCBGP–FB, to determine a State department of agriculture's eligibility in the program, and to certify that grant participants are complying with applicable program regulations.

Description of Respondents: State Agriculture Departments.

Number of Respondents: 56.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,624.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–10951 Filed 5–6–15; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Brazos Electric Power Cooperative, Inc.; Notice of Intent To Hold a Public Workshop and Prepare an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold a public workshop and prepare an Environmental Assessment.

SUMMARY: The Rural Utilities Service (RUS) intends to hold a public scoping workshop and prepare an Environmental Assessment (EA) in connection with possible impacts related to the construction and operation of a new gas-fired combustion turbine generation facility. The project, Hill County Generation Facility, is proposed by Brazos Electric Power Cooperative, Inc. (Brazos), of Waco, Texas. RUS may provide financial assistance for the project. The public scoping workshop is scheduled for Thursday, May 21, 2015, from 4:00 p.m. until 7:00 p.m. in the Community Hall of the First Presbyterian Church at 106 N. Lamar, Itasca, TX 76055.

FOR FURTHER INFORMATION CONTACT: Dennis E. Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue SW., Washington, DC 20250–1571, Telephone: (202) 720–1953 or email: *dennis.rankin@wdc.usda.gov;* or Dave McDaniel, Brazos Electric Power, 7616 Bagby Avenue, Waco, Texas 76712, Telephone: (254) 750–6324 or email: *dmcdaniel@brazoselectric.com.*

SUPPLEMENTARY INFORMATION: Brazos is proposing to construct a new gas-fired combustion turbine generation facility and is evaluating a potential site located in Hill County, Texas. The 40 acre site is located in the northeast corner of Hill County approximately 8 miles east of Itasca, Texas on FM 66 just west of the Hill County line. Associated facilities include a 4.5 mile gas pipeline and new switching facilities to connect the generation plant to existing transmission lines crossing the site.

Comments regarding the proposed project may be submitted in writing at the public scoping workshop or in writing no later than June 21, 2015, to RUS at the address provided above.

An Environmental Assessment (EA) will be prepared for the proposed project. Based on a review of the EA and other relevant information, RUS will determine if the preparation of an Environmental Impact Statement is necessary. Should RUS determine that the preparation of an Environmental Impact Statement is not necessary, it

will prepare a Finding of No Significant Impact.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State, and local environmental laws and regulations and completion of the environmental review procedures as prescribed by RUS' Environmental Policies and Procedures.

Richard Fristik,

Acting Director, Engineering and Environmental Staff, Rural Utilities Service.

[FR Doc. 2015–10943 Filed 5–6–15; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

[Docket No. 150403337–5337–01]

Privacy Act of 1974; System of Records

AGENCY: Office of Inspector General (OIG), Department of Commerce (DOC).

ACTION: Notice of Proposed Amendment to Privacy Act System of Records, ''OIG Investigative Records—COMMERCE/DEPT–12.''

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (11), and Office of Management and Budget (OMB) Circular A–130, Appendix I, ''Federal Agency Responsibility for Maintaining Records about Individuals,'' DOC OIG proposes to amend the system of records entitled ''OIG Investigative Records—COMMERCE/DEPT–12,'' to reflect a new investigative case management system and an electronic discovery tool; update OIG routine uses; update OIG's practices for storing, retrieving, and safeguarding records in the system; and generally update the system's notice. OIG's changes will generally improve the organization, security, ability to search, and reporting capability of OIG's investigative records. Accordingly, ''OIG Investigative Records—COMMERCE/DEPT–12,'' is proposed to be amended as shown below. DOC OIG invites public comment on the amended system announced in this publication.

DATES: *Comment date:* To be considered, written comments on the proposed amended system must be submitted on or before June 8, 2015.

Effective Date: Unless comments are received, the amended system of records will become effective, as proposed, on the date a subsequent notice is published in the **Federal Register**.

ADDRESSES: Please address comments to the OIG Office of Counsel, Room 7896, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; by email to *OIGCounsel@oig.doc.gov;* or by facsimile to (202) 501–7335. For further information, general questions, and privacy-related issues, please contact the Office of Counsel at (202) 482–5992.

SUPPLEMENTARY INFORMATION: The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, authorizes DOC OIG to conduct investigations to detect and prevent fraud, waste, mismanagement and abuse, and to promote economy and efficiency, in the DOC's programs and operations. OIG uses records in this system in the course of investigating individuals and entities suspected of criminal, civil, or administrative misconduct, and in supporting related judicial and administrative proceedings. OIG's Office of Investigations (OI) maintains and manages OIG's investigative records. DOC OIG proposes to amend the system of records entitled ''OIG Investigative Records—COMMERCE/DEPT–12,'' published in the **Federal Register** on March 14, 2012 (77 FR 15038) and January 19, 2012 (77 FR 2692) to reflect a new investigative case management system and an electronic discovery tool; update OIG routine uses; update OIG's practices for storing, retrieving, and safeguarding records in the system; and generally update the system's notice. Specifically, the following sections of the system of records are proposed to be amended: Categories of Individuals Covered by the System; Categories of Records in the System; Routine Uses; Storage; Retrievability; Safeguards; and System Manager.

The updates to the system will not involve the collection of additional categories of information, but will provide methods for data tracking, organization, and retrieval previously unavailable. OIG's changes will generally improve the organization, security, ability to search, and reporting capability of investigative records. For the public's convenience, DOC OIG restates below in its entirety the system of records, including the proposed amendments.

SYSTEM NAME: COMMERCE/DEPT–12, OIG Investigative Records.

SECURITY CLASSIFICATION:

Sensitive but Unclassified (SBU).

SYSTEM LOCATION:

U.S. Department of Commerce, Office of Inspector General, 1401 Constitution Avenue NW., Washington, DC 20230; U.S. Department of Commerce, Office of Inspector General, Regional Offices, and investigative site(s) used in the course of OIG investigation(s).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In connection with its investigative duties, DOC OIG maintains records in its records system on the following categories of individuals insofar as they are relevant to any investigation or preliminary inquiry undertaken to determine whether to commence an investigation: Subjects of investigations; complainants; witnesses; confidential and non-confidential informants; contractors; subcontractors; recipients of Federal funds and their contractors/subcontractors and employees; individuals interacting with DOC employees or management; current, former, and prospective DOC employees; alleged violators of DOC rules and regulations; union officials; individuals who are investigated and/or interviewed; persons suspected of violations of administrative, civil, and/or criminal provisions; grantees; sub-grantees; lessees; licensees; persons engaged in official business with the DOC; or other persons identified by the OIG or by other agencies, constituent units of the DOC, and members of the general public in connection with the authorized functions of the OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains investigative reports and materials gathered or created with regard to investigations of administrative, civil, and criminal matters by DOC OIG and other Federal, State, local, tribal, territorial, non-governmental, international, foreign regulatory, or foreign law enforcement agencies or entities. Categories of records may include: Complaints; requests to investigate; information contained in criminal, civil, or administrative referrals; statements from subjects and/or witnesses; affidavits, transcripts, police reports, photographs, and/or documents relative to a subject's prior criminal record; medical records; accident reports; materials and intelligence information from other governmental investigatory or law enforcement organizations; information relative to the status of a particular complaint or investigation, including any determination relative to criminal prosecution, civil, or administrative action; general case management documentation; subpoenas and evidence obtained in response to subpoenas; evidence logs; pen registers; correspondence; personal information, including financial and biometric data; forensic computer images; records of investigation; and other data and

evidence collected or generated by OIG's Office of Investigations while conducting its official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, 5 U.S.C. App. 3, as amended.

PURPOSE:

The records contained in this system are used by DOC OIG to carry out its statutory responsibilities under the Inspector General Act of 1978, 5 U.S.C. App. 3, as amended, to conduct and supervise investigations, prevent and detect fraud, waste, and abuse, and promote economy, efficiency, and effectiveness in DOC programs and operations. The records are used in the course of investigating individuals and entities suspected of criminal, civil, or administrative misconduct and in supporting related judicial and administrative proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed, as a routine use, to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current license, if necessary to obtain information relevant to a DOC decision concerning the assignment, hiring, or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of discovery or settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

5. A record in this system of records may be disclosed, as a routine use, to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

6. A record in this system may be transferred, as a routine use, to the Office of Personnel Management for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

7. A record from this system of records may be disclosed, as a routine use, to the General Services Administration (GSA) during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose and any other relevant (*i.e.* GSA or DOC) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the appropriate agency or entity, whether Federal, State, local, tribal, territorial, foreign, or international, charged with the responsibility for investigating or prosecuting a violation of any law, rule, regulation or order. Routine use for law enforcement purposes also includes disclosure to individuals or to agencies, whether Federal, State, local, foreign, or international, when necessary to further the ends of an investigation.

9. A record from this system of records may be disclosed, as a routine use, to representatives of the Department of Justice (DOJ) or of any other agency that is responsible for representing DOC interests in connection with judicial, administrative or other proceedings. This includes circumstances in which (1) the DOC or OIG, or any component thereof; (2) any employee of the DOC or OIG in his or her official capacity; (3) any employee of the DOC or OIG in his or her individual capacity, where DOJ has agreed to represent or is considering a request to represent the employee; or (4) the United States or any of its components, is a party to pending or potential litigation or has an interest in such litigation; in which the DOC or OIG is likely to be affected by the litigation, or in which the DOC or OIG determines that the use of such records by the DOJ is relevant and necessary to the litigation; provided, however, that in each case, the DOC or OIG determines that disclosure of records to the DOJ or representative is a use of the information that is compatible with the purpose for which the records were collected. Records may also be disclosed to representatives of DOJ and other U.S. Government entities, to the extent necessary, to obtain their advice on any matter relevant to an OIG investigation.

10. A record from this system of records may be disclosed, as a routine use, to any source from which additional information is requested in order to obtain information relevant to: A decision by either the DOC or OIG concerning the hiring, assignment, or retention of an individual or other personnel action; the issuance, renewal, retention, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance, retention, or revocation of a license, grant, award, contract, or other benefit to the extent the information is relevant and necessary to a decision by the DOC or OIG on the matter.

11. A record from this system of records may be disclosed, as a routine use, to a Federal, State, local, tribal, territorial, foreign, international, or other public authority in response to its request in connection with: The hiring, assignment, or retention of an individual; the issuance, renewal, retention, or revocation of a security clearance; the reporting of an investigation of an individual; the execution of a security or suitability investigation; the letting of a contract; or the issuance, retention, or revocation of a license, grant, award, contract, or other benefit conferred by that entity to the extent that the information is relevant and necessary to the requesting entity's decision on the matter.

12. A record in this system of records may be disclosed, as a routine use, in the event that a record, either by itself or in combination with other information, indicates a violation or a potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto; or a violation or potential violation of a contract provision. In these circumstances, the relevant records in the system may be referred, as a routine use, to the appropriate agency or entity, whether Federal, State, local, tribal, territorial, foreign, or international charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, order, or contract.

13. A record in this system of records may be disclosed, as a routine use, to any source from which additional

information is requested, either private or governmental, to the extent necessary to solicit information relevant to any investigation, audit, or evaluation.

14. A record in this system of records may be disclosed, as a routine use, to a foreign government or international organization pursuant to an international treaty, convention, implementing legislation, or executive agreement entered into by the United States.

15. A record in this system of records may be disclosed, as a routine use, to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the DOC or OIG, who have a need to access the information in the performance of their duties or activities. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

16. A record in this system of records may be disclosed, as a routine use, to representatives of the Office of Personnel Management, the Office of Special Counsel, the Merit Systems Protection Board, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, the Office of Government Ethics, and other Federal agencies in connection with their efforts to carry out their responsibilities to conduct examinations, investigations, and/or settlement efforts, in connection with administrative grievances, complaints, claims, or appeals filed by an employee, and such other functions promulgated in 5 U.S.C. 1205–06.

17. A record in this system of records may be disclosed, as a routine use, to a grand jury agent pursuant to a Federal or State grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

18. A record in this system of records may be disclosed, as a routine use, to the Departments of the Treasury and Justice in circumstances in which OIG seeks to obtain, or has in fact obtained, an ex parte court order to obtain tax return information from the Internal Revenue Service.

19. A record in this system of records may be disclosed, as a routine use, to any Federal official charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations for purposes of reporting to the President and Congress on the activities of OIG. This disclosure category includes other Federal Offices of Inspectors General and members of the Council of Inspectors General on Integrity and Efficiency, and officials and administrative staff within their investigative chain of command, as well as authorized officials of DOJ and its component, the Federal Bureau of Investigation.

20. A record in this system of records may be disclosed, as a routine use, to appropriate agencies, entities, and persons when (1) it is suspected or determined that the security or confidentiality of information in the system of records has been compromised; (2) it is determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identify theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by OIG, DOC, 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 efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

21. A record in this system of records may be disclosed, as a routine use, to the public or to the media for release to the public when the matter under investigation has become public knowledge or the Inspector General determines that such disclosure is necessary to preserve confidence in the integrity of the Inspector General audit, inspection, review, or investigative process, or is necessary to demonstrate the accountability of DOC employees, officers or individuals covered by the system, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

22. A record in this system of records may be disclosed, as a routine use, to Congress, congressional committees, or the staffs thereof, in order to fulfill the Inspector General's responsibility, as mandated by the Inspector General Act of 1978, to keep the Congress, in connection with its oversight and legislative functions concerning the administration of programs and operations administered or financed by DOC, fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies concerning the administration of programs and operations administered or financed by DOC.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and other media (photographs, audio recording, diskettes, CDs, etc.) are stored in locked containers in a secured area. Electronic records are maintained on servers, which house OIG's case management system and electronic discovery tool. Servers are maintained in a secured, restricted-area facility.

RETRIEVABILITY:

Electronic searches may be performed by search criteria that include case numbers, names of individuals or organizations, and other key word search variations.

Paper records are retrieved by indices cross-referenced to file numbers.

SAFEGUARDS:

Paper records are kept in locked cabinets, secured rooms, in a guarded building, and used only by authorized screened personnel. Electronic records are stored on servers maintained in a locked facility that is secured at all times by security systems and video cameras. Data in the system are encrypted and password protected. Access to electronic records is restricted to DOC OIG staff and contractors individually authorized to access the case management or electronic discovery system. Passwords are changed periodically, in accordance with OIG policy. Backup tapes are stored in a locked and controlled room in a secure off-site facility.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the DOC OIG Records Retention Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER NAME AND ADDRESS:

Assistant Inspector General for Investigations, Room 7898c, Office of Inspector General, United States Department of Commerce, 1401 Constitution Ave. NW., Washington, DC 20230.

NOTIFICATION PROCEDURE:

The Inspector General has exempted this system from the procedures of the Privacy Act relating to individuals' requests for notification of the existence of records on themselves.

RECORD ACCESS PROCEDURE:

The Inspector General has exempted this system from the access procedures of the Privacy Act.

CONTESTING RECORDS PROCEDURE:

The Inspector General has exempted this system from the contest procedures of the Privacy Act.

RECORD SOURCE CATEGORIES:

DOC OIG collects information from a wide variety of sources, including information from the DOC and other Federal, State, and local agencies, subjects, witnesses, complainants, victims, confidential and non-confidential sources, individuals, and non-governmental entities.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

Under 5 U.S.C. 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the agency or component that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. The Inspector General Act of 1978, 5 U.S.C. App. 3, as amended, mandates the Inspector General to recommend policies for, and to conduct, supervise and coordinate activities in the Department and between the Department and other Federal, State and local government agencies with respect to all matters relating to the prevention and detection of fraud in programs and operations administered or financed by the Department, and to the identification and prosecution of participants in such fraud. Under the Act, whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law, the Inspector General must report the matter expeditiously to the Attorney General. In addition to these principal functions pertaining to the enforcement of criminal laws, the Inspector General may receive and investigate complaints on information from various sources concerning the possible existence of activities constituting violations of law, rules or regulations, or mismanagement, gross waste of funds, abuses of authority or substantial and specific danger to the public health and safety. The provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(j)(2) are as follows: 5 U.S.C. 552a(c)(3) and (4); 5 U.S.C. 552a(d); 5 U.S.C. 552a(e)(1), (2) and (3); 5 U.S.C. 552a(e)(4)(G), (H), and (I); 5 U.S.C. 552a(e)(5) and (8); 5 U.S.C. 552a(f); 5 U.S.C. 552a(g).

To the extent that the exemption under 5 U.S.C. 552a(j)(2) is held to be invalid, then the exemptions under 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5) are claimed for all material which meets the criteria of these three subsections.

Provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5) are as follows: 5 U.S.C. 552a(c)(3); 5 U.S.C. 552a(d); 5 U.S.C. 552a(e)(1); 5 U.S.C. 552a(e)(4)(G), (H), and (I); 5 U.S.C. 552a(f).

Reasons for exemptions: In general, the exemption of this information and material is necessary in order to accomplish the law enforcement function of the Office of Inspector General, to prevent disclosure of classified information as required by Executive Order, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel. The detailed reasons for exemptions are as follows.

Reasons for exemptions under 5 U.S.C. 552a(j)(2) and (k)(2):

(1) 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(c)(4), (d), (e)(4)(G) and (H), (f) and (g) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating to access to records and the contest of information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in records systems. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or to grant access to an investigative file could interfere with investigative and enforcement proceedings, deprive co-defendants of a right to a fair trial or other impartial adjudication, constitute an unwarranted invasion of personal privacy of others, disclose the identity or confidential sources, reveal confidential information supplied by these sources and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to identify, detect, and apprehend violators.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of a criminal or other investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his or her jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which related to matters incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another

agency. Such information cannot readily be segregated.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privilege under Federal programs. The application of the provision would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct for the following reasons:

a. In certain instances the subject of an investigation cannot be required to supply information to investigators. In those instances, information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct, etc., must be obtained from other sources.

b. Most information collected about an individual under investigation is obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his or her activities.

c. The subject of an investigation will be alerted to the existence of an investigation if any attempt is made to obtain information from the subject. This could afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

d. In any investigation, it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(6) 5 U.S.C. 552a(e)(3) requires that an agency must inform the subject of an investigation who is asked to supply information of:

a. The authority under which the information is sought and whether disclosure of the information is mandatory or voluntary,

b. The purposes for which the information is intended to be used,

c. The routine uses which may be made of the information, and

d. The effects on the subject, if any, of not providing the requested information.

The reasons for exempting this system of records from the foregoing provision are as follows:

(i) The disclosure to the subject of the investigation as stated in (b) above would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(ii) If the subject were informed of the information required by this provision, it could seriously interfere with undercover activities requiring disclosure of undercover agents' identity and impairing their safety, as well as impairing the successful conclusion of the investigation.

(iii) Individuals may be contacted during preliminary information-gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(7) 5 U.S.C. 552a(e)(5) requires that records be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about an individual. Because the law defines ''maintain'' to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation it is not possible to determine this prior to collection of the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material which may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(8) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record of such individual is made available to any persons under compulsory legal process when such process becomes a matter of public record. The notice requirements of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

Reasons for exemptions under 5 U.S.C. 552a(k)(1):

(1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the record at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation, and that such persons are subjects of that investigation, information which if known might cause damage to national security.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records, and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigations undertaken in connection with national security; or could disclose the identity of sources kept secret to protect national security or reveal confidential information supplied by these sources.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose the identity of sources kept secret to protect national security.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of an investigation involving national security matters.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violators of laws other than those within the scope of his or her jurisdiction. In the interests of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining forms of evidence during an investigation, information may be supplied to the investigator which relate to matters incidental to the main purpose of the investigation but which

may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

Reasons for exemptions under 5 U.S.C. 552a(k)(5):

(1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subject with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; co-defendants of a right to a fair trial; constitute an unwarranted invasion of personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by these sources; and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations, and to make fair and objective decisions on questions of suitability for Federal employment and related issues.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. Because it is not possible to detect relevance or necessity of specific information in the early stages of an investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after that information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his or her jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relate to matters incidental to the main purpose of the investigation but which may relate to matters under investigative jurisdiction of another agency. Such information cannot readily be segregated.

Dated: April 28, 2015.

Brenda Dolan,

Departmental Freedom of Information and Privacy Act Officer.

[FR Doc. 2015–10979 Filed 5–6–15; 8:45 am]

BILLING CODE 3510–55–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') is conducting the fifth administrative review of the antidumping duty order on certain steel threaded rod (''STR'') from the People's Republic of China (''PRC''),[1] for the period of review (''POR''), April 1, 2013, to March 31, 2014. The Department selected two respondents for individual review, Gem-Year Industrial Co., Ltd. (''Gem-Year''), and the RMB/IFI Group.[2] We preliminary determine that Gem-Year and the RMB/IFI Group failed to cooperate by not acting to the best of their ability to comply with the Department's request for information, warranting the application of facts otherwise available with adverse inferences, pursuant to sections 776(a)–(b) of the Tariff Act of 1930, as amended (''Act''). As a part of the application of adverse facts available (''AFA''), we preliminarily determine to treat Gem-Year and the RMB/IFI Group as part of the PRC-wide entity.[3] If these preliminary results are adopted in the final results, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* May 7, 2015.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1394 or (202) 482–4047, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 2014, the Department initiated an administrative review of the antidumping duty order on certain steel threaded rod from the PRC for the period, April 1, 2013, through March 31, 2014, for 92 companies.[4] On June 18, 2014, Vulcan Threaded Products, Inc. (''Petitioner'') timely withdrew its request for an administrative review of 83 companies.[5] On September 23, 2014,

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[1] *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009) (''*Order*'').

[2] RMB Fasteners Ltd., IFI & Morgan Ltd., and Jiaxing Brother Standard Part Co., Ltd. (collectively ''the RMB/IFI Group'').

[3] *See* Department Memorandum, ''Certain Steel Threaded Rod from the People's Republic of China: Decision Memorandum for the Preliminary Results of the 2013–2014 Antidumping Duty Administrative Review,'' (''Preliminary Decision Memorandum''), dated concurrently with these results and hereby adopted by this notice.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 30809 (May 29, 2014) (''*Initiation Notice*'').

[5] *See* Letter to the Department from Petitioner, ''Fifth Administrative Review of Certain Steel

the Department rescinded this administrative review with respect to 83 companies named in the *Initiation Notice* based on the timely withdrawal of requests for review,[6] in accordance with 19 CFR 351.213(d)(1).[7] Accordingly, nine companies remain under review for these preliminary results.

Scope of the Order

The merchandise covered by the order includes steel threaded rod. The subject merchandise is currently classifiable under subheading 7318.15.5051, 7318.15.5056, 7318.15.5090, and 7318.15.2095 of the United States Harmonized Tariff Schedule (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.[8]

PRC-Wide Entity

As noted above, a review was requested, but not rescinded, for nine companies. Aside from the mandatory respondents, Gem-Year and RMB/IFI Group, the remaining seven companies are not eligible for separate rate status or rescission because none submitted a completed separate rate application or certification.[9] Accordingly, these seven companies are part of the PRC-wide entity. Additionally, the Department preliminarily determines that Gem-Year and the RMB/IFI Group, the mandatory respondents, failed to cooperate by not acting to the best of their abilities to comply with requests for information, and therefore, neither is eligible for a separate rate. Accordingly, the Department preliminarily finds, based on AFA, that the PRC-wide entity also includes these two companies.[10]

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.[11] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate is not subject to change, (*i.e.,* 206 percent).[12]

Methodology

The Department conducted this review in accordance with section 751(a)(1)(B) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.[13] The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/enforcement/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that, for the period April 1, 2013, through March 31, 2014, the companies identified in Appendix I to this notice are part of the PRC-wide entity.

Public Comment & Opportunity To Request a Hearing

Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results of review.[14] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.[15] Parties who submit arguments are requested to submit with the argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[16] Parties submitting briefs should do so pursuant to the Department's electronic filing system, ACCESS.

Any interested party may request a hearing within 30 days of publication of this notice.[17] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.[18] If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[19]

The Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[20] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For any individually examined respondent whose weighted average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[21] Where either a respondent's weighted average dumping margin is zero or *de minimis,* or an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis,* the Department will instruct CBP to

Threaded Rod from China: Petitioner's Withdrawal of Review Requests for Specific Companies'' (June 18, 2014).

[6] *See Certain Steel Threaded Rod from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review,* 79 FR 56768, (September 23, 2014) (''*Partial Rescission Notice''*).

[7] *Id.*

[8] For a full description of the scope of the *Order, see* Preliminary Decision Memorandum.

[9] These companies are: (1) Fastco (Shanghai) Trading Co., Ltd., (2) Haiyan Dayu Fasteners Co., Ltd., (3) Jiaxing Brother Standard Part, (4) Midas Union Co., Ltd., (5) Shanghai P&J International Trading Co., Ltd., (6) New Pole Power System Co. Ltd., and (7) Zhejiang Morgan Brother Technology Co., Ltd.

[10] *See* section 776(b) of the Act.

[11] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[12] *See Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 71743, 71744 and accompanying Issues and Decision Memorandum (''*4th AR STR Final Results''*).

[13] A list of topics discussed in the Preliminary Decision Memorandum is provided at Appendix II to this notice.

[14] *See* 19 CFR 351.309(c)(1)(ii).

[15] *See* 19 CFR 351.309(d)(1)–(2).

[16] *See* 19 CFR 351.309(c)(2), (d)(2).

[17] *See* 19 CFR 351.310(c).

[18] *Id.*

[19] *See* 19 CFR 351.310(d).

[20] *See* 19 CFR 351.212(b).

[21] *See* 19 CFR 351.212(b)(1).

liquidate appropriate entries without regard to antidumping duties.[22] We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate.

The Department announced a refinement to its assessment practice in non-market economy (''NME'') cases.[23] Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during the administrative review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. Additionally, if the Department determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[24]

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For any companies listed that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: April 30, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Companies Subject to the Administrative Review That Are Preliminarily Determined To Be Part of the PRC-Wide Entity

Fastco (Shanghai) Trading Co., Ltd.
Gem-Year Industrial Co., Ltd.
Haiyan Dayu Fasteners Co., Ltd.
Jiaxing Brother Standard Part Co., Ltd., IFI & Morgan Ltd. and RMB Fasteners Ltd. (collectively ''RMB/IFI Group'')
Jiaxing Brother Standard Part.
Midas Union Co., Ltd.
New Pole Power System Co. Ltd.
Shanghai P&J International Trading Co., Ltd.
Zhejiang Morgan Brother Technology Co. Ltd.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum:

Summary
1. Background
2. Verification
3. Respondent Selection
4. Scope of the Order
5. Questionnaires
6. Non-Market Economy Country
7. PRC-Wide Entity
8. Separate Rates
9. Application of Facts Available and Use of Adverse Inference
10. Conclusion

[FR Doc. 2015–11082 Filed 5–6–15; 8:45 am]

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[22] *See* 19 CFR 351.106(c)(2).

[23] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[24] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–821]

Polyethylene Retail Carrier Bags From Thailand: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Thailand.[1] This review covers 33 companies. The period of review (POR) is August 1, 2013, through July 31, 2014. We preliminarily find that subject merchandise has been sold at less than normal value by the one company subject to this review, Beyond Packaging Co., Ltd. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* May 7, 2015.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0665 and 202–482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the antidumping duty order is polyethylene retail carrier bags, which are currently classified under subheading 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number is provided for convenience and customs purposes. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[2] The written description is dispositive.

[1] *See Antidumping Duty Order: Polyethylene Retail Carrier Bags From Thailand,* 69 FR 48204 (August 9, 2004) (*Order*).

[2] *See* memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of the 2013/2014 Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags from Thailand'' (Preliminary Decision Memorandum), dated concurrently with this notice.

Rescission of Review in Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Except for Beyond Packaging Co., Ltd. (Beyond Packaging), the petitioners [3] withdrew their request for an administrative review of the remaining 32 companies identified in the *Initiation Notice* [4] within the 90-day period.[5] The petitioners were the only party to request a review of these companies. Accordingly, we are rescinding this administrative review, in part, with respect to these companies in accordance with 19 CFR 351.213(d)(1).

Methodology

In accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), we relied on facts available with an adverse inference with respect to Beyond Packaging, the sole company selected for individual examination and sole company in this review. Thus, we preliminarily assigned a rate of 122.88 percent as the weighted-average dumping margin for Beyond Packaging. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* A list of topics included in the Preliminary Decision Memorandum is included in Appendix I attached to this notice. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin on PRCBs from Thailand exists for the period August 1, 2013, through July 31, 2014, at the following rate:

Company	Rate (percent)
Beyond Packaging Co., Ltd	122.88

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[6] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[7]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the date of publication of this notice.[8] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

When submitting a document to the Department *via* the Department's electronic records system, ACCESS, the document must be received successfully in its entirety by 5 p.m. Eastern Time on the date on which it is due.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. For the final results, if we continue to rely on adverse facts available to establish Beyond Packaging's weighted-average dumping margin, we will instruct CBP to apply an *ad valorem* assessment rate of 122.88 percent to all entries of subject merchandise during the POR which were produced and/or exported by Beyond Packaging.

For the companies for which the review is rescinded, the antidumping duty shall be assessed at the rate equal to the cash deposit of the estimated antidumping duty required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). We will instruct CBP accordingly.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of PRCBs from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Beyond Packaging will be equal to the weighted-average dumping margin established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash deposit rate will be 4.69 percent.[9] These deposit requirements, when imposed, shall remain in effect until further notice.

[3] Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation (collectively, the petitioners).

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 58729 (September 30, 2014) (*Initiation Notice*). The *Initiation Notice* incorrectly lists one of the companies as 2PK Inetrplas Co., Ltd., instead of 2PK Interplas Co., Ltd. This error was corrected in *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 64565 (October 30, 2014).

[5] *See* letter from King & Spalding LLP on behalf of the petitioners entitled ''Polyethylene Retail Carrier Bags from Thailand: Partial Withdrawal of Request for Administrative Review'' dated December 16, 2014.

[6] *See* 19 CFR 351.309(d).

[7] *See* 19 CFR 351.303 (for general filing requirements).

[8] *See* 19 CFR 351.310(c).

[9] *See Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand,* 75 FR 48940 (August 12, 2010).

Notifications to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 1, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

A. Summary
B. Background
C. Scope of the Order
D. Rescission of Review in Part
E. Discussion of the Methodology
  1. Use of Facts Otherwise Available
  a. Use of Facts Available
  b. Application of Facts Available With an Adverse Inference
  c. Selection and Corroboration of Information Used as Facts Available
  2. Duty Absorption
F. Recommendation

[FR Doc. 2015–11087 Filed 5–6–15; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–984]

Drawn Stainless Steel Sinks From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission in Part, and Intent To Rescind the Review in Part; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on drawn stainless steel sinks (sinks) from the People's Republic of China (PRC). The period of review (POR) is August 6, 2012, through December 31, 2013. We preliminarily find that Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (Dongyuan) received countervailable subsidies during the POR. We are rescinding the review with respect to Foshan Zhaoshun Trade Co., Ltd. (Zhaoshun), Zhongshan Superte Kitchenware Co., Ltd. (Superte), Zhongshan Newecan Enterprise Development Corporation Limited (Newecan), Zhongshan Silk Imp. & Exp. Group Co., Ltd. of Guangdong (Zhongshan Silk). Further, we preliminarily find that Shunde Native Produce Import and Export Co., Ltd. of Guangdong (Native Produce) did not have any reviewable entries during the POR. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* May 7, 2015.

FOR FURTHER INFORMATION CONTACT: Jennifer Meek or Joshua Morris, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2778 and (202) 482–1779, respectively.

Scope of the Order

Drawn stainless steel sinks are sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of sinks. The products covered by this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under statistical reporting number 7324.10.0000. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

A full description of the scope of the order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of Countervailing Duty Administrative Review: Drawn Stainless Steel Sinks from the People's Republic of China'' dated concurrently with this notice (Preliminary Decision Memorandum), which is hereby adopted by this notice. A list of topics discussed in the Preliminary Decision Memorandum is provided as Appendix I to this Notice.

The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Methodology

The Department conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each program found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[1]

In making the preliminary findings, we relied, in part, on facts available and, because the Government of the PRC did not act to the best of its ability to respond to the Department's requests for information, we applied an adverse inference in selecting from among the facts otherwise available.[2] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Partial Rescission

As discussed in the Preliminary Decision Memorandum, the companies Zhaoshun, Superte, Newecan, and Zhongshan Silk timely withdrew their requests for administrative review of themselves.[3] No other parties requested reviews of these companies. The Department, pursuant to 19 CFR 351.213(d)(1), is therefore rescinding this administrative review with respect to Zhaoshun, Superte, Newecan, and Zhongshan Silk.[4]

Preliminary Determination of No Shipments and Intent To Rescind the Review in Part

Based on our analysis of U.S. Customs and Border Protection (CBP) information and information provided by Native Produce, we preliminarily determine that Native Produce did not

[1] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[2] *See* sections 776(a) and (b) of the Act. For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

[3] As noted in the Preliminary Decision Memorandum, Native Produce also submitted a withdrawal of its request for review. It did so, however, after the 90-day deadline pursuant to 19 CFR 351.213(d)(1) and was, therefore, untimely.

[4] *See* Appendix II for the full list of companies for which this review is being rescinded.

have any reviewable entries during the POR. Absent any evidence of shipments being placed on the record, pursuant to 19 CFR 351.213(d)(3), in the final results, we intend to rescind the administrative review of this company. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Preliminary Results of the Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for Dongyuan for the period August 6, 2012, through December 31, 2013. We calculated a rate for 2012, which will be applicable to entries made during the period August 6, 2012, through December 31, 2012, and a rate for 2013, which will be applicable to entries during the period January 1, 2013, through December 31, 2013. We preliminarily find that the net subsidy rates for Dongyuan are as follows:

Company	Subsidy rate (percent) 2013	Subsidy rate (percent) 2012
Guangdong Dongyuan Kitchenware Industrial Co., Ltd	9.83	3.91

Disclosure and Public Comment

The Department intends to disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice.[5] Interested parties may submit case briefs no later than 30 days after the day on which these preliminary results are published in the **Federal Register**.[6] Rebuttal briefs, which must be limited to issues raised in case briefs, may be submitted by no later than five days after the deadline for case briefs.[7] Parties who submit case briefs or rebuttal briefs in this proceeding should submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8] The summary of the argument should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice.[9] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, on a date and at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS.[10] An electronically filed documents must be received successfully in their entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.[11]

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including our analysis of and responses to issues raised by the parties in their comments, within 120 days after issuing these preliminary results.

Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), we assigned a subsidy rate for the producer/exporter subject to this administrative review. Upon issuance of the final results, the Department shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

For the rescinded companies, countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period August 6, 2012, through December 31, 2013, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Cash Deposit Requirements

Also in accordance with section 751(a)(2)(C) of the Act, the Department intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for Dongyuan, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: April 30, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Partial Rescission of the Administrative Review
5. Intent to Rescind, in Part, the Administrative Review
6. Use of Facts Otherwise Available and Adverse Inferences
7. Subsidy Valuation Information
8. Analysis of Programs
9. Recommendation

Appendix II—Companies for Which the Review Is Rescinded

1. Foshan Zhaoshun Trade Co., Ltd.
2. Zhongshan Superte Kitchenware Co., Ltd.
3. Zhongshan Silk Imp. & Exp. Group Co., Ltd. of Guangdong
4. Zhongshan Newecan Enterprise Development Corporation Limited

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[5] *See* 19 CFR 351.224(b).

[6] *See* 19 CFR 351.309(c)(1)(ii).

[7] *See* 19 CFR 351.309(d).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See* 19 CFR 351.310(c).

[10] *See generally* 19 CFR 351.303.

[11] *See Antidumping and Countervailing Duty proceedings: Electronic Filing Procedures; Administrative Protective Order Procedure,* 76 FR 39263 (July 6, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–983]

Drawn Stainless Steel Sinks From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2012–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on drawn stainless steel sinks (drawn sinks) from the People's Republic of China (PRC). The administrative review covers 11 exporters, of which the Department selected two as mandatory respondents for individual examination (*i.e.,* Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (Dongyuan) and Guangdong Yingao Kitchen Utensils Co., Ltd. (Yingao)). The period of review (POR) is October 4, 2012, through March 31, 2014.

The Department preliminarily finds that Dongyuan and Yingao both made sales of subject merchandise at less than normal value (NV) during the POR. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* May 7, 2015.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or Brandon Custard, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1766 and (202) 482–1823, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the order include drawn stainless steel sinks. Imports of subject merchandise are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7324.10.0000 and 7324.10.0010. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.[1]

Methodology

The Department conducted this review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act). Export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy (NME) within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov;* the Preliminary Decision Memorandum is also available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Enforcement and Compliance's Web site at *http://www.trade.gov/enforcement/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as the Appendix to this notice.

Preliminary Results of Review

Because Feidong Import & Export Co., Ltd., Shunde Native Produce Import & Export Co, Ltd. of Guangdong, and Zhongshan Silk Import & Export Group Co., Ltd. of Guangdong did not demonstrate they were entitled to a separate rate, the Department preliminarily finds these companies to be part of the PRC-wide entity.[2] The rate previously established for the PRC-wide entity is 76.53 percent.[3]

The Department preliminarily determines that the following weighted-average dumping margins exist for the period October 4, 2012, through March 31, 2014:

Exporters	Weighted-average dumping margin (percent)
Foshan Zhaoshun Trade Co., Ltd.*	2.14
Guangdong Dongyuan Kitchenware Industrial Co., Ltd	0.81
Guangdong New Shichu Import & Export Company Limited*	2.14
Guangdong Yingao Kitchen Utensils Co., Ltd	5.55
Yuyao Afa Kitchenware Co., Ltd.*	2.14
Zhongshan Newecan Enterprise Development Corporation Limited*	2.14
Zhongshan Superte Kitchenware Co., Ltd.*	2.14

*This company demonstrated that it qualified for a separate rate in this administrative review. The rate for this company is the average of the weighted-average dumping margins assigned to Dongyuan and Yingao. *See* the Preliminary Decision Memorandum.

Disclosure and Public Comment

The Department intends to disclose to the parties the calculations performed for these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[4] Rebuttals to case briefs may be filed no later than five days after the written comments are filed and all rebuttal comments must be limited to comments raised in the case briefs.[5]

Any interested party may request a hearing within 30 days of publication of this notice.[6] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401

[1] For a complete description of the Scope of the Order, *see* ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Drawn Stainless Steel Sinks from the People's Republic of China'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated April 30, 2015 (Preliminary Decision Memorandum), issued concurrently with and hereby adopted by this notice.

[2] *See* Preliminary Decision Memorandum. Pursuant to the Department's change in practice, the Department no longer considers the NME entity as an exporter conditionally subject to administrative reviews. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013). Under this practice, the NME entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the entity, the entity is not under review and the entity's rate is not subject to change.

[3] The PRC-wide rate determined in the investigation was 76.53 percent. *See Drawn Stainless Steel Sinks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 78 FR 21592 (April 11, 2013). This rate was adjusted for export subsidies and estimated domestic subsidy pass through to determine the cash deposit rate (76.45 percent) collected for companies in the PRC-wide entity. *See* explanation in *Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination,* 78 FR 13019 (February 26, 2013).

[4] *See* 19 CFR 351.309(c).

[5] *See* 19 CFR 351.309(d).

[6] *See* 19 CFR 351.310(c).

Constitution Avenue NW., Washington, DC 20230.[7]

Unless otherwise extended, the Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in the case briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[8] The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of the final results of this review.

For each individually-examined respondent in this review (*i.e.,* Dongyuan and Yingao) which has a weighted-average dumping margin which is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer- (or customer-) specific per-unit duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's (or customer's) examined sales to the total sales quantity associated with those sales, in accordance with 19 CFR 351.212(b)(1).[9] Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer- (or customer-) specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the respondents which were not selected for individual examination in this administrative review and which qualified for a separate rate, the assessment rate will be equal to the average of the weighted-average dumping margins assigned to Dongyuan and Yingao in the final results of this review.

For the final results, if we continue to treat the three companies identified above as part of the PRC-wide entity, we will instruct CBP to apply an *ad valorem* assessment rate of 76.45 percent to all entries of subject merchandise during the POR which were produced and/or exported by those companies.

The Department announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[10]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is zero or *de minimis,* then a cash deposit rate of zero will be established for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity, which is 76.45 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results of reviews in accordance with sections 751(a)(l) and 777(i)(l) of the Act.

Dated: April 30, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

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[FR Doc. 2015–11083 Filed 5–6–15; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* 19 CFR 351.310(d).

[8] *See* 19 CFR 351.212(b)(1).

[9] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[10] For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (*NME Antidumping Proceedings*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–803]

Preliminary Negative Determination of Circumvention of the Antidumping Order on Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

SUMMARY: On July 29, 2014, pursuant to allegations by Polyplex USA LLC and Flex USA Inc., the Department of Commerce (the Department) initiated an anti-circumvention inquiry to determine whether imports of polyethylene terephthalate film, sheet, and strip (PET Film) from the Kingdom of Bahrain (Bahrain) produced by JBF Bahrain S.P.C. (JBF Bahrain) are circumventing the antidumping order on PET Film from the United Arab Emirates (UAE). We preliminarily determine that PET Film produced by JBF Bahrain in

Bahrain is not circumventing the order of PET Film from the UAE,[1] pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act).

DATES: *Effective:* May 7, 2015.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, 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) 482–4261.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the order are all gauges of raw, pre-treated, or primed polyethylene terephthalate film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. Polyethylene terephthalate film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.[2]

Scope of the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers PET Film produced in Bahrain by JBF Bahrain from inputs (PET chips and silica chips) manufactured in the UAE, and that is subsequently exported from Bahrain to the United States.

Methodology

The Department has conducted this preliminary determination of circumvention in accordance with section 781(b) of the Act and 19 CFR 351.225(h). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.[3] The Preliminary Decision Memorandum is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov,* and it is available to all parties in the Central Records Unit in room 7046 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Findings

As detailed in the Preliminary Decision Memorandum, the Department has preliminarily determined that the process of completion or assembly of PET Film produced by JBF Bahrain is not minor or insignificant, pursuant to section 781(b)(2) of the Act, nor is the value of the merchandise produced in the UAE a significant portion of the value of PET film exported from Bahrain to the United States, pursuant to section 781(b)(1)(D) of the Act. Therefore, the Department preliminarily determines that PET Film produced by JBF Bahrain in Bahrain using inputs from the UAE, and exported from Bahrain to the United States, is not circumventing the *Order.*

Public Comment

The Department intends to disclose the analysis used in these preliminary findings within five days of publication of this notice. Interested parties are invited to comment on the preliminary results of this review. Pursuant to 19 CFR 351.309(b)(2), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may not be filed later than five days after the time limit for filing case briefs.[4] Case and rebuttal briefs, when submitted, must comport with the requirements contained in 19 CPR 351.309(c)(2) and (d)(2).

Any interested party who wishes to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the day of publication of this notice pursuant to 19 CFR 351.310(c). A request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.[5] Issues raised in the hearing will be limited to those raised in case briefs.

Final Determination

According to 19 CFR 351.225(f)(5), the Department will normally issue a final scope ruling in a circumvention inquiry within 300 days of the date of the initiation inquiry. Because of the extensive cost, investment, and research and development information required for this analysis from JBF, the Department is extending the deadline for the final ruling in this inquiry. The final determination with respect to this anti-circumvention inquiry, including results of the Department's analysis of any written comments, will be issued no later than July 31, 2015.

This preliminary negative circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225.

Dated: May 1, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Scope of the Anticircumvention Inquiry
5. Statutory Framework
6. Statutory Analysis
7. Summary of Statutory Analysis

[FR Doc. 2015–11085 Filed 5–6–15; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates,* 73 FR 66595 (November 10, 2008) (*Order*).

[2] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Preliminary Decision Memorandum for Anti-circumvention Inquiry of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates'' (Preliminary Decision Memorandum), dated concurrently with these results and herby adopted by this notice.

[3] *Id.*

[4] *See* 19 CFR 351.309(d)(1).

[5] *See* 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

SUMMARY: The Department of Commerce (''Department'') is amending the *Final Results*[1] of the administrative review of

[1] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 20197 (April 15, 2015) (''*Final Results*'') and accompanying Memorandum from

the antidumping duty order on certain new pneumatic off-the-road tires (''OTR Tires'') from the People's Republic of China (''PRC'') to correct a ministerial error. The period of review (''POR'') is September 1, 2012, through August 31, 2013.

DATES: *Effective:* May 7, 2015.

FOR FURTHER INFORMATION CONTACT: Andrew Medley, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202–482–4987.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 2015, the Department disclosed to interested parties its calculations for the *Final Results.*[2] On April 15, 2015, we received a ministerial error allegation from Petitioners[3] regarding the Department's margin calculation for Guizhou Tyre Co., Ltd./Guizhou Tyre Import and Export Co., Ltd. (collectively, ''GTC'').[4]

Scope of the Order

The merchandise covered by this order includes new pneumatic tires designed for off-the-road and off-highway use, subject to certain exceptions. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.[5]

Ministerial Error

Section 751(h) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.224(f) define a ''ministerial error'' as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any similar type of unintentional error which the Secretary considers ministerial.'' We analyzed Petitioners' ministerial error comments and determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that we made a ministerial error in our calculation of GTC's margin for the *Final Results* by inadvertently neglecting to include two of GTC's inputs in the total material cost buildup for normal value.[6]

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results.*[7] The revised weighted-average dumping margins are detailed below.

Amended Final Results

As a result of correcting this ministerial error, we determine that the following weighted-average dumping margins exist for the POR:

Exporter	Weighted average dumping margin (percent)
Guizhou Tyre Co., Ltd./Guizhou Tyre Import and Export Co., Ltd	11.41
Zhongce Rubber Group Company Limited	11.41
Weihai Zhongwei Rubber Co., Ltd	11.41
PRC-Wide Entity[8]	105.31

Assessment Rates

The Department shall determine, and the U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b).[9] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these amended final results of review.

For customers or importers of GTC for which we do not have entered value, we calculated importer- (or customer-) specific antidumping duty assessment amounts based on the ratio of the total amount of dumping duties calculated for the examined sales of subject merchandise to the total sales quantity of those same sales.[10] For customers or importers of GTC for which we received entered-value information, we have calculated importer- (or customer-) specific antidumping duty assessment rates based on importer- (or customer-) specific *ad valorem* rates.[11] For the non-examined separate rate companies, we will instruct CBP to liquidate all appropriate entries at 11.41 percent. For the PRC-wide entity, including Double Coin, we will instruct CBP to liquidate all appropriate entries at 105.31 percent.

Consistent with the Department's assessment practice in non-market economy cases,[12] for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, if the Department determines that an exporter under review had no shipments of subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the amended final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin identified in the ''Amended Final Results'' section; (2) for previously

Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, titled ''Issues and Decision Memorandum for Final Results of Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2012–2013'' (''Issues and Decision Memorandum'').

[2] *See* Memorandum, ''2012–2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Disclosure of Calculations for Final Results,'' dated April 10, 2015.

[3] Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (collectively, ''Petitioners'').

[4] *See* Letter from the Petitioners to the Department, titled ''Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' Clerical Error Comments, GTC,'' dated April 15, 2015. *See also* Memorandum to the File, titled ''2012–2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Final Results Margin Calculation for Guizhou Tyre Co., Ltd.,'' dated April 8, 2015 (''GTC's Analysis Memorandum'').

[5] For a complete description of the scope of the order, *see* Issues and Decision Memorandum.

[6] *See* GTC's Analysis Memorandum at Attachment I.

[7] *See* Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office III, titled ''2012–2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Ministerial Error Allegation for the Final Results,'' dated concurrently with this notice.

[8] The PRC-Wide Entity includes Double Coin Holdings Ltd. (''Double Coin'').

[9] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8103 (February 14, 2012) (''*NME Antidumping Proceedings*'').

[10] *See* 19 CFR 351.212(b)(1).

[11] *Id.*

[12] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

investigated or reviewed PRC and non-PRC exporters that are not under review in this segment of the proceeding but that received a separate rate in a previous segment, the cash deposit rate will continue to be the exporter-specific rate (or exporter-producer chain rate) published for the most recently completed segment of this proceeding; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 105.31 percent;[13] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. The cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Disclosure

We will disclose the calculations performed for these amended final results to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

[13] In the ''Cash Deposit Requirements'' section of the *Final Results,* the Department inadvertently listed the PRC-wide cash deposit rate as 105.24 percent. The correct PRC-wide cash deposit rate is 105.31 percent.

These amended final results of review are issued and published in accordance with section 751(h) of the Tariff Act of 1930 Act and 19 CFR 351.224(f).

Dated: May 1, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–11086 Filed 5–6–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness: Notice of Public Meetings

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meetings.

SUMMARY: This notice sets forth the schedule and proposed topics of discussion for public meetings of the Advisory Committee on Supply Chain Competitiveness (Committee).

DATES: This conference call meeting will be held on May 21, 2015, from 10:00 a.m. to 11:00 a.m., Eastern Standard Time (EST).

Call In Information: The conference call will have webinar capabilities. Participants can join the event directly at: *https://www.mymeetings.com/nc/join.php?i=PW3670392&p=4490607&t=c.* For those whose computers are compatible to the webinar system, this will give you both the ability to look at the document and hear the conversations of the meeting participants. For those that do not hear the audio from this site, you will have to call 1–877–951–7311 and input the passcode: 4490607 for audio.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Supply Chain, Professional & Business Services, International Trade Administration. (Phone: (202) 482–1135 or Email: *richard.boll@trade.gov*)

SUPPLEMENTARY INFORMATION:

Background

The Committee was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). It provides advice to the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness designed to support U.S. export growth and national economic competitiveness, encourage innovation, facilitate the movement of goods, and improve the competitiveness of U.S. supply chains for goods and services in the domestic and global economy; and provides advice to the Secretary on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. For more information about the Committee visit: *http://trade.gov/td/services/oscpb/supplychain/acscc/.*

Matters To Be Considered

Committee members are expected to deliberate and vote on the Trade and Competitiveness subcommittee's recommendation to Secretary Pritzker, which generally urges the Administration to expand market access for U.S. firms to international markets, implement the WTO Trade Facilitation Agreement (TFA), support customs trade transformation initiatives, and ensure our trading partners' compliance with our trade agreements. This recommendation, available at: *http://trade.gov/td/services/oscpb/supplychain/acscc/documents/May%2021%202015%20Conf%20Call/ACSCC%20trade%20ltr%20to%20SPP%20TC%20Subcomm.pdf,* has been reviewed and discussed over the last several open meetings of the ACSCC, most recently at the April 16 meeting. The Office of Supply Chain, Professional & Business Services will post the final agenda and the recommendation on its Web site at least one week prior to the meeting. The conference call will be open to the public and press on a first-come, first-served basis. Access lines are limited. The minutes of the meetings will be posted on the Committee Web site within 60 days of the meeting.

Dated: May 1, 2015.

David Long,

Director, Office of Supply Chain, Professional & Business Services.

[FR Doc. 2015–11073 Filed 5–6–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD925

Mid-Atlantic Fishery Management Council (MAFMC); Fisheries of the Northeastern United States; Public Meeting.

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

ACTION: Notice; public meeting.

SUMMARY: The Council's Mackerel-Squid-Butterfish (MSB) Monitoring Committee will meet via webinar to develop recommendations for future MSB specifications.

DATES: The meeting will be Thursday, May 21, 2015, at 9 a.m.

ADDRESSES: The meeting will be held via webinar, but anyone can also attend at the Council office address (see below). The webinar link is: *http://mafmc.adobeconnect.com/msbmoncom2015/.* Please call the Council at least 24 hours in advance if you wish to attend at the Council office.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site, *www.mafmc.org* will also have details on webinar access and any background materials.

SUPPLEMENTARY INFORMATION: The Council's Mackerel-Squid-Butterfish (MSB) Monitoring Committee will meet to develop recommendations for future MSB specifications. There will be time for public questions and comments. The Council utilizes the Monitoring Committee recommendations at each June Council meeting when setting the subsequent years' MSB specifications.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 1, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–10958 Filed 5–6–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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: Permits for Incidental Taking of Endangered or Threatened Species.

OMB Control Number: 0648–0230.

Form Number(s): None.

Type of Request: Regular (extensions of a currently approved information collection).

Number of Respondents: 13.

Average Hours per Response: 80 hours for a permit application (including Habitat Conservation Plans), 40 minutes for transfer of an incidental take permit; 8 hours for a permit report.

Burden Hours: 394.

Needs and Uses: This request is for extension of a currently approved information collection.

The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et. seq.) imposed prohibitions against the taking of endangered species. In 1982, Congress revised the ESA to allow permits authorizing the taking of endangered species incidental to otherwise lawful activities. The corresponding regulations (50 CFR part 222.222) established procedures for persons to apply for such a permit. In addition, the regulations set forth specific reporting requirements for such permit holders.

The regulations contain three sets of information collections: (1) Applications for incidental take permits, (2) applications for certificates of inclusion, and (3) reporting requirements for permits issued. Certificates of inclusion are only required if a general permit is issued to a representative of a group of potential permit applicants, rather than requiring each entity to apply for and receive a permit.

The required information is used to evaluate the impacts of the proposed activity on endangered species, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions.

When a species is listed as threatened, section 4(d) of the ESA requires the Secretary to issue whatever regulations are deemed necessary or advisable to provide for conservation of the species. In many cases those regulations reflect blanket application of the section 9 take prohibition. However, the National Marine Fisheries Service (NMFS) recognizes certain exceptions to that prohibition, including habitat restoration actions taken in accord with approved state watershed action plans. While watershed plans are prepared for other purposes in coordination with or fulfillment of various state programs, a watershed group wishing to take advantage of the exception for restoration activities (rather than obtaining a section 10 permit) would have to submit the plan for NMFS review.

Affected Public: Business or other for-profit organizations; individuals or households; not-for-profit institutions, and state, local, or tribal government.

Frequency: Annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

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: May 4, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–11006 Filed 5–6–15; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2015–0019]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice; extension of comment period.

SUMMARY: This notice corrects the docket number and extends the comment period in a notice published in the **Federal Register** on April 21, 2015, (80 FR 22168), notifying the public of a proposed new information collection titled ''Consumer Complaint Intake System Company Portal Boarding Form Information Collection System,'' in accordance with the Paperwork Reduction Act of 1995 (PRA). The document contained an incorrect docket number for submitting comments. The correct docket number is CFPB–2015–0019. The date for receiving comments has been extended accordingly.

DATES: The comment period for the notice titled Agency Information Collection Activities: Submission for OMB Review; Comment Request published April 21, 2015, at 80 FR 22168, is extended. Written comments are encouraged and must be received on or before June 8, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information

collection and docket number (see above), by any of the following methods:

• *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *OMB:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov.* Please do not submit comments to this email box.

Correction

In the **Federal Register** of April 21, 2015, in FR Doc. 80–22168, on page 22168, in the second column, correct the docket number to read [Docket No: CFPB–2015–0019].

Dated: April 29, 2015.

Ashwin Vasan,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2015–11015 Filed 5–6–15; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2015–0016]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting to renew the approval for an existing information collection titled, ''Gramm-Leach-Bliley Act (Regulation P) 12 CFR 1016.''

DATES: Written comments are encouraged and must be received on or before July 6, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

• *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.

• *Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Gramm-Leach-Bliley Act (Regulation P) 12 CFR 1016.

OMB Control Number: 3170–0010.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Businesses and other for-profit institutions.

Estimated Number of Respondents: 29,544.

Estimated Total Annual Burden Hours: 366,134

Abstract: Section 502 of the Gramm-Leach-Bliley Act (GLBA) (Pub. L. 106–102) generally prohibits a financial institution from sharing nonpublic personal information about a consumer with nonaffiliated third parties unless the institution satisfies various disclosure requirements (including provision of initial privacy notices, annual notices, notices of revisions to the institution's privacy policy, and opt-out notices) and the consumer has not elected to opt out of the information sharing. The CFPB promulgated Regulation P (12 CFR 1016) to implement the GLBA's notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of 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 Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: April 28, 2015.

Ashwin Vasan,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2015–11014 Filed 5–6–15; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday May 12, 2015, 9 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public

MATTER TO BE CONSIDERED: Decisional Matter: Fiscal Year 2015 Mid-Year Review and Operating Plan.

A live webcast of the Meeting can be viewed at *www.cpsc.gov/live.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: May 4, 2015.

Todd A. Stevenson,

Secretariat.

[FR Doc. 2015–11112 Filed 5–5–15; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Scientific Advisory Board; Notice of Meeting

AGENCY: Air Force Scientific Advisory Board, Department of the Air Force, Department of Defense.

ACTION: Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the United States Air Force (USAF) Scientific Advisory Board (SAB) Summer Session Board Meeting will take place on 24 June 2015 at the SAFTAS Conference and Innovation Conference Center, located on the plaza level of 1550 Crystal Drive in Crystal City, Virgina. The meeting will occur from 8:00 a.m.–3:00 p.m. on Wednesday, 24 June 2015. The session that will be open to the general public will be held from 8:00 a.m. to 9:00 a.m. on 24 June 2015. The purpose of this Air Force Scientific Advisory Board quarterly meeting is to conduct a final review and receive FACA approval of FY15 SAB studies, which consist of: (1) Cyber Vulnerabilities of Embedded Systems on Air And Space Systems, (2) Enhanced Utility of Unmanned Air Vehicles In Contested and Denied Environments, (3) Utility of Quantum Systems for the Air Force. In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, a number of sessions of the USAF SAB Summer Session Board meeting will be closed to the public because they will discuss classified information and matters covered by section 5 U.S.C. 552b(c)(1).

Any member of the public that wishes to attend this meeting or provide input to the USAF SAB must contact the Designated Federal Officer at the phone number or email address listed below at least five working days prior to the meeting date. Please ensure that you submit your written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting commencement date. The Designated Federal Officer will review all timely submissions and respond to them prior to the start of the meeting identified in this noice. Written statements received after this date may not be considered by the USAF SAB until the next scheduled meeting.

FOR FURTHER INFORMATION CONTACT: The USAF SAB meeting organizer, Major Mike Rigoni at, *michael.j.rigoni.mil@mail.mil* or 240–612–5504, United States Air Force Scientific Advisory Board, 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762.

Henry Williams, Civ,

DAF, Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2015–11008 Filed 5–6–15; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2015–0021]

Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; Construction and Architect-Engineer Contracts

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the 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 the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through August 31, 2015. DoD proposes that OMB extend its approval for three additional years.

DATES: DoD will consider all comments received by July 6, 2015.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0255, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0255 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Tresa Sullivan, OUSD (AT&L) DPAP (DARS), 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting, (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Tresa Sullivan, 571–372–6089.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Information Collection in Support of the Defense Federal Acquisition Regulation Supplement (DFARS) Part 236, Construction and Architect-Engineer Contracts, and related clauses at DFARS 252.236; OMB Control Number 0704–0255.

Needs and Uses: DoD contracting officers need this information to evaluate contractor proposals for contract modifications; to determine that a contractor has removed obstructions to navigation; to review contractor requests for payment for mobilization and preparatory work; to determine reasonableness of costs allocated to mobilization and demobilization; and to determine eligibility for the 20 percent evaluation preference for United States firms in the award of some overseas construction contracts.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 342,315.

Number of Respondents: 3,353.

Responses per Respondent: Approximately 1.

Annual Responses: 3,369.

Average Burden per Response: Approximately 101 hours.

Frequency: On occasion.

Summary of Information Collection

DFARS 236.570(a) prescribes use of the clause at DFARS 252.236–7000, Modification Proposals—Price Breakdown, in all fixed-price

construction solicitations and contracts. The clause requires the contractor to submit a price breakdown with any proposal for a contract modification.

DFARS 236.570(b) prescribes use of the following clauses in fixed-price construction contracts and solicitations as applicable:

(1) The clause at DFARS 252.236–7002, Obstruction of Navigable Waterways, requires the contractor to notify the contracting officer of obstructions in navigable waterways.

(2) The clause at DFARS 252.236–7003, Payment for Mobilization and Preparatory Work, requires the contractor to provide supporting documentation when submitting requests for payment for mobilization and preparatory work.

(3) The clause at DFARS 252.236–7004, Payment for Mobilization and Demobilization, permits the contracting officer to require the contractor to furnish cost data justifying the percentage of the cost split between mobilization and demobilization, if the contracting officer believes that the proposed percentages do not bear a reasonable relation to the cost of the work.

DFARS 236.570(c) prescribes use of the following provisions in solicitations for military construction contracts that are funded with military construction appropriations and are estimated to exceed $1,000,000:

(1) The provision at DFARS 252.236–7010, Overseas Military Construction—Preference for United States Firms, when contract performance will be in a United States outlying area in the Pacific or in a country bordering the Arabian Gulf, requires an offeror to specify whether or not it is a United States firm.

(2) The provision at DFARS 252.236–7012, Military Construction on Kwajalein Atoll—Evaluation Preference, when contract performance will be on Kwajalein Atoll, requires an offeror to specify whether it is a United States firm, a Marshallese firm, or other firm.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2015–11072 Filed 5–6–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The following invention is assigned to the United States Government as represented by the Secretary of the Navy and made available for licensing by the Department of the Navy: U.S. Patent Application No. 14/591660—''Use of heptadecanoic acid (C17:0) to detect risk of and treat hyperferritinemia and metabolic syndrome''.

ADDRESSES: Request for copies of invention disclosures cited should be directed to Space and Naval Warfare Systems Center Pacific, Office of Research and Technology Applications, Code 72120, 53560 Hull St., Bldg. A33 Room 2531, San Diego, CA 92152–5001.

FOR FURTHER INFORMATION CONTACT: Brian Suh, Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St., Bldg. A33 Room 2531, San Diego, CA 92152–5001, telephone 619–553–5118, Email: *brian.suh@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: May 1, 2015.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2015–10954 Filed 5–6–15; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Epitracker, LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Epitracker, LLC, a revocable, nonassignable, partially exclusive license in the United States to practice the Government-Owned inventions described in U.S. Patent Application No. 14/591660—''Use of heptadecanoic acid (C17:0) to detect risk of and treat hyperferritinemia and metabolic syndrome''.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, no later than May 22, 2015.

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St., Bldg. A33 Room 2531, San Diego, CA 92152–5001.

FOR FURTHER INFORMATION CONTACT: Brian Suh, Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St., Bldg. A33 Room 2531, San Diego, CA 92152–5001, telephone 619–553–5118, E-Mail: *brian.suh@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: May 1, 2015.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2015–10990 Filed 5–6–15; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–94–000; Docket No. CP15–96–000; Docket No. CP15–93–000]

Panhandle Eastern Pipe Line Company, LP; Trunkline Gas Company, LLC; Rover Pipeline LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Panhandle Backhaul Project and Trunkline Backhaul Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will analyze the environmental impacts of the Panhandle Backhaul Project and Trunkline Backhaul Project, involving the modification and upgrades of existing facilities by Panhandle Eastern Pipe Line Company, LP (Panhandle) and Trunkline Gas Company, LLC (Trunkline), in the Commission's environmental impact statement (EIS) currently under preparation for the Rover Pipeline Project in Docket No. CP15–93–000. The Panhandle Backhaul Project would modify existing facilities in Michigan, Ohio, Indiana, and Illinois. The Trunkline Backhaul Project would modify existing facilities in Illinois, Tennessee, and Mississippi. Both projects would increase backhaul capacity to flow natural gas volumes from the Rover Pipeline Project. The Commission will use the EIS in its decision-making process to determine whether the projects are in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Panhandle Backhaul Project and

Trunkline Backhaul Project. You can make a difference by providing us with your specific comments or concerns about these two projects. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EIS. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before June 1, 2015.

If you sent comments on these projects to the Commission before the opening of these dockets on February 23, 2015, you will need to file those comments in Docket No. CP15–94–000 for the Panhandle Backhaul Project and Docket No. CP15–96–000 for the Trunkline Backhaul Project to ensure they are considered as part of these proceedings.

This notice is being sent to the Commission's current environmental mailing list for these projects. State and local government representatives should notify their constituents of these proposed projects and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement or lease to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the projects, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the projects' docket numbers (CP15–94–000 for the Panhandle Backhaul Project and CP15–96–000 for the Trunkline Backhaul Project) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Projects

Panhandle and Trunkline are proposing the upgrades and modifications to allow for bi-directional flow of natural gas on their existing pipeline systems. Modifications and upgrades along the Panhandle system would occur at existing facilities in Lenawee County, Michigan; Allen and Defiance Counties, Ohio; Hamilton, Marion, Parke, and Vermillion Counties, Indiana; and Douglas County, Illinois. The Panhandle Backhaul Project would include:

- New pipe, valves, fittings, and associated materials to allow for bi-directional flow at the Edgerton, Zionsville, Montezuma, and Tuscola Compressor Stations;
- minor piping, pressure controls, valves, fittings, and associated materials at Edgerton 10 Gate, Zionsville 3 Gate, and Tuscola 6 Gate; and
- tap valves and associated piping for an interconnect with the proposed Rover Pipeline Project at the Rover Defiance Compressor Station.

Modifications and upgrades along the Trunkline system would occur at existing facilities in Douglas and Wayne Counties, Illinois; Dyer County, Tennessee; and Tate County, Mississippi. The Trunkline Backhaul Project would include:

- New pipe, valves, fittings, and associated materials to allow for bi-directional flow at the Johnsonville, Joppa, Dyersburg, and Independence Compressor Stations;
- new pipe, valves, fittings, meters, regulators, and other associated materials at the Bourbon Meter Station; and
- tap valves and associated piping for an interconnect with the Panhandle Backhaul Project at the Tuscola Compressor Station.

The general locations of the Panhandle and Trunkline project facilities are shown in appendix 1.[1]

Land Requirements for Construction

Construction of the Panhandle facilities would disturb a total of 230.2 acres of land on or surrounding Panhandle's permanent right-of-way or lands leased or owned by Panhandle. Any land disturbance associated with the modifications and upgrades would occur within previously disturbed areas.

Construction of the Trunkline facilities would disturb a total of 204.3 acres of land within the existing facility sites or within Trunkline's permanent right-of-way. Any land disturbance associated with the modifications and upgrades would occur within previously disturbed areas.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EIS. We will consider all filed comments during the preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

proposed projects under these general headings:

Geology and soils;
land use;
socioeconomics;
water resources,
cultural resources;
vegetation and wildlife;
air quality and noise;
endangered and threatened species;
public safety; and
cumulative impacts

We will also evaluate reasonable alternatives to the proposed projects or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The FERC staff is in the process of preparing an EIS for the Rover Pipeline Project. Five other agencies are participating as cooperating agencies in the preparation of this EIS: The U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and Ohio Environmental Protection Agency. With this notice, we are asking other agencies with jurisdiction by law and/or special expertise with respect to environmental issues related the Panhandle and/or Trunkline projects to formally cooperate with us in the preparation of the EIS.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

The EIS will present our independent analysis of the issues. We will publish and distribute the draft EIS for public comment. After the comment period, we will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office(s) (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the projects' potential effects on historic properties.[4] The EIS will document our findings on the impacts on historic properties and summarize the status of consultations under section 106. We note that Panhandle has a signed categorical exclusion with Illinois SHPO and Trunkline has signed categorical exclusions with Illinois and Tennessee SHPOs. These categorical exclusions exempt work activities within existing facilities from further review by the SHPOs.

We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the projects develop. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EIS for these projects will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the projects. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed projects.

Copies of the completed draft EIS will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceedings. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the projects is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP15–94, CP15–96, CP15–93). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: May 1, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–10969 Filed 5–6–15; 8:45 am]

BILLING CODE 6717–01–P

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–77–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Broad Run Expansion Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Broad Run Expansion Project (Project) involving construction and operation of facilities by Tennessee Gas Pipeline Company, L.L.C. (Tennessee) in Kanawha County, West Virginia; Madison, Powell, and Boyd Counties, Kentucky; and Davidson County, Tennessee. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before June 1, 2015.

If you sent comments on this Project to the Commission before the opening of this docket on January 30, 2015, you will need to file these comments in Docket No. CP15–77–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Tennessee provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister*.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP15–77–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Tennessee proposes to build four new compressor stations, and add compression and modify two existing compressor stations to transport up to 200,000 dekatherms per day. Tennessee also proposes to improve efficiency and reduce certain emissions by replacing older existing compression facilities on its system with newer compressor units.

The Project would include construction and operation of the following facilities:

- Two new compressor stations in Kanawha County, West Virginia, to be known as the Tyler Mountain Compressor Station (CS 118A) and the Rocky Fork Compressor Station (CS 119A);
- a new compressor station in Madison County, Kentucky, to be known as the Richmond Compressor Station (CS 875);
- a new compressor station in Davidson County, Tennessee, to be known as the Pinnacle Compressor Station (CS 563); and
- modifications (including abandonment and replacement of certain compression units, system components, and associated facilities) at the existing Clay City Compressor Station in Powell County, Kentucky (CS 106), and the existing Catlettsburg Compressor Station in Boyd County, Kentucky (CS 114).

The general location of the proposed facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the facilities would disturb about 270 acres of land. Following construction, Tennessee would maintain about 213 acres for permanent operation of the Project; the remaining acreage would be restored and revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We note that some comments were filed prior to this

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

notice. We want to assure those commentors that their concerns filed after January 30, 2015 will be considered in the scope of our environmental review; you do not need to resubmit comments. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

- Air quality and noise;
- endangered and threatened species;
- vegetation and wildlife;
- geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this Project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Offices (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[4] We will define the Project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the Project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include compressor stations, the construction right-of-way, contractor/pipe storage yards, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on comments that we have received. These include the potential for noise disturbance, impacts on air quality, and impacts on nearby organic farming. As mentioned above, we will consider all comments on the EA before making our recommendations to the Commission. This preliminary list of issues may be changed based on your comments and our analysis.

Environmental Mailing List

The environmental mailing list includes: Federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP15–77). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: May 1, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–10968 Filed 5–6–15; 8:45 am]

BILLING CODE 6717–01–P

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OR15–25–000]

BP Products North America Inc. v. Sunoco Pipeline L.P.; Notice of Complaint

Take notice that on April 30, 2015, pursuant to section 1(4), 1(6), 3(1), 8, 9, 13(1), 15(1), and 16(1) of the Interstate Commerce Act, 49 U.S.C. App. §§ 1(4), 1(6), 3(1), 8, 9, 13(1), 15(1), and 16(1); Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206; and section 343.2 of the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2, BP Products North America Inc. (Complainant) filed a formal complaint against Sunoco Pipeline L.P. (Sunoco or Respondent), challenging the justness and reasonableness of: (1) Executed Throughput and Deficiency Agreements with certain shippers; and (2) Sunoco's revisions to its prorationing policy for its pipeline operating between Marysville, Michigan and Toledo, Ohio (Sunoco Pipeline), as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the Respondents.

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). 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 June 1, 2015.

Dated: May 1, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–10971 Filed 5–6–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD15–11–000]

Electronic Filing Protocols for Commission Forms; Notice of Conference With North American Energy Standards Board

Take notice that, on June 10, 2015, Commission staff will lead a technical conference, pursuant to the Commission's April 16, 2015 Order Instituting Proceeding to Develop Electronic Filing Protocols for Commission Forms,[1] that will include the North American Energy Standards Board (NAESB) and interested members of the public and industry to discuss the transition to a new submission format for certain forms and NAESB's assistance in the process of developing standards for the submission of data to the Commission for the following Commission forms: Forms 1, 1–F, 2, 2–A, 3–Q electric, 3–Q gas, 6, 6–Q, FERC–60, and FERC–714. The technical conference will explore a transition to XML format, as well as the protocols and standards needed to provide metadata that will enable the Commission to develop a database to track the information submitted to the Commission in those forms.

The technical conference will be held from 10:00 a.m. until 4:00 p.m. (Eastern Time) at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in the Commission Meeting Room. The conference is open to the public. Pre-registration through the Commission's Web site (*https://www.ferc.gov/whats-new/registration/06-10-15-form.asp*) is encouraged but not required.

[1] *Electronic Filing Protocols for Commission Forms,* 151 FERC ¶ 61,025 (2015).

The Commission will post information on the technical conference on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov,* prior to the conference. The conference will also be webcast and transcribed. The webcast will be available through a link on the Commission's Calendar of Events available at *http://www.ferc.gov.* An email account has been created for off-site participants to submit questions for the question and answer session at the technical conference. At any time prior to and during the technical conference, please email questions to *eForms.Refresh@ferc.gov.* The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. For technical support, visit *http://www.CapitolConnection.org* or call (703) 993–3100. Transcripts of the technical conference will be available for a fee from Ace-Federal Reporters, Inc.; contact them at (202) 347–3700.

Background material can be found on the Commission's Web site (*www.ferc.gov;* click on Documents & Filings, then Forms, and finally on eForms Refresh), and will also be available on NAESB's Web site (*www.naesb.org*). Notices of any subsequent meetings will be posted on both the Commission's and NAESB's Web sites.

The Commission will accept comments following the conference, with a deadline of June 30, 2015.

Conferences held at the Federal Energy Regulatory Commission 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 more information about this conference, please contact Robert Hudson (Technical Information), Office of Enforcement, at (202) 502–6620 or *Robert.Hudson@ferc.gov,* or Sarah McKinley (Logistical Information), Office of External Affairs at (202) 502–8368 or *Sarah.McKinley@ferc.gov.*

Dated: May 1, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–10976 Filed 5–6–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:.		
1. CP13–193–000	3–9–15	Elizabeth Morra.[1]
2. CP15–26–000	4–27–15	Mildred H. Danch.
Exempt:.		
1. CP15–93–000	4–8–15	FERC Staff.[2]
2. CP13–483–000, CP13–492–000	4–14–15	U.S. Department of the Interior.
3. CP13–483–000, CP13–492–000	4–15–15	FERC Staff.[3]
4. CP13–483–000, CP13–492–000	4–17–15	Hon. Peter A. DeFazio.
5. CP14–347–000	4–17–15	Ambassador Kim Beazley, Australia.
6. CP14–96–000	4–20–15	Linda D. Puglisi, Town Supervisor.

[1] Phone record.
[2] Email record.
[3] Phone record.

Dated: April 30, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–10575 Filed 5–6–15; 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 rate filings:

Docket Numbers: ER10–1246–011; ER10–1982–012; ER10–1253–011; ER10–1252–011; ER13–764–012; ER14–1927–003; ER12–2498–012; ER12–2499–012; ER14–1776–005; ER12–1566–006; ER14–1548–004; ER11–3987–007.

Applicants: Consolidated Edison Energy, Inc., Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Consolidated Edison Solutions, Inc., CED White River Solar, LLC, CED White River Solar 2, LLC, Alpaugh 50, LLC, Alpaugh North, LLC, Broken Bow Wind II, LLC, Copper Mountain Solar 2, LLC, Copper Mountain Solar 3, LLC, Mesquite Solar 1, LLC.

Description: Notice of Change in Status of the Consolidated Edison, Inc. subsidiaries.

Filed Date: 4/30/15.

Accession Number: 20150430–5645.

Comments Due: 5 p.m. ET 5/21/15.

Docket Numbers: ER12–1436–009; ER14–152–004; ER13–1793–006; ER10–3099–012; ER12–1260–008; ER10–2329–006; ER14–153–003; ER14–154–003; ER10–3300–009; ER13–2386–003; ER10–3143–015.

Applicants: Eagle Point Power Generation LLC, Elgin Energy Center, LLC, Hazle Spindle, LLC, RC Cape May Holdings, LLC, Stephentown Spindle, LLC, Vineland Energy LLC, Gibson City Energy Center, LLC, Grand Tower Energy Center, LLC, La Paloma Generating Company, LLC, Lakeswind Power Partners, LLC, Sabine Cogen, LP.

Description: Notice of Change in Status of the Rockland Sellers.

Filed Date: 4/30/15.

Accession Number: 20150430–5647.

Comments Due: 5 p.m. ET 5/21/15.

Docket Numbers: ER12–2178–013; ER14–2145–003; ER14–2144–003; ER14–1524–005; ER13–1536–007; ER12–2311–011; ER12–2201–011; ER12–1829–011; ER12–1223–016; ER11–3989–016; ER11–2056–018; ER11–2014–021; ER11–2013–021; ER11–2011–020; ER11–2010–021; ER11–2009–020; ER11–2005–021; ER10–3308–022; ER10–2184–024; ER10–2182–027; ER10–2181–027; ER10–2180–024; ER10–2179–027; ER10–2172–024; ER10–1143–020; ER10–1081–021; ER10–1080–020; ER10–1078–020; ER10–1048–021; ER10–1020–020.

Applicants: AV Solar Ranch 1, LLC, Baltimore Gas and Electric Company, Beebe 1B Renewable Energy, LLC, Beebe

Renewable Energy, LLC, Calvert Cliffs Nuclear Power Plant, LLC, CER Generation, LLC, Commonwealth Edison Company, Constellation Mystic Power, LLC, Constellation Power Source Generation, LLC, Cow Branch Wind Power, LLC, CR Clearing, LLC, Criterion Power Partners, LLC, Exelon Framingham LLC, Exelon Generation Company, LLC, Exelon New Boston, LLC, Exelon West Medway, LLC, Exelon Wind 4, LLC, Exelon Wyman, LLC, Fourmile Wind Energy, LLC, Handsome Lake Energy, LLC, Harvest II Windfarm, LLC, Harvest Windfarm, LLC, Michigan Wind 1, LLC, Michigan Wind 2, LLC, Nine Mile Point Nuclear Station, LLC, PECO Energy Company, R.E. Ginna Nuclear Power Plant, LLC, Shooting Star Wind Project, LLC, Wildcat Wind, LLC, Wind Capital Holdings, LLC.

Description: Notice of Non-Material Change in Status of the Exelon MBR Entities.

Filed Date: 4/30/15.

Accession Number: 20150430–5652.

Comments Due: 5 p.m. ET 5/21/15.

Docket Numbers: ER14–1458–000.

Applicants: East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc.

Description: eTariff filing per 35.19a(b): Refund Report to be effective N/A.

Filed Date: 4/30/15.

Accession Number: 20150430–5599.

Comments Due: 5 p.m. ET 5/21/15.

Docket Numbers: ER15–685–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing per 35: 2015–04–30 ELMP Compliance Filing to be effective 3/1/2015.

Filed Date: 4/30/15.

Accession Number: 20150430–5547.

Comments Due: 5 p.m. ET 5/21/15.

Docket Numbers: ER15–1619–000.

Applicants: Pacific Gas and Electric Company.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): CCSF IA—49th Quarterly Filing of Facilities Agreements to be effective 3/31/2015.

Filed Date: 4/30/15.

Accession Number: 20150430–5565.

Comments Due: 5 p.m. ET 5/21/15.

Docket Numbers: ER15–1620–000.

Applicants: Cassia Gulch Wind Park, LLC.

Description: Compliance filing per 35: Notice of Change in Status to be effective 4/1/2015.

Filed Date: 4/30/15.

Accession Number: 20150430–5567.

Comments Due: 5 p.m. ET 5/21/15.

Docket Numbers: ER15–1621–000.

Applicants: Constellation Energy Commodities Group Maine, LLC.

Description: Compliance filing per 35: Notice of Change in Status to be effective 4/1/2015.

Filed Date: 4/30/15.

Accession Number: 20150430–5575.

Comments Due: 5 p.m. ET 5/21/15.

Docket Numbers: ER15–1622–000.

Applicants: Constellation Energy Services, Inc.

Description: Compliance filing per 35: Notice of Change in Status to be effective 4/1/2015.

Filed Date: 4/30/15.

Accession Number: 20150430–5582.

Comments Due: 5 p.m. ET 5/21/15.

Docket Numbers: ER15–1623–000.

Applicants: Constellation Energy Services of New York, Inc.

Description: Compliance filing per 35: Notice of Change in Status to be effective 4/1/2015.

Filed Date: 4/30/15.

Accession Number: 20150430–5585.

Comments Due: 5 p.m. ET 5/21/15.

Docket Numbers: ER15–1624–000.

Applicants: Constellation NewEnergy, Inc..

Description: Compliance filing per 35: Notice of Change in Status to be effective 4/1/2015.

Filed Date: 4/30/15.

Accession Number: 20150430–5587.

Comments Due: 5 p.m. ET 5/21/15.

Docket Numbers: ER15–1625–000.

Applicants: Exelon Generation Company, LLC.

Description: Compliance filing per 35: Notice of Change in Status to be effective 4/1/2015.

Filed Date: 4/30/15.

Accession Number: 20150430–5588.

Comments Due: 5 p.m. ET 5/21/15.

Docket Numbers: ER15–1626–000.

Applicants: High Mesa Energy, LLC.

Description: Compliance filing per 35: Notice of Change in Status to be effective 4/1/2015.

Filed Date: 4/30/15.

Accession Number: 20150430–5590.

Comments Due: 5 p.m. ET 5/21/15.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES15–22–000; ES15–23–000; ES15–24–000; ES15–25–000; ES15–26–000; ES15–27–000; ES15–28–000; ES15–29–000.

Applicants: Entergy Arkansas, Inc., Entergy Louisiana Power, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., System Energy Resources, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC.

Description: Joint Application of Entergy Arkansas, Inc., et. al. for FPA Section 204 authorizations.

Filed Date: 4/30/15.

Accession Number: 20150430–5651.

Comments Due: 5 p.m. ET 5/21/15.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA15–1–000.

Applicants: NextEra Companies.

Description: Quarterly Land Acquisition Report of the NextEra Companies.

Filed Date: 4/30/15.

Accession Number: 20150430–5646.

Comments Due: 5 p.m. ET 5/21/15.

Docket Numbers: LA15–1–000.

Applicants: Auburndale Peaker Energy Center, LLC, Bethpage Energy Center 3, LLC, Calpine Bethlehem, LLC, Calpine Construction Finance Company, L.P., Calpine Energy Services, L.P., Calpine Fore River Energy Center, LLC, Calpine Gilroy Gogen, L.P., Calpine Greenleaf, Inc., Calpine Mid-Atlantic Generation, LLC, Calpine Mid-Atlantic Marketing, LLC, Calpine Mid Merit, LLC, Calpine New Jersey Generation, LLC, Calpine Newark, LLC, Calpine Power America—CA, LLC, Calpine Vineland Solar, LLC, CCFC Sutter Energy, LLC, CES Marketing IX, LLC, CES Marketing X, LLC, CPN Bethpage 3rd Turbine, Inc., Creed Energy Center, LLC, Delta Energy Center, LLC, Garrison Energy Center LLC, Geysers Power Company, LLC, Gilroy Energy Center, LLC, Goose Haven Energy Center, LLC, Hermiston Power, LLC, KIAC Partners, Los Esteros Critical Energy Facility, LLC, Los Medanos Energy Center, LLC, Mankato Energy Center, LLC, Metcalf Energy Center, LLC, Morgan Energy Center, LLC, Nissequogue Cogen Partners, O.L.S. Energy-Agnews, Inc., Osprey Energy Center, LLC, Otay Mesa Energy Center, LLC, Pastoria Energy Facility L.L.C., Pine Bluff Energy, LLC, Power Contract Financing, L.L.C., RockGen Energy, LLC, Russell City Energy Company, LLC, South Point Energy Center, LLC, TBG Cogen Partners, Westbrook Energy Center, LLC, ZION ENERGY, LLC.

Description: Quarterly Land Acquisition Report of the Calpine MBR Sellers.

Filed Date: 4/30/15.

Accession Number: 20150430–5597.

Comments Due: 5 p.m. ET 5/21/15.

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: May 1, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–10966 Filed 5–6–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2310–207]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application for Temporary Variance of License Requirement.

b. *Project No.:* 2310–207.

c. *Date Filed:* April 24, 2015.

d. *Applicants:* Pacific Gas and Electric Company (licensee).

e. *Name of Project:* Drum-Spaulding Project.

f. *Location:* South Yuba River and Bear River in Placer and Nevada counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Ezra Becker, License Coordinator, Pacific Gas and Electric Company, (415) 973–3082.

i. *FERC Contact:* Mr. John Aedo, (415) 369–3335, or *john.aedo@ferc.gov.*

j. Deadline for filing comments, motions to intervene, protests, and recommendations is May 29, 2015 (30 days from April 29, 2015). This corrects the earlier parenthetical deadline, which incorrectly stated April 29, 2015. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2310–207) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* The licensee requests a temporary variance of the minimum flow requirements at streamflow gage YB–292, located in Mormon Ravine above Newcastle Powerhouse. Specifically, the licensee requests that the instantaneous 5 cubic feet per second (cfs) minimum flow requirement be reduced to 3 cfs from May 11 to October 15, 2015. During this time the licensee would also maintain a target flow of 5 cfs, based on a 24-hour average flow at gage YB–292. The licensee states that the variance is necessary due to reduced water deliveries in the upstream canal system during the ongoing drought and the large fluctuations caused by irregular water withdrawals in the canal system made by other users.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 1, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–10973 Filed 5–6–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

Take notice that the following settlement agreement has been filed

with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* P–7320–042.

c. *Date filed:* April 30, 2015.

d. *Applicant:* Erie Boulevard Hydropower, LP (Erie).

e. *Name of Project:* Chasm Hydroelectric Project.

f. *Location:* On the Salmon River in Franklin County, New York. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Steven Murphy, Licensing Manager, Erie Boulevard Hydropower, L.P., 33 West 1st Street South, Fulton, New York, 13069, (315) 598–6130 or email at *steven.murphy@brookfieldpower.com.*

i. *FERC Contact:* John Mudre at (202) 502–8902 or email at *john.mudre@ferc.gov.*

j. *Deadline for filing comments:* May 21, 2015. Reply comments due May 31, 2015.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–7320–042.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Erie filed the Settlement Agreement on behalf of itself and the U.S. Fish and Wildlife Service, New York State Department of Environmental Conservation, New York State Council of Trout Unlimited, and the Town of Malone, New York. The purpose of the Settlement Agreement is to resolve among the signatories various issues associated with issuance of a new license for the project, including impoundment fluctuation, base flows, bypassed reach flows, fish protection and passage, recreational enhancements, stream flow and water level monitoring, and invasive species management. Erie requests that the Commission accept and incorporate the agreed-upon items into any new license that may be issued for the project.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: May 1, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–10974 Filed 5–6–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR15–24–000]

Navigator BSG Transportation & Storage, LLC; Notice of Petition for Declaratory Order

Take notice that on April 29, 2015, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2014), Navigator BSG Transportation & Storage, LLC filed a petition for a declaratory order seeking an order approving the overall tariff, rate, and priority service structure for its proposed new crude pipeline system (Project). The Project will transport crude oil from West Texas counties in Permian Basin to points of interconnection with long-haul take away pipelines, 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, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''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 May 21, 2015.

Dated: May 1, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–10970 Filed 5–6–15; 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 exempt wholesale generator filings:

Docket Numbers: EG15–79–000.

Applicants: Cameron Wind I, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Cameron Wind I, LLC.

Filed Date: 5/1/15.

Accession Number: 20150501–5227.

Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: EG15–80–000.

Applicants: 67RK 8me LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of 67RK 8me LLC.
Filed Date: 5/1/15.
Accession Number: 20150501–5325.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: EG15–81–000.
Applicants: 65HK 8me LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of 65HK 8me LLC.
Filed Date: 5/1/15.
Accession Number: 20150501–5327.
Comments Due: 5 p.m. ET 5/22/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3460–008; ER12–1301–006.
Applicants: Bayonne Energy Center, LLC, Zone J Tolling Co., LLC.
Description: Notice of Non-Material Change In Status of Bayonne Energy Center, LLC, et. al.
Filed Date: 5/1/15.
Accession Number: 20150501–5308.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER12–673–007; ER12–672–007; ER10–1533–011; ER10–2374–009; ER12–674–008; ER12–670–008, ER15–359–004.
Applicants: Brea Generation LLC, Brea Power II, LLC, Macquarie Energy LLC, Puget Sound Energy, Inc., Rhode Island Engine Genco, LLC, Rhode Island LFG Genco, LLC, Samchully Power & Utilities 1 LLC.
Description: Notice of Non-Material Change in Status of Brea Generation LLC, et. al.
Filed Date: 5/1/15.
Accession Number: 20150501–5357.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1627–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Beech Ridge Energy Service Agreements 3086, 3087, and 4118; Queue M24 to be effective 3/31/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5000.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1628–000.
Applicants: Tuana Springs Energy, LLC.
Description: Compliance filing per 35: Notice of Change in Status to be effective 4/1/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5002.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1629–000.
Applicants: ISO New England Inc., NSTAR Electric Company.
Description: Compliance filing per 35: NSTAR Electric Company; Filing to Comply with FERC Audit Report to be effective 6/1/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5085.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1630–000.
Applicants: US Borax, Inc.
Description: Initial rate filing per 35.12 Market-Based Rate Application to be effective 6/30/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5105.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1631–000.
Applicants: NorthWestern Corporation.
Description: Tariff Withdrawal per 35.15: Notice of Cancellation of SA 717—Construction Agreement with Idaho Power Co to be effective 5/4/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5124.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1632–000.
Applicants: Beech Ridge Energy LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Filing of Amended Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 7/1/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5134.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1633–000.
Applicants: Beech Ridge Energy II LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Filing of Amended Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 7/1/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5135.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1634–000.
Applicants: Beech Ridge Energy Storage LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Filing of Amended Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 7/1/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5136.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1635–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Beech Ridge Energy Service Agreement 4118; Queue M24 to be effective 3/31/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5206.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1636–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Amended SGIA and Distribution Service Agreement with SEPV Palmdale East, LLC to be effective 5/2/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5220.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1637–000.
Applicants: Bayonne Energy Center, LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Revised MBR Tariff re 784 to be effective 11/27/2013.
Filed Date: 5/1/15.
Accession Number: 20150501–5236.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1638–000.
Applicants: Dynegy Conesville, LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Notices of Succession of Reactive Power Rate Schedules to be effective 4/2/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5266.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1639–000.
Applicants: New England Power Pool Participants Committee.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): May 2015 Membership Filing to be effective 4/1/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5269.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1640–000.
Applicants: Dynegy Dicks Creek, LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Notices of Succession of Reactive Power Rate Schedules to be effective 4/2/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5270.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1641–000.
Applicants: Dynegy Fayette II, LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Notices of Succession of Reactive Power Rate Schedules to be effective 4/2/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5271.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1642–000.
Applicants: Dynegy Hanging Rock II, LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Notices of Succession of Reactive Power Rate Schedules to be effective 4/2/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5272.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1643–000.
Applicants: Dynegy Killen, LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Notices of

Succession of Reactive Power Rate Schedules to be effective 4/2/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5273.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1644–000.
Applicants: Dynegy Lee II, LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Notices of Succession of Reactive Power Rate Schedules to be effective 4/2/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5274.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1645–000.
Applicants: Dynegy Miami Fort, LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Notices of Succession of Reactive Power Rate Schedules to be effective 4/2/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5275.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1646–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Reliability Related Clean-up (Claim10Claim30) to be effective 6/1/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5277.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1647–000.
Applicants: Dynegy Stuart, LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Notices of Succession of Reactive Power Rate Schedules to be effective 4/2/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5278.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1648–000.
Applicants: Dynegy Washington II, LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Notices of Succession of Reactive Power Rate Schedules to be effective 4/2/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5280.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1649–000.
Applicants: Dynegy Zimmer, LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Notices of Succession of Reactive Power Rate Schedules to be effective 4/2/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5281.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1650–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Zonal Demand Curve to be effective 6/1/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5345.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1651–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): OATT Amendment to Schedule 4 and Schedule 13 to be effective 6/30/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5372.
Comments Due: 5 p.m. ET 5/22/15.

Docket Numbers: ER15–1652–000.
Applicants: Pacific Gas and Electric Company.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): 5th Amendment to Extend the PG&E–SVP Interconnection Agreement to be effective 6/30/2015.
Filed Date: 5/1/15.
Accession Number: 20150501–5416.
Comments Due: 5 p.m. ET 5/22/15.

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: May 1, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–10967 Filed 5–6–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–178]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application for Temporary Variance of License Requirement.
b. *Project No.:* 137–178.
c. *Date Filed:* April 24, 2015, and supplemented April 29, 2015.
d. *Applicants:* Pacific Gas and Electric Company (licensee).
e. *Name of Project:* Mokelumne River Project.
f. *Location:* Mokelumne River, South Fork Mokelumne River, Bear River, and their tributaries in Amador, Alpine, and Calaveras counties, California.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.
h. *Applicant Contact:* Mr. Ezra Becker, License Coordinator, Pacific Gas and Electric Company, (415) 973–3082.
i. *FERC Contact:* Mr. John Aedo, (415) 369–3335, or *john.aedo@ferc.gov.*
j. Deadline for filing comments, motions to intervene, protests, and recommendations is May 29, 2015 (30 days from April 29, 2015). This corrects the earlier parenthetical deadline, which incorrectly stated April 29, 2015. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–137–178) on any comments, motions to intervene, protests, or recommendations filed.
k. *Description of Request:* The licensee requests Commission approval of a temporary variance of the minimum and pulse flow requirements at the project Upper Lakes under the requirements of the project license and Condition No. 7 of the U.S. Forest Service's (FS) section 4(e) Conditions. Specifically, the license requests that the 5 cubic feet per second (cfs) minimum flow requirement be reduced to 2 cfs below Lower Blue and Meadow Lakes from May 1, 2015 through the June 30, 2015. The licensee also requests Commission approval to forego the 5-day, 20 cfs pulse flow requirement in 2015 at Upper Blue, Lower Blue, and Meadow Lakes. The licensee states that

the temporary variance is necessary to conserve water in order to ensure minimum flow releases through the fall and to maintain an adequate level to recreation opportunities at the Upper Lakes this summer.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 1, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–10972 Filed 5–6–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14276–002]

FFP Project 92, LLC; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 14276–002.

c. *Date Filed:* April 16, 2015.

d. *Applicant:* FFP Project 92, LLC.

e. *Name of Project:* Kentucky River Lock and Dam No. 11 Hydroelectric Project.

f. *Location:* The proposed project would be located on the Kentucky River in Estill and Madison Counties, Kentucky, at the existing Kentucky River Lock and Dam No. 11 which is owned by the Commonwealth of Kentucky and operated by the Kentucky River Authority. The project would not affect federal land.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's regulations and Hydropower Regulatory Efficiency Act of 2013.

h. *Applicant Contact:* Elvir Mujanovic, Vice President of Finance, Rye Development, LLC, 745 Atlantic Avenue, 8th floor, Boston, MA 02111; Telephone (781) 856–2030; *elvir@ryedevelopment.com.*

i. *FERC Contact:* Sarah Salazar, (202) 502–6863 or *sarah.salazar@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The proposed project would be located at the Commonwealth of Kentucky's existing Kentucky River Lock and Dam No. 11, which was originally constructed from 1904 to 1906 by the U.S. Corps of Engineers for the purpose of transportation. There is a single lock chamber with a total length of 148 feet and width of 52 feet on the south end of the dam. However, a concrete bulkhead and miter gates were installed in front of the lock structure and it is no longer being used for navigational purposes. The Kentucky River Authority currently operates the dam to maintain the upriver channel depth and an impoundment to withdraw water for municipal drinking water purposes. The impoundment also serves the purposes of providing opportunities for recreation and habitat for fish and wildlife.

The proposed project would be operated in a run-of-river mode. The proposed project would include: (1) The existing 579-acre impoundment, with a normal pool elevation of 585.60 feet North American Vertical Datum of 1988; (2) the existing 208-foot-long, 35-foot-high fixed crest dam; (3) a new 3.5-foot-high adjustable crest gate attached to the top of the dam that would be used to maintain the water surface elevation of the impoundment during project operations (*i.e.,* when inflow would be diverted from the spillway to the proposed turbines); (4) a new 275-foot-long, 75-foot-wide reinforced concrete intake channel equipped with trashracks with 3-inch bar spacing; (5) a new 140-foot-long, 64.5-foot-wide powerhouse built within the existing lock structure, with two horizontal Pit Kaplan turbine generator units each rated at 2.5 megawatts (MW) for a total installed capacity of 5 MW; (6) a new 190-foot-long, 78-foot-wide tailrace; (7) a new 40-foot-long, 40-foot-wide substation; (8) a new approximately 4.5-mile-long, 69-kilovolt transmission line extending from the new substation at the powerhouse to an existing substation located near Waco, Kentucky; and (9) appurtenant facilities. The proposed project would generate about 18,500 megawatt-hours annually, which would be sold to a local utility.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on

the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	July 2015
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	September 2015
Commission issues Environmental Assessment (EA)	December 2015
Comments on EA, modified terms and conditions	January 2016

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: May 1, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–10975 Filed 5–6–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2014–0060; FRL–9927–30–OAR]

California State Nonroad Engine Pollution Control Standards; Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards Regulations; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision.

SUMMARY: The Environmental Protection Agency (''EPA'') is granting the California Air Resources Board's (''CARB'') request for authorization of amendments to its mobile cargo handling equipment at ports and intermodal rail yards regulations (''CHE amendments''). EPA is also confirming that certain CHE amendments are within the scope of prior EPA authorizations. CARB's mobile cargo handling equipment at ports and intermodal rail yard regulations apply to all newly purchased, leased or rented on- and off-road vehicles and equipment, as well as in-use on- and off-road vehicles and equipment, with compression-ignition engines that operate at ports and intermodal rail yards. This decision is issued under the authority of the Clean Air Act (''CAA'' or ''Act'').

DATES: Petitions for review must be filed by July 6, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2014–0060. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *www.regulations.gov* Web site, enter EPA–HQ–OAR–2014–0060 in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality (''OTAQ'') maintains a Web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: David Dickinson, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Telephone: (202) 343–9256. Fax: (202) 343–2804. Email: *dickinson.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

CARB first adopted its CHE regulation on December 31, 2006. The regulation applied to newly purchased, leased, or rented on- and off-road vehicles and equipment, as well as to in-use on- and off-road vehicles and equipment with compression-ignition (CI) engines that operate at ports and intermodal rail yards.[1] On February 21, 2012, EPA granted California a full waiver for those parts of the CHE regulation establishing emission standards for new on-road motor vehicles and full authorization for standards and other requirements related to the control of emissions affecting new and in-use nonroad engines.[2] CARB formally adopted the CHE amendments on October 14, 2012,[3] and they are codified at title 13, California Code of Regulations (CCR), section 2479. The CHE amendments modify certain retrofit, operational, and compliance requirements; strengthen certain emission standards; and address definitions and provide other clarifying language. By letter dated May 16, 2013, CARB submitted a request to EPA pursuant to section 209(e) of the Act, seeking EPA's confirmation that certain CHE amendments fall within the scope of EPA's February 2012 authorization

[1] The federal term ''nonroad'' and the California term ''off-road'' are used interchangeably.

[2] 77 FR 9916 (February 21, 2012).

[3] CARB ''Resolution 11–30,'' September 22, 2011; CARB ''Executive Order R–12–009,'' August 2, 2012.

and a full authorization for other CHE amendments. Those CHE amendments for which CARB sought within-the-scope confirmation are related to compliance flexibility and reduced compliance costs and include: Modification to retrofit requirements and operational practices; demonstration of emissions equivalency for alternative technology; and modification of certain compliance requirements. CARB sought a full authorization for the CHE amendments related to new, more stringent requirements and include: A new opacity based monitoring program for in-use nonroad vehicles and equipment; and, a new retrofit requirement for engines meeting the Tier 4 Family Emissions Limit standards.

A. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any state, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain *new* nonroad engines or vehicles.[4] For all other nonroad engines (including ''non-new'' engines), states generally are preempted from adopting and enforcing standards and other requirements relating to the control of emissions, except that section 209(e)(2)(A) of the Act requires EPA, after notice and opportunity for public hearing, to authorize California to adopt and enforce such regulations unless EPA makes one of three enumerated findings. Specifically, EPA must deny authorization if the Administrator finds that (1) California's protectiveness determination (*i.e.,* that California standards will be, in the aggregate, as protective of public health and welfare as applicable federal standards) is arbitrary and capricious, (2) California does not need such standards to meet compelling and extraordinary conditions, or (3) the California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

On July 20, 1994, EPA promulgated a rule interpreting the three criteria set forth in section 209(e)(2)(A) that EPA must consider before granting any California authorization request for nonroad engine or vehicle emission standards.[5] EPA revised these regulations in 1997.[6] As stated in the preamble to the 1994 rule, EPA historically has interpreted the consistency inquiry under the third criterion, outlined above and set forth in section 209(e)(2)(A)(iii), to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) of the Act.[7]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests under section 209(b)(1)(C). That provision provides that the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures will be found to be inconsistent with section 202(a) if (1) there is inadequate lead time to permit the development of the necessary technology, giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

In light of the similar language of sections 209(b) and 209(e)(2)(A), EPA has reviewed California's requests for authorization of nonroad vehicle or engine standards under section 209(e)(2)(A) using the same principles that it has historically applied in reviewing requests for waivers of preemption for new motor vehicle or new motor vehicle engine standards under section 209(b).[8] These principles include, among other things, that EPA should limit its inquiry to the three specific authorization criteria identified in section 209(e)(2)(A),[9] and that EPA should give substantial deference to the policy judgments California has made in adopting its regulations. In previous waiver decisions, EPA has stated that Congress intended EPA's review of California's decision-making be narrow. EPA has rejected arguments that are not specified in the statute as grounds for denying a waiver:

> The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in California air quality not commensurate with its costs or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California.[10]

This principle of narrow EPA review has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit.[11] Thus, EPA's consideration of all the evidence submitted concerning an authorization decision is circumscribed by its relevance to those questions that may be considered under section 209(e)(2)(A).

If California amends regulations that were previously authorized by EPA, California may ask EPA to determine that the amendments are within the scope of the earlier authorization. A within-the-scope determination for such amendments is permissible without a full authorization review if three conditions are met. First, the amended regulations must not undermine California's previous determination that

[4] States are expressly preempted from adopting or attempting to enforce any standard or other requirement relating to the control of emissions from new nonroad engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. Such express preemption under section 209(e)(1) of the Act also applies to new locomotives or new engines used in locomotives.

[5] *See* ''Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards,'' 59 FR 36969 (July 20, 1994).

[6] *See* ''Control of Air Pollution: Emission Standards for New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts; Preemption of State Regulation for Nonroad Engine and Vehicle Standards; Amendments to Rules,'' 62 FR 67733 (December 30, 1997). The applicable regulations are now found in 40 CFR part 1074, subpart B, section 1074.105.

[7] *See supra* note 12. EPA has interpreted 209(b)(1)(C) in the context of section 209(b) motor vehicle waivers.

[8] *See Engine Manufacturers Association* v. *EPA,* 88 F.3d 1075, 1087 (D.C. Cir. 1996): ''. . . EPA was within the bounds of permissible construction in analogizing § 209(e) on nonroad sources to § 209(a) on motor vehicles.''

[9] *See supra* note 12, at 36983.

[10] ''Waiver of Application of Clean Air Act to California State Standards,'' 36 FR 17458 (Aug. 31, 1971). Note that the more stringent standard expressed here, in 1971, was superseded by the 1977 amendments to section 209, which established that California must determine that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. In the 1990 amendments to section 209, Congress established section 209(e) and similar language in section 209(e)(1)(i) pertaining to California's nonroad emission standards which California must determine to be, in the aggregate, at least as protective of public health and welfare as applicable federal standards.

[11] *See, e.g., Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) (''*MEMA I*'').

its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 209 of the Act, following the same criteria discussed above in the context of full authorizations. Third, the amended regulations must not raise any ''new issues'' affecting EPA's prior authorizations.[12]

B. Deference to California

In previous waiver decisions, EPA has recognized that the intent of Congress in creating a limited review based on the section 209(b)(1) criteria was to ensure that the federal government did not second-guess state policy choices. As the agency explained in one prior waiver decision:

> It is worth noting * * * I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the federal level in my own capacity as a regulator. The whole approach of the Clean Air Act is to force the development of new types of emission control technology where that is needed by compelling the industry to ''catch up'' to some degree with newly promulgated standards. Such an approach * * * may be attended with costs, in the shape of reduced product offering, or price or fuel economy penalties, and by risks that a wider number of vehicle classes may not be able to complete their development work in time. Since a balancing of these risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency under the statutory scheme outlined above, I believe I am required to give very substantial deference to California's judgments on this score.[13]

Similarly, EPA has stated that the text, structure, and history of the California waiver provision clearly indicate both a congressional intent and appropriate EPA practice of leaving the decision on ''ambiguous and controversial matters of public policy'' to California's judgment.[14] This interpretation is supported by relevant discussion in the House Committee Report for the 1977 amendments to the Clean Air Act.[15] Congress had the opportunity through the 1977 amendments to restrict the preexisting waiver provision, but elected instead to expand California's flexibility to adopt a complete program of motor vehicle emission controls. The report explains that the amendment is intended to ratify and strengthen the preexisting California waiver provision and to affirm the underlying intent of that provision, that is, to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.[16]

C. Burden and Standard of Proof

As the U.S. Court of Appeals for the D.C. Circuit has made clear in *MEMA I,* opponents of a waiver request by California bear the burden of showing that the statutory criteria for a denial of the request have been met:

> [T]he language of the statute and its legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[17]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: ''here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.' '' [18] Therefore, the Administrator's burden is to act ''reasonably.'' [19]

With regard to the standard of proof, the court in *MEMA I* explained that the Administrator's role in a section 209 proceeding is to:

> [. . .]consider all evidence that passes the threshold test of materiality and * * * thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.[20]

In that decision, the court considered the standards of proof under section 209 for the two findings related to granting a waiver for an ''accompanying enforcement procedure.'' Those findings involve: (1) Whether the enforcement procedures impact California's prior protectiveness determination for the associated standards, and (2) whether the procedures are consistent with section 202(a). The principles set forth by the court, however, are similarly applicable to an EPA review of a request for a waiver of preemption for a standard. The court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.'' [21]

With regard to the protectiveness finding, the court upheld the Administrator's position that, to deny a waiver, there must be ''clear and compelling evidence'' to show that proposed enforcement procedures undermine the protectiveness of California's standards.[22] The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[23]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for ''standards,'' as compared to a waiver request for accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.'' [24]

D. EPA's Administrative Process in Consideration of California's CHE Amendment Request for Authorization

On May 28, 2014, EPA published a **Federal Register** notice announcing its receipt of California's authorization

[12] *See* ''California State Motor Vehicle Pollution Control Standards; Amendments Within the Scope of Previous Waiver of Federal Preemption,'' 46 FR 36742 (July 15, 1981).

[13] 40 FR 23102, 23103–23104 (May 28, 1975).

[14] *Id. at* 23104; 58 FR 4166 (January 13, 1993).

[15] *MEMA I,* 627 F.2d at 1110 (*citing* H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–302 (1977)).

[16] *Id.*

[17] *MEMA I, supra* note 19, at 1121.

[18] *Id.* at 1126.

[19] *Id.* at 1126.

[20] *Id.* at 1122.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *See, e.g.,* ''California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption,'' 40 FR 23102 (May 28, 1975), at 23103.

request. In that notice, EPA invited public comment on each of the CHE amendments and an opportunity to request a public hearing.[25]

First, EPA requested comment on the CHE amendments, as follows: (1) Should California's CHE amendments be considered under the within-the-scope analysis, or should they be considered under the full authorization criteria?; (2) If those amendments should be considered as a within-the-scope request, do they meet the criteria for EPA to grant a within-the-scope confirmation?; and (3) If the amendments should not be considered under the within-the-scope analysis, or in the event that EPA determines they are not within the scope of the previous authorization, do they meet the criteria for full authorization?

EPA received one anonymous written comment that opposed ''any new Regulation or Rule promulgated by EPA on California State Non Road Engine Pollution Control Standards: Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards Regulations.'' [26] EPA is not promulgating any regulations or rules regarding California's CHE regulations, but rather is adjudicating whether or not the amendments that CARB made to its own CHE regulations are within the scope of previous authorizations granted by EPA or fulfill the criteria for a full authorization under the Clean Air Act. EPA received no requests for a public hearing. Consequently, EPA did not hold a public hearing.

II. Discussion

The CHE amendment package contains six categories of amendments. CARB seeks within-the-scope confirmation for the following amendments: (1) Modification to retrofit requirements; (2) modification of operation practices; (3) allowance of demonstration of emissions equivalency for alternative technology; and (4) modification of compliance requirements. CARB seeks a full authorization to enforce amendments that establish: (1) A new opacity based monitoring program; and (2) new retrofit requirements for engines meeting the Tier 4 Family Emission Limits standards.

A. Within-the-Scope Discussion

California maintains that many of the CHE amendments were enacted to address a variety of implementation issues associated with the initial CHE regulations. CARB asserts that the amendments provide additional compliance flexibilities without sacrificing significant emission reductions.

CARB's amendments to the retrofit requirements allow additional time for fleet owners/operators (fleets) to retrofit equipment for which no verified diesel emission control strategies (VDECS) are available. The retrofit amendments also add safety as a criterion for assessing VDECS availability, allow additional time to request a compliance date extension, and allow an extension of the time for the use of experimental diesel particulate matter emissions control strategies for the purpose of gathering verification data on such strategies.

According to CARB, the amendments that modify the operational practice requirements involve four minor adjustments to the CHE regulations. These include a low-use compliance extension (a two-year extension for equipment that operates less than 200 hours per year), an allowance for cargo handling equipment other than yard trucks (''non-truck CHE''), owned or leased by one party to be transferred to another location under certain limitations, an allowance for fleets to replace engines still under the original equipment manufacturer's warranty with replacement engines that meet the emission standards of the original engine, even when newer engine emission standards are in place for newly produced engines, and a new provision allowing fleets to rent non-compliant equipment in the event that compliant equipment is unavailable due to manufacturer delivery delays.

The third set of amendments that CARB maintains are within the scope of the prior authorization establishes a compliance option that allows fleets to demonstrate emissions equivalency for alternative technology. CARB states that these amendments are designed to encourage introduction of new technologies such as hybrid and electric equipment.

Finally, the fourth set of amendments modifies compliance requirements by establishing a compliance schedule that allows fleets to bring older engines into compliance first if owners and operators choose to do so, and by exempting equipment at rural low-throughput ports.[27]

CARB maintains that the amendments noted above meet all three within-the-scope criteria, *i.e.* that the amendments: (1) Do not undermine the original protectiveness determination underlying California's CHE regulations; (2) do not affect the consistency of the CHE regulations with section 209, and (3) do not raise any new issues affecting the prior authorizations.[28] We received no adverse comments or evidence suggesting a within-the-scope analysis is inappropriate, or that these CHE amendments fail to meet any of the three criteria for within-the-scope confirmation.

With regard to the first within-the-scope prong, CARB maintains that the stringency of its emission standards is, in the aggregate, at least as protective of public health and welfare as applicable federal standards.[29] CARB also notes that its amendments will not create any expected adverse environmental impacts.[30] Finally, CARB notes that there can be no question that the CHE regulations are at least as protective of public health and welfare as applicable federal standards given that EPA is unable to regulate emissions from in-use nonroad engines and equipment and that no federally applicable regulations exist. EPA agrees that there are no federally applicable standards for in-use nonroad engines and that no evidence exists in the record to demonstrate that CARB's CHE regulations, in the aggregate, are less protective than applicable federal standards. Therefore, we cannot find that the CHE amendments, as noted, undermine the protectiveness determination made with regard to the original CHE authorization.

With regard to the second within-the-scope prong (consistency with section 209), CARB maintains that the CHE amendments do not regulate new motor vehicles or motor vehicles engines and so are consistent with section 209(a). Likewise the CHE amendments do not regulate any of the permanently preempted categories of engines or vehicles, and so are consistent with section 209(e)(1). Finally, CARB maintains that the CHE amendments do not cause any technological feasibility issues or cause inconsistency between state and federal test procedures, per section 209(b)(1)(C). CARB maintains that the CHE amendments, as noted, provide additional compliance flexibilities beyond the CHE regulations

[25] *See* ''California State Nonroad Engine Pollution Control Standards; Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards Regulation; Request for Within-the-Scope and Full Authorization; Opportunity for Public Hearing and Comment,'' 79 FR 30608 (May 28, 2014).

[26] *See* EPA–HQ–OAR–2014–0060–0019.

[27] The exemption applies if the average annual throughput of goods through a port is less than one million tons and the port is located more than 75 miles from an urban area.

[28] *Id.* at 16.

[29] *See* CARB Board Resolution 11–30 (enclosure 4 of CARB's authorization request).

[30] *See* CARB Staff Report (enclosure 2 of CARB's authorization request).

already found to be technologically feasible. Because there is no evidence in the record to indicate that CARB's CHE amendments are inconsistent with section 209 we cannot find that the CHE amendments, as noted, are inconsistent with section 209.

Third, California states that no new issues exist, and EPA has received no evidence to the contrary.[31] We therefore do not find any new issues raised by the CHE amendments as noted.

Having received no contrary evidence regarding these amendments, we find that California has met the three criteria for a within-the-scope authorization approval, and these amendments are thus confirmed as within the scope of previous EPA authorizations of California's CHE regulations.

B. Full Authorization Discussion

As noted above, CARB seeks a full authorization to enforce amendments that establish a new opacity based monitoring program and new retrofit requirements for engines meeting the Tier 4 Family Emission Limits standards.

CARB's CHE amendments establish new in-use opacity standards and require owners/operators to conduct annual opacity monitoring of all CHE more than four years old from the date of its original manufacture to ensure proper operation and maintenance so that engines continue to perform as designed and certified. Retrofitted engines are similarly monitored to ensure that the engines continue to be in compliance with the VDECS executive order issued by CARB. Equipment found to be in excess of opacity standards would be required to receive maintenance and repair before being returned to service.

Under the CHE regulation that EPA previously authorized, engine manufacturers are allowed some flexibility during periods in which emission standards are transitioning from one emission level (tier) to another emission level (tier). This flexibility allows engine manufacturers to certify a certain percentage of engines manufactured, and identified as being part of the more stringent tier, to emission levels that do not meet that more stringent tier. CARB established a family emission limit (FEL) alternate particulate matter (PM) emission standard (Tier 4 Alternate PM standard) that is essentially equivalent to the less stringent Tier 3 PM emission standard. The Tier 4 Alternate PM standard is about ten times higher than the otherwise applicable Tier 4 PM standard. Through inadvertent error by CARB, the CHE regulations allowed for in-use nonroad non-truck CHE to meet the applicable upgrade requirements by meeting the Tier 4 Alternate PM standard rather than the Tier 4 PM standard. CARB's CHE amendments correct this error by requiring fleets that used the FEL-certified engines to retrofit these engines with the highest available (best—Tier 4) VDECS within one year.

With regard to the first full authorization prong at section 209(e)(2)(i) of the Act, CARB maintains that the stringency of its emission standards is, in the aggregate, at least as protective of public health and welfare as applicable federal standards.[32] CARB also notes that its amendments will not create any expected adverse environmental impacts.[33] Finally, CARB notes that there can be no question that its CHE regulation is at least as protective of public health and welfare as applicable federal standards given that EPA is unable to regulate emissions from in-use nonroad engines and equipment and that no federally applicable regulations exist. EPA agrees that there are no federally applicable standards for in-use nonroad engines and that no evidence exists in the record to demonstrate that CARB's CHE regulation is less protective, in the aggregate, than applicable federal standards. Accordingly, we cannot find that CARB's protectiveness finding is arbitrary and capricious.

With regard to the second authorization criterion, section 209(e)(2)(A)(ii) instructs that EPA cannot grant an authorization if the Agency finds that California ''does not need such California standards to meet compelling and extraordinary conditions.'' EPA's inquiry under this second criterion (found both in paragraphs 209(b)(1)(B) and 209(e)(2)(A)(ii)) has been to determine whether California needs its own mobile source pollution program (*i.e.* set of standards) for the relevant class or category of vehicles or engines to meet compelling and extraordinary conditions, and not whether the specific standards that are the subject of the authorization or waiver request are necessary to meet such conditions.[34] CARB notes that in adopting its CHE amendments the CARB Board confirmed its longstanding position that California continues to need its own nonroad engine emission program to meet serious air pollution problems.[35] Based on the lack of evidence in the record or any suggestion that CARB no longer has a need for its standards to meet compelling and extraordinary conditions, we have no reason to deny CARB's authorization request based on this second authorization criterion.

Section 209(e)(2)(A)(iii) of the Act instructs that EPA cannot grant an authorization if California's standards and enforcement procedures are not consistent with ''this section.'' As described above, EPA's section 209(e) rule states that the Administrator shall not grant authorization to California if she finds (among other tests) that the ''California standards and accompanying enforcement procedures are not consistent with section 209.'' EPA has interpreted the requirement to mean that California standards and accompanying enforcement procedures must be consistent with at least section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted this last subsection in the context of motor vehicle waivers.[36] Thus, this can be viewed as a three-pronged test.

1. Consistency With Section 209(a)

Section 209(a) of the Clean Air Act prohibits states or any political subdivisions of states from setting emission standards for new motor vehicles or new motor vehicle engines. Section 209(a) is modified in turn by section 209(b) which allows California to set such standards if other statutory requirements are met. To find a standard to be inconsistent with section 209(a) for purposes of section 209(e)(2)(A)(iii), EPA must find that the standard in question actually regulates new motor vehicles or new motor vehicle engines. In its authorization request, CARB stated that by definition, the CHE amendments do not regulate new motor vehicles or new motor vehicle engines. EPA received no comments to suggest the contrary. Therefore, EPA cannot deny California's request based on the CHE amendments being inconsistent with section 209(a) of the Act.

2. Consistency With Section 209(e)(1)

To be consistent with section 209(e)(1), California's standards or other requirements relating to the control of emissions must not relate to new engines which are used in farm or construction equipment or vehicles and which are smaller than 175 horsepower

[31] CARB authorization support document at 14, docket entry EPA–HQ–OAR–2014–0060–0003.

[32] *See* CARB Board Resolution 11–30 (enclosure 4 of CARB's authorization request).

[33] *See* CARB Staff Report (enclosure 2 of CARB's authorization request).

[34] *See* 74 FR 32744, 32761 (July 8, 2009); 49 FR 18887, 18889–18890 (May 3, 1984).

[35] *See* CARB's Authorization Support document at 15, *citing* CARB Board Resolution 11–30.

[36] *See* 59 FR 36969 (July 20, 1994).

(hp), and new locomotives or new engines used in locomotives.

CARB maintains that its CHE amendments do not regulate new engines which are used in construction or farm equipment or vehicles below 175 hp, nor do the CHE amendments regulate new locomotives or new engines used in locomotives.

In light of the lack of contrary information in the record, EPA cannot make a finding that CARB's CHE amendments are inconsistent with section 209(e)(1). Therefore, EPA cannot deny CARB's authorization request on this basis.

3. Consistency With Section 209(b)(1)(C)

The requirement that California's standards be consistent with section 209(b)(1)(C) of the Clean Air Act effectively requires consistency with section 202(a) of the Act. To determine this consistency, EPA has applied to California nonroad standards the same test it has used previously for California motor vehicle standards; namely, state standards are inconsistent with section 202(a) of the Act if there is inadequate lead-time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that timeframe. California's accompanying enforcement procedures would also be inconsistent with section 202(a) if federal and California test procedures conflicted. The scope of EPA's review of whether California's action is consistent with section 202(a) is narrow. The determination is limited to whether those opposed to the authorization or waiver have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with the federal test procedures.[37]

CARB states that the smoke opacity test is a quick and inexpensive way to detect if an engine is emitting excessive emissions. CARB maintains that the smoke opacity test is technologically feasible and that compliance with the standards does not require the incorporation of any new technology not already required by existing regulations that have previously received an EPA authorization. CARB also states that the clarification of the Tier 4 FEL emission standards provisions are technologically feasible and were designed to correct an unintentional error and to clarify the original intent of the previously authorized CHE regulations. The CHE amendments only require retrofit to the Tier 4 emission level if appropriate technology is available and require the retrofit be performed within one year. EPA did not receive any comment or evidence to suggest that either of the two amendments for which CARB requested authorization is technologically infeasible.

Consequently, based on the record, EPA is unable to make the finding that the CHE amendments are not technologically feasible with the available lead time giving consideration to the cost of compliance.

EPA received no comments suggesting that CARB's CHE amendments pose any test procedure consistency problem. Therefore, based on the record, EPA cannot find that CARB's testing procedures are inconsistent with section 202(a) and cannot deny CARB's request based on this criterion.

III. Decision

The Administrator has delegated the authority to grant California section 209(e) authorizations to the Assistant Administrator for Air and Radiation. After evaluating CARB's amendments to its CHE regulations described above and CARB's submissions for EPA review, EPA is taking the following actions.

First, EPA is granting a within-the-scope authorization for the CHE amendments that modify the retrofit requirements, modify operational practices, allow demonstration of emissions equivalency for alternative technology, and modify compliance requirements.

Second, EPA is granting a full authorization for the CHE amendments that establish a new opacity based monitoring program and new retrofit requirements for engines meeting the Tier 4 FEL standards.

This decision will affect persons in California and those manufacturers and/or owners/operators nationwide who must comply with California's requirements. In addition, because other states may adopt California's standards for which a section 209(e)(2)(A) authorization has been granted if certain criteria are met, this decision would also affect those states and those persons in such states. *See* CAA section 209(e)(2)(B). For these reasons, EPA determines and finds that this is a final action of national applicability, and also a final action of nationwide scope or effect for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by July 6, 2015. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

IV. Statutory and Executive Order Reviews

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: April 29, 2015.

Janet G. McCabe,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2015–11034 Filed 5–6–15; 8:45 am]

BILLING CODE 6560–50–P

[37] *See, e.g., Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) (''*MEMA I*'').

ENVIRONMENTAL PROTECTION AGENCY

[FRL_XXXX–X]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Florida's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective May 7, 2015.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an

acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On February 25, 2015, the Florida Department of Environmental Protection (FDEP) submitted an application titled ''National Pollutant Discharge Elimination System e-Reporting Tool (NeT)'' for revisions/modifications of its EPA-authorized programs under title 40 CFR. EPA reviewed FDEP's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Florida's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 122, 403, and 503 is being published in the **Federal Register**:

Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System

Part 403—General Pretreatment Regulations For Existing And New Source Of Pollution

Part 501—State Sludge Management Program Regulations

FDEP was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Matthew Leopard,

Acting Director, Office of Information Collection.

[FR Doc. 2015–10989 Filed 5–6–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0806]

Information Collection Being Submitted for Emergency Review and Approval to the Office of Management and Budget

AGENCY: Federal Communication Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning: (a) Whether the proposed collection(s) of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection(s) of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for 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 Office of Management and Budget (OMB) Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 8, 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 FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email at *Nicholas_A._Fraser@omb.eop.gov.* Also, please submit your PRA comments to the FCC by email at *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Nicole Ongele, Office of the Managing Director, FCC at (202) 418–2991.

SUPPLEMENTARY INFORMATION: The Commission is requesting that OMB approve this revised information collection under the emergency processing provisions of the PRA, 5 CFR 1320.5, 1320.8(d), and 1320.13 by July 1, 2015.

OMB Control Number: 3060–0806.

Title: Universal Service—Schools and Libraries Universal Service Program, FCC Forms 470 and 471.

Form Number: FCC Forms 470 and 471.

Type of Review: Revision to a currently approved collection.

Respondents: State, local or tribal government public institutions, and other not-for-profit institutions.

Number of Respondents and Responses: 82,000 respondents; 82,000 responses.

Estimated Time per Response: 3.5 hours for FCC Form 470 (3 hours for response; 0.5 hours for recordkeeping); 4.5 hours for FCC Form 471 (4 hours for response; 0.5 hours for recordkeeping).

Frequency of Response: On occasion and annual reporting requirements, and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403, and 405.

Total Annual Burden: 334,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents concerning this information collection. However, respondents may request materials or information submitted to the Commission or to the Administrator be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: The Commission seeks to revise OMB 3060–0806 to conform this information collection to changes implemented in the *Second E-Rate Modernization Order* (WC Docket No. 13–184, FCC 14–189; 80 FR 5961, February 4, 2015). Collection of the information on FCC Forms 470 and 471 is necessary so that the Commission and the Universal Service Administrative Company (USAC) have sufficient

information to determine if entities are eligible for funding pursuant to the schools and libraries support mechanism, to determine if entities are complying with the Commission's rules, and to prevent waste, fraud, and abuse. In addition, the information is necessary for the Commission to evaluate the extent to which the E-rate program is meeting the statutory objectives specified in section 254(h) of the 1996 Act, and the Commission's own performance goals established in the *E-rate Modernization Order* and *Second E-rate Modernization Order.* This information collection, as described in more detail below, is being revised to modify FCC Form 470 pursuant to program and rule changes in the *Second E-rate Modernization Order* and to accommodate USAC's new online portal as well as the requirement that all FCC Forms 470 be electronically filed. The FCC Form 470, which is used to seek competitive bids on eligible services from service providers, must be available to applicants on July 1 (or very soon thereafter) to ensure schools and libraries can take full advantage of the Commission's reforms in funding year 2016. This revision does not propose changes to the FCC Form 471.

The supporting documents for this submission, including revised forms and instructions, may be accessed via this Web site by searching under ''OMB 3060–0806'': *http://www.reginfo.gov/public/do/PRASearch.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–10977 Filed 5–6–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1053]

Information Collection Approved by the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for a revision of a currently approved public information collection pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Cathy Williams, Office of the Managing Director, at (202) 418–2918, or email: *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1053.

OMB Approval Date: March 31, 2015.

OMB Expiration Date: March 31, 2018.

Title: Two-Line Captioned Telephone Order, IP Captioned Telephone Service Declaratory Ruling; and Internet Protocol Captioned Telephone Service Reform Order, CG Docket Nos. 13–24 and 03–123.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Estimated Number of Respondents and Responses: 148,006 respondents; 556,010 responses.

Estimated Time per Response: 0.25 hours (15 minutes) to 8 hours.

Frequency of Response: Annual, every five years, on-going, and one-time reporting requirement; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements is found at sec. 225 [47 U.S.C. 225] Telecommunications Services for Hearing-Impaired Individuals; The Americans with Disabilities Act of 1990, (ADA), Public Law 101–336, 104 Stat. 327, 366–69, was enacted on July 26, 1990.

Estimated Total Annual Burden: 399,072 hours.

Total Annual Costs: $1,680,000.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information by the FCC from individuals.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On August 1, 2003, the Commission released *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, Declaratory Ruling, 68 FR 55898, September 28, 2003, clarifying that one-line captioned telephone voice carry over (VCO) service is a type of telecommunications relay service (TRS) and that eligible providers of such services are eligible to recover their costs from the Interstate TRS Fund (Fund) in accordance with section 225 of the Communications Act. The Commission also clarified that certain TRS mandatory minimum standards do not apply to one-line captioned telephone VCO service and waived 47 CFR 64.604(a)(1) and (a)(3) for all current and future captioned telephone VCO service providers, for the same period of time beginning August 1, 2003. The waivers were contingent on the filing of annual reports.

On July 19, 2005, the Commission released *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67 and CG Docket No. 03–123, Order, 70 FR 54294, September 14, 2005, clarifying that two-line captioned telephone VCO service, like one-line captioned telephone VCO service, is a type of TRS eligible for compensation from the Fund.

On January 11, 2007, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03–123, Declaratory Ruling, 72 FR 6960, February 14, 2007, granting a request for clarification that Internet Protocol (IP) captioned telephone relay service (IP CTS) is a type of TRS eligible for compensation from the Fund. The Commission also waived certain TRS mandatory minimum standards that do not apply to IP CTS, contingent on the filing of annual reports.

On August 26, 2013, the Commission issued *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket Nos. 13–24 and 03–123, Report and Order, 78 FR 53684, August 30, 2013, to regulate practices relating to the marketing of IP CTS, impose certain requirements for the provision of this service, and mandate registration and certification of IP CTS users.

On June 20, 2014, the D.C. Circuit vacated the rule prohibiting compensation to providers for minutes of use generated by equipment consumers received from providers for free or for less than $75 ($75 equipment charge rule) and the rule requiring providers to maintain captions off as the default setting for IP CTS equipment. *Sorenson Communications, Inc. and CaptionCall, LLC* v. *FCC,* 755 F.3d 702

(D.C. Cir. 2014) (*D.C. Circuit IP CTS Order*).

On August 22, 2014, the Commission issued *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Waivers of iTRS Mandatory Minimum Standards,* CG Docket No. 03–123, Report and Order, 79 FR 62875, October 21, 2014 (*iTRS Waiver Order*), to make permanent waivers of certain TRS mandatory minimum standards and eliminate waivers of other TRS mandatory minimum standards for IP CTS and CTS. The Commission also eliminated the requirement that IP CTS and CTS providers file annual reports regarding the TRS mandatory minimum standards.

This notice pertains to OMB approval of revisions to the information collection requirements as a result of the *iTRS Waiver Order* eliminating the requirement that IP CTS and CTS providers file annual reports regarding the TRS mandatory minimum standards and as a result of the *D.C. Circuit IP CTS Order* vacating the $75 equipment charge rule and the rule requiring providers to maintain captions off as the default setting for IP CTS equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–10978 Filed 5–6–15; 8:45 am]

BILLING CODE 6712–01–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 June 5, 2015.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Wells Bancshares, Inc.,* Platte City, Missouri; to retain up to 20 percent, and to acquire up to 100 percent, of the voting shares of Bedison Bancshares, Inc., Platte City, Missouri, and thereby indirectly retain voting shares of Bank CBO, Oregon, Missouri.

Board of Governors of the Federal Reserve System, May 4, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–11024 Filed 5–6–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 2015.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Synchrony Financial,* Stamford, Connecticut; to remain a savings and loan holding company by retaining voting shares of Synchrony Bank, Draper, Utah.

Board of Governors of the Federal Reserve System, May 4, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–11022 Filed 5–6–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0076; Docket 2015–0076; Sequence 12]

Information Collection; Novation/Change of Name Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Novation/Change of Name Requirements.

DATES: Submit comments on or before July 6, 2015.

ADDRESSES: Submit comments identified by Information Collection 9000–0076, Novation/Change of Name Requirements, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment''

that corresponds with ''Information Collection 9000–0076, Novation/Change of Name Requirements.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0076, Novation/Change of Name Requirements'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0076, Novation/Change of Name Requirements.

Instructions: Please submit comments only and cite Information Collection 9000–0076, Novation/Change of Name Requirements, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–208–4949 or via email *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Acquisition Regulation 42.1203 and 42.1204 provide requirements for contractors to request novation/change of name agreements and supporting documents when a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts, or (2) a name change, it must submit certain documentation to the Government.

B. Annual Reporting Burden

Respondents: 1,178.
Responses per Respondent: 1.
Annual Responses: 1,178.
Hours per Response: 2.0.
Total Burden Hours: 2,356.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

Dated: May 4, 2015.

Edward Loeb,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2015–11074 Filed 5–6–15; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice–MA–2015–02; Docket No. 2015–0002, Sequence No. 10]

Federal Travel Regulation (FTR); Relocation Allowances—Requirement To Report Agency Payments for Relocation

AGENCY: Office of Government-Wide Policy, General Services Administration (GSA).

ACTION: Notice of a bulletin.

SUMMARY: The purpose of this notice is to inform agencies that FTR Bulletin 15–04, pertaining to the Requirement to Report Agency Payments for Relocation, is now available online at *www.gsa.gov/ftrbulletin.*

DATES: *Effective:* May 7, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Miller, Office of Asset and Transportation Management (MA), Office of Government-wide Policy, GSA, at 202–501–3822 or via email at *rodney.miller@gsa.gov.* Please cite FTR Bulletin 15–04.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 5707(c), as implemented in the Federal Travel Regulation, Part 300–70, Subpart A—Requirement To Report Agency Payments for Employee Travel and Relocation, and Part 302–1, Subpart B—Requirement to Report Agency Data for Employee Relocation, the Administrator of General Services is required to collect data on total agency payments for travel, transportation, and relocation expenses every year. This bulletin provides guidance to agencies that spent more than $5 million on travel and transportation payments, including relocation costs, and the requirement procedures to report the data to GSA. Federal Travel Regulation Bulletin 15–04 and all other FTR Bulletins can be found at *www.gsa.gov/ftrbulletin.*

Dated: May 1, 2015.

Giancarlo Brizzi,

Acting Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2015–10631 Filed 5–6–15; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: *''Pilot Test of the Proposed Hospital Survey on Patient Safety Culture Version 2.0.''* In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by July 6, 2015.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Pilot Test of the Proposed Hospital Survey on Patient Safety Culture Version 2.0

Proposed Project

In 2004, AHRQ developed and published a measurement tool to assess the culture of patient safety in hospitals (OMB control no. 0935–0115). The *Hospital Survey on Patient Safety Culture* (HSOPS) is a survey of providers and staff that can be implemented by hospitals to identify strengths and areas for patient safety culture improvement as well as raise awareness about patient safety. When

conducted routinely, the survey can be used to examine trends in patient safety culture over time and evaluate the cultural impact of patient safety initiatives and interventions. The data can also be used to make comparisons across hospital units. AHRQ also produced a survey user's guide to assist hospitals in conducting the survey successfully. The guide addresses issues such as which providers and staff should complete the survey, how to select a sample of hospital providers and staff, how to administer the questionnaire, and how to analyze and report on the resulting data.

Since 2004, thousands of hospitals within the U.S. and internationally have implemented the survey. In response to requests for comparative data from other hospitals, AHRQ funded the development of a comparative database on the survey in 2006 (OMB control no. 0935–0162). The database is currently compiled every two years, using the latest data provided by participating hospitals (and retaining submitted data for no more than 2 years). Reports describing the findings from analysis of the database are made available on the AHRQ Web site to assist hospitals in comparing their results. The 2014 database contains data from 405,281 hospital provider and staff respondents within 653 participating hospitals. The 2014 User Comparative Database Report presents results by hospital characteristics (*e.g.,* number of beds, teaching status, geographic location) and respondent characteristics (*e.g.,* position type, work area/unit).

The survey constructed in 2004 remains in use today, more than 10 years after its initial launch. Since the launch of HSOPS, AHRQ has funded development of patient safety culture surveys for other settings. In 2008, surveys were published for outpatient medical offices (OMB control no. 0935–0131) and nursing homes (OMB control no. 0935–0132). In 2012, a survey for community pharmacies (OMB control no. 0935–0183) was released. Surveys for each setting built upon the strengths of HSOPS but improved and updated items where appropriate.

Users of HSOPS have provided feedback over the years suggesting that changes to the instrument would be valuable and welcomed. The comparative database registrants provided feedback about potential changes in 2013, and telephone interviews were conducted with 8 current survey users and vendors to gain an in-depth understanding of their thoughts on the current survey and possible changes. As a result of this feedback, the *Hospital Survey on Patient Safety Culture Version 2.0* (HSOPS 2.0) is being constructed with the following 8 objectives in mind.

(1) Shift to a Just Culture framework for understanding responses to errors. In the original HSOPS, questions around responses to errors were negatively worded to detect a ''culture of blame'' in organizations. For example, respondents evaluated the extent to which errors were held against them and whether it felt as though the person was being written up rather than the problem. In contrast, a Just Culture framework emphasizes learning from mistakes, providing a safe environment for reporting errors, and utilizing a balanced approach to errors that considers both system and individual behavioral reasons as causes for errors. New items will be constructed in HSOPS 2.0 to capture the extent to which positive responses to error consistent with a Just Culture framework are present in an organization. For example, respondents will be asked to evaluate the extent to which the organization tries to understand the factors that lead to patient safety errors.

(2) Reduce the number of negatively worded items. The original HSOPS has negatively worded items. For example, respondents are asked whether there are ''patient safety problems in this unit'' (negatively worded). Using some negatively worded items was intended to reduce social desirability and acquiescence biases and identify individuals not giving the survey their full attention (*e.g.,* ''straight-lining,'' or providing the same answer for every item, regardless of positive or negative wording). However, many users have indicated that respondents sometimes had difficultly correctly interpreting and responding to the negatively worded items. Therefore, many survey users recommended that the number of negatively worded items should be reduced, but they did not recommend removing all of these items as they felt a mixture of items helps keep respondents engaged.

(3) Add a ''Does not apply/Don't know'' response option. Analysis of the Comparative Database data found that a percentage of respondents selects ''neither agree nor disagree'' on many items when they really should have answered ''Does not apply/Don't know''. While some portion of respondents will always have neutral feelings about a statement, in some cases a respondent will select a neutral response to an item because they do not have experience in that area or the item does not apply to their position. Addition of a ''does not apply/don't know'' response option should reduce neutral responses to an item in cases where the item is not relevant for a respondent, providing more statistical variability in responses. Recognizing these issues, the other AHRQ Surveys on Patient Safety Culture all have a 5th ''Does not apply/Don't know'' response option.

(4) Reword unclear or difficult-to-translate items. HSOPS was originally designed for use in U.S. hospitals, but it has since been translated into languages other than English. Some HSOPS items use idiomatic expressions that do not translate well, such as ''things fall between the cracks'' and ''the person is being written up.'' Other items have words that are complex or may mean different things to different people, such as ''sacrifice'' and ''overlook.'' HSOPS 2.0 uses more universal phrases which can be accurately translated and have more consistent meaning across respondents, some of whom are non-clinical staff. A related change across many items is use of the word ''we'' rather than ''staff.'' It may be unclear to respondents whether providers such as physicians, residents, and interns qualify as ''staff,'' while ''we'' invites a more inclusive view of those in the hospital or unit.

(5) Reword items to be more applicable to physicians and non-clinical staff. Users have indicated that the wording of some of the items makes it awkward for physicians to answer. For example, the section that asks about ''Your Supervisor/Manager'' does not apply well to physicians who report to a clinical leader but not to a manager per se. In addition, some items were difficult for non-clinical staff to answer. For example, the item ''We have patient safety problems in this unit'' may not be relevant for staff who do not have direct interaction with patients (*e.g.,* IT staff).

(6) Align the HSOPS survey with AHRQ patient safety culture surveys for other settings. The development of patient safety culture surveys for other settings provided opportunities to test new items and refinements of original HSOPS items. Many of these items have performed well for other settings and are relevant to the hospital setting. In addition, standardizing items across the patient safety culture surveys would allow cross-setting comparisons that are not currently possible.

(7) Reduce survey length. To increase response rates and reduce the survey administration burden for hospitals, the revised survey is intended to be shorter than the original instrument. Some of the original items have relatively low variability and therefore contribute little to discrimination between positive and negative assessment of patient safety

culture. However, the need for careful testing of alternative questions means that the initial draft of the revised or 2.0 survey is slightly longer than the original. Through cognitive interviewing, pilot testing, and expert review, we will identify items that can be deleted, resulting in a shorter final instrument.

(8) *Investigate supplemental items/composites.* Develop a set of supplemental items for the HSOPS 2.0 survey pertaining to Health Information Technology (Health IT).

Further details about the specific changes by composite and at the item level can be found on the AHRQ Web site at: *http://www.ahrq.gov/professionals/quality-patient-safety/patientsafetyculture/hospital/update/index.html.*

The draft 2.0 version of the instrument has undergone preliminary cognitive testing with 9 hospital physicians and staff members as well as review by a Technical Expert Panel (TEP).

This research has the following goals:

(1) Cognitively test with individual respondents the items in a) the draft HSOPS 2.0 survey and b) HSOPS 2.0 supplemental item set assessing Health IT Patient Safety. Cognitive testing will be conducted in English and Spanish.

(2) Conduct data collection as follows:

a. A combined pilot test and bridge study for the draft HSOPS 2.0 in 40 hospitals and modify the questionnaire as necessary. The pilot test component will entail administering the draft 2.0 version to determine which items to retain. The bridge study component will entail administering the original HSOPS in addition to the draft HSOPS 2.0 version to provide guidance to hospitals in understanding changes in their scores resulting from the new instrument versus changes resulting from true changes in culture.

b. The pilot testing of the supplemental item set will be conducted with the same hospitals and respondents as the pilot test for the draft HSOPS 2.0. These supplemental items will be added to the draft HSOPS 2.0 survey for pilot testing.

(3) Engage a TEP in review of pilot results and finalize the questionnaire and supplemental item set.

(4) Make the final HSOPS 2.0 survey and the supplemental items publicly available.

This work is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

Cognitive interviews—The purpose of these interviews is to understand the cognitive processes respondents engage in when answering each item on the survey, which will aid in refining the survey instrument. These interviews will be conducted with a mix of hospital personnel, including physicians, nurses, and other types of staff (from dietitians to housekeepers).

Draft HSOPS 2.0—Cognitive interviews have already been conducted with 9 respondents to inform development of the current draft HSOPS 2.0. Up to three additional rounds of interviews will be conducted by telephone with a total of 27 respondents (nine respondents each round). The instrument will be translated into Spanish and another round of cognitive interviews will be conducted with nine Spanish-speaking respondents for a total of up to 36 respondents across all four rounds. A cognitive interview guide will be used for all rounds.

Supplemental Items—Up to three rounds of interviews will be conducted by telephone for a total of 27 respondents (nine respondents each round). The supplemental items will be translated into Spanish and another round of cognitive interviews will be conducted with nine Spanish-speaking respondents for a total of up to 36 respondents across all four rounds. A cognitive interview guide will be used for all rounds.

Feedback obtained from the first round of interviews for the draft HSOPS 2.0 and the supplemental items will be used to refine the items. The results of Round 1 testing, along with the proposed revisions, will be reviewed with a TEP prior to commencing with Rounds 2 and/or 3 testing. In total, up to 72 cognitive interviews will be conducted to refine the draft HSOPS 2.0 and supplemental items for pilot testing.

(2) Pilot test and bridge study—There will be one data collection effort which will provide data for the pilot test and the bridge study. The pilot test of the draft HSOPS 2.0 and supplemental items will allow the assessment of the psychometric properties of the items and composites. We will assess the variability, reliability, factor structure and construct validity of the draft HSOPS 2.0 and supplemental items and composites, allowing for their further refinement. The draft HSOPS 2.0 survey and supplemental items will be pilot tested with hospital personnel in approximately 40 hospitals to facilitate multilevel analysis of the data. Approximately 500 providers and staff will be sampled from each hospital, with 250 receiving HSOPS 2.0 with supplemental items for the pilot test and 250 receiving the original HSOPS for the bridge study comparisons. A hospital point of contact will be recruited in each hospital to publicize the survey and assemble a list of sampled providers and staff. Providers and staff will receive notification of the survey and reminders via email and the web-based survey will be fielded entirely online.

The goal of the bridge study will be to provide users with guidance on how their new results will compare with results from the original HSOPS survey. Although users have requested that the HSOPS survey be revised, they are also concerned about their ability to trend results with data from prior years. A similar bridge study was conducted during the 1994 redesign of the Census Bureau's Current Population Survey (CPS). In the CPS bridge study, an additional 12,000 households were added to the survey's monthly rotation schedule between July 1992 and December 1993. The added households received the redesigned version of the instrument. Thus, the CPS fielded both the revised and the original versions of the instrument simultaneously. One of the most important results of the CPS bridge study was the development of metrics that allowed estimates of change that were due to the changes in the instrument. These metrics were used to adjust the estimates produced by the revised CPS instrument. As a result of the study, key labor force metrics such as the unemployment rate could be trended accurately after the instrument's redesign.

We propose to conduct a similarly constructed bridge study in which sampled providers and staff take either the draft HSOPS 2.0 or original versions of HSOPS. As noted above, a split ballot design will be used in which half of sampled providers and staff in each hospital receive the original HSOPS (N=250) and the other half receive the draft HSOPS 2.0 (N=250). This bridge study is designed to produce metrics of change that are attributable to the changed survey instrument. The number of hospitals and sampled providers and staff for this data collection effort was calculated to ensure the statistical power needed to detect relatively small differences in scores (3 percentage points).

(3) TEP feedback—A TEP has been assembled to provide input to guide patient safety culture survey product

development and has been convened to discuss the proposed changes to the HSOPS survey and supplemental items. Upon completion of the pilot test, results will be reviewed with the TEP and the survey will be finalized. This TEP activity does not impose a burden on the public and is therefore not included in the burden estimates in Exhibits 1 and 2.

(4) Dissemination activities—The final HSOPS 2.0 instrument and supplemental items will be made publicly available through the AHRQ Web site. A report from the bridge study will also be made public as a resource to hospitals making the transition to the new survey. This dissemination activity does not impose a burden on the public and is therefore not included in the burden estimates in Exhibits 1 and 2.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the participants' time to take part in this research. Cognitive interviews for the draft HSOPS 2.0 will be conducted with 36 individuals and will take about one hour and 30 minutes to complete. Cognitive interviews for the supplemental items will be conducted with 36 individuals and take about one hour to complete. We will recruit 40 hospitals for the pilot test and bridge study, sampling approximately 500 staff members in each (250 taking the original survey and 250 taking the HSOPS 2.0 and supplemental item set). Because we require such a large sample within each hospital, we will target only hospitals with 49 or more beds. For hospitals with fewer than 500 providers and staff, we will conduct a census in the hospital (assuming on average 375 providers and staff in these hospitals this will yield a total of 18,375 sample members assuming all 40 hospitals participate. Assuming a response rate of 50 percent, this will yield a total of 9,188 completed questionnaires. The total annualized burden is estimated to be 2,387 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the participants' time to take part in this research. The total cost burden is estimated to be $83,533.26.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name/activity	Number of respondents	Hours per response	Total burden hours
Cognitive interviews—HSOPS 2.0	36	1.5	54
Cognitive interviews—Supplemental Items	36	1.0	36
Pilot test and bridge study	9,188	0.25	2,297
Total	9,260	na	2,387

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name/activity	Total burden hours	Average hourly wage rate *	Total cost burden
Cognitive interviews (HSOPS 2.0 and supplemental items)	90	[a] $35.38	$3,184.20
Pilot test and bridge study	2,297	[b] 34.98	80,349.06
Total	2,387	na	83,533.26

[a] Based on the weighted average hourly wage in hospitals for one physician (29–1060; $101.53), one registered nurse (29–1141; $30.22), one general and operations manager (11–1021; $52.64), and six clinical lab techs (29–2010; $22.34) whose hourly wage is meant to represent wages for other hospital employees who may participate in cognitive interviews.

[b] Based on the weighted average hourly wage in hospitals for 1,981 registered nurses, 209 clinical lab techs, 176 physicians and surgeons, and 21 general and operations managers.

* National Industry-Specific Occupational Employment and Wage Estimates, May 2013, from the Bureau of Labor Statistics (available at *http://www.bls.gov/oes/current/naics4_621100.htm* [for general medical and surgical hospitals, NAICS 622100]).

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 27, 2015.

Sharon B. Arnold,

Deputy Director, AHRQ.

[FR Doc. 2015–10982 Filed 5–6–15; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

National Advisory Council for Healthcare Research and Quality: Request for Nominations for Public Members

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of request for nominations for public members.

SUMMARY: 42 U.S.C. 299c establishes a National Advisory Council for Healthcare Research and Quality (the Council). The Council is to advise the Secretary of HHS (Secretary) and the

Director of the Agency for Healthcare Research and Quality (AHRQ) on matters related to activities of the Agency to produce evidence to make health care safer, higher quality, more accessible, equitable, and affordable, and to work within the U.S. Department of Health and Human Services and with other partners to make sure that the evidence is understood and used.

Seven current members' terms will expire in November 2015. To fill these positions, we are seeking individuals who are distinguished in: (1) The conduct of research, demonstration projects, and evaluations with respect to health care; (2) the fields of health care quality research or health care improvement; (3) the practice of medicine; (4) other health professions; (5) representing the private health care sector (including health plans, providers, and purchasers) or administrators of health care delivery systems; (6) the fields of health care economics, information systems, law, ethics, business, or public policy; and, (7) representing the interests of patients and consumers of health care. 42 U.S.C. 299c(c)(2). Individuals are particularly sought with experience and success in activities specified in the summary above.

DATES: Nominations should be received on or before 60 days after date of publication.

ADDRESSES: Nominations should be sent to Ms. Karen Brooks, AHRQ, 540 Gaither Road, Room 3006, Rockville, Maryland 20850. Nominations may also be emailed to *Karen.Brooks@ahrq.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Jaime Zimmerman, AHRQ, at (301) 427–1456.

SUPPLEMENTARY INFORMATION: 42 U.S.C. 299c provides that the Secretary shall appoint to the National Advisory Council for Healthcare Research and Quality twenty one appropriately qualified individuals. At least seventeen members shall be representatives of the public and at least one member shall be a specialist in the rural aspects of one or more of the professions or fields listed in the above summary. In addition, the Secretary designates, as ex officio members, representatives from other Federal agencies, principally agencies that conduct or support health care research, as well as Federal officials the Secretary may consider appropriate. 42 U.S.C. 299c(c)(3). The Council meets in the Washington, DC, metropolitan area, generally in Rockville, Maryland, approximately three times a year to provide broad guidance to the Secretary and AHRQ's Director on the direction of and programs undertaken by AHRQ.

Seven individuals will be selected by the Secretary to serve on the Council beginning with the meeting in the spring of 2016. Members generally serve 3-year terms. Appointments are staggered to permit an orderly rotation of membership.

Interested persons may nominate one or more qualified persons for membership on the Council. Self-nominations are accepted. Nominations shall include: (1) A copy of the nominee's resume or curriculum vitae; and (2) a statement that the nominee is willing to serve as a member of the Council. Selected candidates will be asked to provide detailed information concerning their financial interests, consultant positions and research grants and contracts, to permit evaluation of possible sources of conflict of interest. Please note that once a candidate is nominated, AHRQ may consider that nomination for future positions on the Council. Federally registered lobbyists are not permitted to serve on this advisory board pursuant to the Presidential Memorandum entitled ''Lobbyists on Agency Boards and Commissions'' dated June 10, 2010, and the Office of Management and Budget's ''Final Guidance on Appointment of Lobbyists to Federal Boards and Commissions,'' 76 FR 61756 (October 5, 2011).

The Department seeks a broad geographic representation. In addition, AHRQ conducts and supports research concerning priority populations, which include: low-income groups; minority groups; women; children; the elderly; and individuals with special health care needs, including individuals with disabilities and individuals who need chronic care or end-of-life health care. See 42 U.S.C. 299(c). Nominations of persons with expertise in health care for these priority populations are encouraged.

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2015–10983 Filed 5–6–15; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed changes to the currently approved information collection project: *''Medical Expenditure Panel Survey—Insurance Component.''* In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on February 18th, 2015 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by June 8, 2015.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Medical Expenditure Panel Survey—Insurance Component

Employer-sponsored health insurance is the source of coverage for 78 million current and former workers, plus many of their family members, and is a cornerstone of the U.S. health care system. The Medical Expenditure Panel Survey—Insurance Component (MEPS–IC) measures on an annual basis the extent, cost, and coverage of employer-sponsored health insurance. These statistics are produced at the National, State, and sub-State (metropolitan area) level for private industry. Statistics are also produced for State and local governments. The MEPS–IC was last approved by OMB on November 21, 2013 and will expire on November 30, 2016. The OMB control number for the MEPS–IC is 0935–0110. All of the supporting documents for the current MEPS–IC can be downloaded from OMB's Web site at *http://www.reginfo.gov/public/do/*

PRAViewDocument?ref_nbr=201310-0935-001.

In order to ensure that the MEPS–IC is able to capture important changes in the employer-sponsored health insurance market due to the implementation of the Patient Protection and Affordable Care Act (ACA), AHRQ will field a longitudinal survey in 2015 to include a sample of 5,000 small private sector employers that responded to the 2014 MEPS–IC. The OMB clearance that was approved on November 21, 2013 included the 2014 longitudinal survey, a survey of 3,000 respondents to the 2013 MEPS–IC, but did not include the 2015 longitudinal survey. This submission is for the 2015 longitudinal survey only; there are no other changes.

This research has the following goals:

(1) Provide data for Federal policymakers evaluating the effects of National and State health care reforms.

(2) Provide descriptive data on the current employer-sponsored health insurance system and data for modeling the differential impacts of proposed health policy initiatives.

(3) Supply critical State and National estimates of health insurance spending for the National Health Accounts and Gross Domestic Product.

(4) Support evaluation of the impact on health insurance offered by small employers due to the implementation of Small Business Health Options Program (SHOP) exchanges under the ACA, through the addition of a longitudinal component to the sample.

The MEPS–IC is conducted pursuant to AHRQ's statutory authority to conduct surveys to collect data on the cost, use and quality of health care, including the types and costs of private insurance. 42 U.S.C. 299b–2(a).

Method of Collection

To achieve the goals of this project for both private sector and state and local government employers, the following data collections will be implemented:

(1) Prescreener Questionnaire—The purpose of the Prescreener Questionnaire, which is collected via telephone, varies depending on the insurance status of the establishment contacted. (Establishment is defined as a single, physical location in the private sector and a governmental unit in state and local governments.) For establishments that do not offer health insurance to their employees, the prescreener is used to collect basic information such as number of employees via a phone call. For establishments that do offer health insurance, the prescreener is used to collect contact names and address information is that are used to mail a written establishment and plan questionnaires. Obtaining this contact information helps ensure that the questionnaires are directed to the person best equipped to complete them.

(2) Establishment Questionnaire—The purpose of the mailed Establishment Questionnaire is to obtain general information from employers who provide health insurance to their employees. The Questionnaire collects such information as total active enrollment in health insurance, other employee benefits offered, demographic characteristics of employees, and retiree health insurance.

(3) Plan Questionnaire—The purpose of the mailed Plan Questionnaire is to collect plan-specific information on each plan (up to four) offered by establishments that provide health insurance to their employees. This questionnaire asks about total premiums, employer and employee contributions to the premium, and plan enrollment for each type of coverage offered—single, employee-plus-one, and family—within a plan. It also asks for information on deductibles, copays, and other plan characteristics.

(4) Longitudinal Sample (LS)—For 2015, an additional sample of small employers (those with 100 or fewer employees) will be included in the collection. The LS will consist of 5,000 small, private-sector employers who responded to the 2014 MEPS–IC regular survey. These employers will be surveyed again in 2015—using the same collection methods as the regular survey—in order to track changes in their health insurance offerings, characteristics, and costs.

The primary objective of the MEPS–IC is to collect information on employer-sponsored health insurance. Such information is needed in order to provide the tools for Federal, State, and academic researchers to evaluate current and proposed health policies and to support the production of important statistical measures for other Federal agencies.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondent's time to provide the requested data for the 2015 longitudinal survey. The Prescreener questionnaire will be completed by 4,300 respondents and takes about 5½ minutes to complete. The Establishment questionnaire will be completed by 2,054 respondents and takes about 23 minutes to complete. The Plan questionnaire will be completed by 2,054 respondents and will require an average of 1.4 responses per respondent. Each Plan questionnaire takes about 11 minutes to complete. The total burden hours are estimated to be 1,686 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this data collection. The annualized cost burden is estimated to be $52,709.

EXHIBIT 1—ESTIMATED BURDEN HOURS FOR THE 2015 LONGITUDINAL SURVEY

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Prescreener Questionnaire	4,326	1	0.09	389
Establishment Questionnaire	2,078	1	0.38*	790
Plan Questionnaire	2,078	1.4	0.18	524
Total	8,482	na	na	1,703

*The burden estimate printed on the establishment questionnaire is 45 minutes which includes the burden estimate for completing the establishment questionnaire, an average of 1.4 plan questionnaires, plus the prescreener. The establishment and plan questionnaires are sent to the respondent as a package and are completed by the respondent at the same time.

EXHIBIT 2—ESTIMATED COST BURDEN FOR THE 2015 LONGITUDINAL SURVEY

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Prescreener Questionnaire	4,326	389	$30.95	$12,040
Establishment Questionnaire	2,078	790	30.95	24,451
Plan Questionnaire	2,078	524	30.95	16,218
Total	8,482	1,703	na	$52,709

*Based upon the mean hourly wage for Compensation, Benefits, and Job Analysis Specialists occupation code 13–1141, at *http://www.bls.gov/oes/current/oes131141.htm* (U.S. Department of Labor, Bureau of Labor Statistics.)

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 27, 2015.

Sharon B. Arnold,

Deputy Director, AHRQ.

[FR Doc. 2015–10981 Filed 5–6–15; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1623–N]

Medicare Program; Public Meeting on July 16, 2015 Regarding New and Reconsidered Clinical Diagnostic Laboratory Test Codes for the Clinical Laboratory Fee Schedule for Calendar Year 2016

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

ACTION: Notice.

SUMMARY: This notice announces a public meeting to receive comments and recommendations (including accompanying data on which recommendations are based) from the public on the appropriate basis for establishing payment amounts for new or substantially revised Healthcare Common Procedure Coding System (HCPCS) codes being considered for Medicare payment under the clinical laboratory fee schedule (CLFS) for calendar year (CY) 2016. This meeting also provides a forum for those who submitted certain reconsideration requests regarding final determinations made last year on new test codes and for the public to provide comment on the requests.

DATES: *Meeting Date:* The public meeting is scheduled for Thursday, July 16, 2015 from 9:00 a.m. to 3:00 p.m., Eastern Daylight Savings Time.

Deadline for Registration of Presenters and Submission of Presentations: All presenters for the public meeting must register and submit their presentations electronically to Glenn McGuirk at *Glenn.McGuirk@cms.hhs.gov* by July 2, 2015.

Deadline for Submitting Requests for Special Accommodations: Requests for special accommodations must be received no later than 5:00 p.m. on July 2, 2015.

Deadline for Submission of Written Comments: We intend to publish our proposed determinations for new test codes and our preliminary determinations for reconsidered codes (as described below) for CY 2016 by early September 2015. Interested parties may submit written comments on these determinations by early October, 2015 to the address specified in the **ADDRESSES** section of this notice or electronically to Glenn McGuirk at *Glenn.McGuirk@cms.hhs.gov* (the specific date for the publication of these determinations on the CMS Web site, as well as the deadline for submitting comments regarding these determinations will be published on the CMS Web site).

ADDRESSES: The public meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services (CMS), Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Glenn McGuirk, (410) 786–5723.

SUPPLEMENTARY INFORMATION:

I. Background

Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish procedures for coding and payment determinations for new clinical diagnostic laboratory tests under Part B of title XVIII of the Social Security Act (the Act) that permit public consultation in a manner consistent with the procedures established for implementing coding modifications for International Classification of Diseases (ICD–9–CM). The procedures and public meeting announced in this notice for new tests are in accordance with the procedures published on November 23, 2001 in the **Federal Register** (66 FR 58743) to implement section 531(b) of BIPA.

Section 942(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) added section 1833(h)(8) of the Act. Section 1833(h)(8)(A) of the Act requires the Secretary to establish by regulation procedures for determining the basis for, and amount of, payment for any clinical diagnostic laboratory test with respect to which a new or substantially revised Healthcare Common Procedure Coding System (HCPCS) code is assigned on or after January 1, 2005 (hereinafter referred to as ''new tests''). A code is considered to be substantially revised if there is a substantive change to the definition of the test or procedure to which the code applies (such as, a new analyte or a new methodology for measuring an existing analyte-specific test). (See section 1833(h)(8)(E)(ii) of the Act).

Section 1833(h)(8)(B) of the Act sets forth the process for determining the basis for, and the amount of, payment for new tests. Pertinent to this notice, section 1833(h)(8)(B)(i) and (ii) of the Act requires the Secretary to make available to the public a list that includes any such test for which establishment of a payment amount is being considered for a year and, on the same day that the list is made available, cause to have published in the **Federal Register** notice of a meeting to receive comments and recommendations (including accompanying data, on which recommendations are based) from the public on the appropriate basis for establishing payment amounts for the tests on such list. This list of codes for which the establishment of a payment amount under the clinical laboratory fee schedule (CLFS) is being considered for calendar year (CY) 2016 is posted on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Laboratory_Public_Meetings.html.* Section 1833(h)(8)(B)(iii) of the Act requires that we convene the public meeting not less than 30 days after publication of the notice in the **Federal Register**. These requirements are codified at 42 CFR part 414, subpart G.

Two bases of payment are used to establish payment amounts for new tests. The first basis called ''crosswalking,'' is used when a new test is determined to be comparable to an existing test code, multiple existing test codes, or a portion of an existing test code. The new test code is assigned the local fee schedule amounts and the national limitation amount of the existing test. Payment for the new test is made at the lesser of the local fee schedule amount or the national limitation amount. (See 42 CFR 414.508(a).)

The second basis called ''gapfilling,'' is used when no comparable existing test is available. When using this method, instructions are provided to each Part A and Part B Medicare Administrative Contractor (MAC) to determine a payment amount for its Part B geographic areas for use in the first year. The contractor-specific amounts are established for the new test code using the following sources of information, if available: Charges for the test and routine discounts to charges; resources required to perform the test; payment amounts determined by other payers; and charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant. (See 42 CFR 414.508(b) and § 414.509 for more information regarding the gapfilling process.)

Under section 1833(h)(8)(B)(iv) of the Act, the Secretary, taking into account the comments and recommendations (and accompanying data) received at the public meeting, develops and makes available to the public a list of proposed determinations with respect to the appropriate basis for establishing a payment amount for each code, an explanation of the reasons for each determination, the data on which the determinations are based, and a request for public written comments on the proposed determinations. Under section 1833(h)(8)(B)(v) of the Act, taking into account the comments received during the public comment period, the Secretary develops and makes available to the public a list of final determinations of final payment amounts for new test codes along with the rationale for each determination, the data on which the determinations are based, and responses to comments and suggestions received from the public.

After the final determinations have been posted on our Web site, the public may request reconsideration of the basis and amount of payment for a new test as set forth in § 414.509. Pertinent to this notice, those requesting that CMS reconsider the basis for payment or, for crosswalking, reconsider the payment amount as set forth in § 414.509(a) and (b)(1) may present their reconsideration requests at the following year's public meeting provided that the requestor made the request to present at the public meeting in the written reconsideration request. For purposes of this notice, we refer to these codes as the ''reconsidered codes.'' The public may comment on the reconsideration requests. (See the November 27, 2007 CY 2008 Physician Fee Schedule final rule with comment period (72 FR 66275 through 66280) for more information on these procedures.)

II. Format

We are following our usual process, including an annual public meeting to determine the appropriate basis and payment amount for new and reconsidered test codes under the CLFS for CY 2016.

This meeting is open to the public. The on-site check-in for visitors will be held from 8:30 a.m. to 9:00 a.m., followed by opening remarks. Registered persons from the public may discuss and make recommendations for specific new and reconsidered test codes for the CY 2016 CLFS.

Because of time constraints, presentations must be brief, lasting no longer than 10 minutes, and must be accompanied by three written copies. In addition, CMS recommends that presenters make copies available for approximately 50 meeting participants, since CMS will not be providing additional copies. Written presentations must be electronically submitted to CMS on or before July 2, 2015. Presentation slots will be assigned on a first-come, first-served basis. In the event that there is not enough time for presentations by everyone who is interested in presenting, CMS will gladly accept written presentations from those who were unable to present due to time constraints. Presentations should be sent via email to Glenn McGuirk, at *Glenn.McGuirk@cms.hhs.gov.* For reconsidered and new test codes, presenters should address all of the following items:

- Reconsidered or new test code(s) and descriptor.
- Test purpose and method.
- Costs.
- Charges.
- A recommendation with rationale for one of the two bases (crosswalking or gapfilling) for determining payment for new tests, or a recommendation with rationale for changing the basis or payment amount, as applicable, for reconsidered tests.

Additionally, the presenters should provide the data on which their recommendations are based. Written presentations from the public meeting will be available upon request, via email, to Glenn McGuirk at *Glenn.McGuirk@cms.hhs.gov.* Presentations regarding reconsidered and new test codes that do not address the above five items may be considered incomplete and may not be considered by CMS when making a determination.

Taking into account the comments and recommendations (and accompanying data) received at the public meeting, we intend to post our proposed determinations with respect to the appropriate basis for establishing a payment amount for each new test code and our preliminary determinations with respect to the reconsidered codes along with an explanation of the reasons for each determination, the data on which the determinations are based, and a request for public written comments on these determinations on the CMS Web site by early September 2015. This Web site can be accessed at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Laboratory_Public_Meetings.html.* We also will include a summary of all comments received by August 6, 2015 (15 business days after the meeting). Interested parties may submit written comments

on the proposed determinations for new test codes or the preliminary determinations for reconsidered codes by early October, 2015, to the address specified in the **ADDRESSES** section of this notice or electronically to Glenn McGuirk at *Glenn.McGuirk@cms.hhs.gov* (the specific date for the publication of the determinations on the CMS Web site, as well as the deadline for submitting comments regarding the determinations will be published on the CMS Web site). Final determinations for new test codes to be included for payment on the CLFS for CY 2016 and reconsidered codes will be posted on our Web site in November 2015, along with the rationale for each determination, the data which the determinations are based, and responses to comments and suggestions received from the public. The final determinations with respect to reconsidered codes are not subject to further reconsideration. With respect to the final determinations for new test codes, the public may request reconsideration of the basis and amount of payment as set forth in § 414.509.

III. Registration Instructions

The Division of Ambulatory Services in the CMS Center for Medicare is coordinating the public meeting registration. Beginning June 8, 2015, registration may be completed on-line at the following Web address: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/index.html?redirect=/ClinicalLabFeeSched/.* All the following information must be submitted when registering:

- Name.
- Company name.
- Address.
- Telephone numbers.
- Email addresses.

When registering, individuals who want to make a presentation must also specify for which new test codes they will be presenting comments. A confirmation will be sent upon receipt of the registration. Individuals must register by the date specified in the **DATES** section of this notice.

IV. Security, Building, and Parking Guidelines

The meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. It is suggested that you arrive at the CMS facility between 8:15 a.m. and 8:30 a.m., so that you will be able to arrive promptly at the meeting by 9:00 a.m. Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 8:15 a.m. (45 minutes before the convening of the meeting).

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel. Persons without proper identification may be denied access to the building.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

V. Special Accommodations

Individuals attending the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should provide that information upon registering for the meeting. The deadline for registration is listed in the **DATES** section of this notice.

Dated: April 7, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–11026 Filed 5–6–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care Quarterly Case Record Report—ACF–801.

OMB No.: 0970–0167.

Description: Section 658K of the Child Care and Development Block Grant (CCDBG) Act (42 U.S.C. 9858, as amended by Public Law 113–186) requires that States and Territories submit monthly case-level data on the children and families receiving direct services under the Child Care and Development Fund (CCDF). The implementing regulations for the statutorily required reporting are at 45 CFR 98.70 and 98.71. Case-level reports, submitted quarterly or monthly (at grantee option), include monthly sample or full population case-level data. The data elements to be included in these reports are represented in the ACF–801. ACF uses disaggregate data to determine program and participant characteristics as well as costs and levels of child care services provided. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research.

Consistent with the recent reauthorization of the CCDBG statute, ACF requests extension of the ACF–801 including a number of changes and clarifications to the reporting requirements and instructions as set forth below.

- *Homeless Status:* Section 658K(a)(1)(B)(xi) of the CCDBG Act now requires States to report whether children receiving assistance under this subchapter are homeless children.
- *Child Disability:* ACF proposes to add a new data element indicating whether or not each child receiving services is a child with a disability, in part to track State implementation of priority for services requirements at section 658E(c)(3)(B) of the CCDBG Act (which includes children with special needs as defined by the State).
- *Military Status:* ACF proposes to add a new data element to the ACF–801 to determine the family's status related to military service.
- *Family Zip Code and Provider Zip Code:* ACF proposes to add zip codes to both the family and the provider records to identify the communities where CCDF families and providers are located, in part to support implementation of sections 658E(a)(2)(M) and 658E(a)(2)(Q) of the CCDBG Act that require States to address the supply and access to high-quality child care services for certain areas and populations.
- *Quality of Child Care Providers:* The existing ACF–801 allows States several ways of reporting information on the quality of each child's provider(s)—including: Quality Rating and Improvement System (QRIS) participation and rating, accreditation status, State pre-K standards, and other State-defined quality measure. To date,

States have been required to report on at least one of the quality elements for a portion of the provider population. ACF is proposing that, effective with the October 2017 report, States must report quality information for every child care provider. States with a QRIS, at a minimum, would be required to report QRIS participation and rating for every provider. States without QRIS would be required to report quality information for every provider using one or more of the quality elements on the form. ACF is proposing to add a new option to indicate whether or not the provider is subject to Head Start or Early Head Start standards.

• *Inspection Date:* Section 658E(c)(2)(J) of the reauthorized CCDBG Act requires States to monitor both licensed and license-exempt CCDF providers. ACF proposes to add a data element effective October 2017 indicating, for each child care provider delivering services to a CCDF child, the date of the most recent inspection for compliance with health, safety, and fire standards (including licensing standards for licensed providers).

• *Personally Identifiable Information:* Section 658K(a)(1)(E) of the CCDBG Act now prohibits the ACF–801 report from containing personally identifiable information. As a result, ACF proposes to delete Social Security Numbers (SSNs) from the report. Note that the form will still require a unique identifying number, other than the SSN, that is assigned by the State for each family.

Respondents: States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–801	56	4	25	5,600

Estimated Total Annual Burden Hours: 5,600.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–10988 Filed 5–6–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care and Development Fund Annual Aggregate Report—ACF–800.

OMB No.: 0970–0150.

Description: Section 658K of the Child Care and Development Block Grant (CCDBG) Act (42 U.S.C. 9858, as amended by Pub. L. 113–186) requires that States and Territories submit annual aggregate data on the children and families receiving direct services under the Child Care and Development Fund. The implementing regulations for the statutorily required reporting are at 45 CFR 98.70 and 98.71. Annual aggregate reports include data elements represented in the ACF–800 reflecting the scope, type, and methods of child care delivery. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research.

Consistent with the recent reauthorization of the CCDBG statute, ACF requests extension and revision of the ACF–800 including a number of changes and clarifications to the reporting requirements and instructions. Most notably, section 658K(a)(2)(F) of the CCDBG Act now requires States to report the number of fatalities occurring among children while in the care and facility of child care providers serving CCDF children.

Respondents: States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–800	56	1	42	2,352

Estimated Total Annual Burden Hours: 2,352.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–10987 Filed 5–6–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–E–0397]

Determination of Regulatory Review Period for Purposes of Patent Extension; ISTENT TRABECULAR MICRO-BYPASS STENT

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the ISTENT TRABECULAR MICRO-BYPASS STENT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Campus, Rm. 3180, Silver Spring, MD 20993, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device ISTENT TRABECULAR MICRO-BYPASS STENT. ISTENT TRABECULAR MICRO-BYPASS STENT is indicated for use in conjunction with cataract surgery for the reduction of intraocular pressure in adult patients with mild to moderate open-angle glaucoma currently treated with ocular hypotensive medication. Subsequent to this approval, the USPTO received a patent term restoration application for the ISTENT TRABECULAR MICRO-BYPASS STENT (U.S. Patent No. 6,626,858) from Glaukos Corporation, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 30, 2014, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of the ISTENT TRABECULAR MICRO-BYPASS STENT represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for the ISTENT TRABECULAR MICRO-BYPASS STENT is 2,820 days. Of this time, 1,535 days occurred during the testing phase of the regulatory review period, while 1,285 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* October 7, 2004. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective October 7, 2004.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* December 19, 2008. FDA has verified the applicant's claim that the premarket approval application (PMA) for the ISTENT TRABECULAR MICRO-BYPASS STENT (PMA P080030) was initially submitted December 19, 2008.

3. *The date the application was approved:* June 25, 2012. FDA has verified the applicant's claim that PMA P080030 was approved on June 25, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 6, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 3, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. 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. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–10999 Filed 5–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–0138]

Questions and Answers Regarding Mandatory Food Recalls; Draft Guidance for Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry on the implementation of the mandatory food recall provisions of the FDA Food Safety Modernization Act (FSMA). The guidance is in the form of Questions and Answers and provides answers to common questions that might arise about the mandatory recall provisions and FDA's plans for their implementation.

DATES: Although you may comment on any guidance at any time, to ensure that the Agency considers your comments on this draft guidance before it completes a final version of the guidance, submit electronic or written comments on the draft guidance by July 6, 2015.

ADDRESSES: Submit written requests for single copies of the guidance to the Outreach and Information Center (HFS–009), Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

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

FOR FURTHER INFORMATION CONTACT: Cecilia M. Wolyniak, Food and Drug Administration, WO32 Rm. 4352 HFC–210, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–8209.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's mandatory food recall authority went into effect when FSMA was enacted on January 4, 2011. Section 423 of the Federal Food, Drug and Cosmetic Act (FD&C Act), as added by section 206 of FSMA, gives FDA the authority to order a responsible party to recall an article of food where FDA determines that there is a reasonable probability that the article of food (other than infant formula) is adulterated under section 402 of the FD&C Act [21 U.S.C. 342] or misbranded under section 403(w) of the FD&C Act [21 U.S.C. 343(w)] and that the use of or exposure to such article will cause serious adverse health consequences or death to humans or animals (SAHCODHA).

FDA is announcing the availability of a draft guidance for industry entitled ''Questions and Answers Regarding Mandatory Food Recalls; Draft Guidance for Industry.'' The draft guidance provides answers to common questions that might arise about the mandatory recall provisions and FDA's plans for their implementation.

This guidance is being issued consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent our current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance does not refer to any information collection provisions found in FDA regulations. Collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We conclude that the Draft Guidance for Industry: Questions and Answers Regarding Mandatory Food Recalls is not subject to Paperwork Reduction Act of 1995.

III. Comments

Interested persons may submit either written comments regarding the guidance to the Division of Dockets Management (see **ADDRESSES**) or electronic comments regarding the guidance to *http://www.regulations.gov.* 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.*

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: May 1, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11009 Filed 5–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–2029]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Administrative Practices and Procedures; Formal Evidentiary Public Hearing

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.

DATES: Fax written comments on the collection of information by June 8, 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 0910–0191. 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.

Administrative Practices and Procedures (21 CFR 10.30, 10.33.10.35.10.85); Formal Evidentiary Public Hearing (21 CFR 12.22, 12.45) (OMB Control Number 0910–0191)—Extension

The Administrative Procedures Act (5 U.S.C. 553(e)) provides that every Agency shall give an interested person the right to petition for issuance, amendment, or repeal of a rule. Section 10.30 (21 CFR 10.30) sets forth the format and procedures by which an interested person may submit to FDA, in accordance with § 10.20 (21 CFR 10.20) (Submission of documents to Division of Dockets Management), a citizen petition requesting the Commissioner to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action.

The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take other action as the petition warrants. Respondents are individuals or households, State or local governments, and not-for-profit institutions or groups.

Section 10.33 (21 CFR 10.33), issued under section 701(a) of the Federal, Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 371(a)), sets forth the format and procedures by which an interested person may request reconsideration of part or all of a decision of the Commissioner on a petition submitted under 21 CFR 10.25 (Initiation of administrative proceedings). A petition for reconsideration must contain a full statement in a well-organized format of the factual and legal grounds upon which the petition relies. The grounds must demonstrate that relevant information and views contained in the administrative record were not previously or not adequately considered by the Commissioner. The respondent must submit a petition no later than 30 days after the decision involved. However, the Commissioner may, for good cause, permit a petition to be filed after 30 days. An interested person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision. FDA uses the information provided in the request to determine whether to grant the petition for reconsideration. Respondents to this collection of information are individuals of households, State or local governments, not-for-profit institutions, and businesses or other for-profit institutions who are requesting from the Commissioner of FDA a reconsideration of a matter.

Section 10.35 (21 CFR 10.35), issued under section 701(a) of the FD&C Act, sets forth the format and procedures by which an interested person may request, in accordance with § 10.20 (Submission of documents to Division of Dockets Management), the Commissioner to stay the effective date of any administrative action.

Such a petition must do the following: (1) Identify the decision involved; (2) state the action requested, including the length of time for which a stay is requested; and (3) include a statement of the factual and legal grounds on which the interested person relies in seeking the stay. FDA uses the information provided in the request to determine whether to grant the petition for stay of action.

Respondents to this information collection are interested persons who choose to file a petition for an administrative stay of action.

Section 10.85 (21 CFR 10.85), issued under section 701(a) of the FD&C Act, sets forth the format and procedures by which an interested person may request, in accordance with § 10.20 (Submission of documents to Division of Dockets Management), an advisory opinion from the Commissioner on a matter of general applicability. An advisory opinion represents the formal position of FDA on a matter of general applicability. When making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested, and a full statement of the facts and legal points relevant to the request. Respondents to this collection of information are interested persons seeking an advisory opinion from the Commissioner on the Agency's formal position for matters of general applicability.

FDA has developed a method for electronic submission of citizen petitions. The Agency still allows for non-electronic submissions; however, electronic submissions of a citizen petition to a specific electronic docket presents a simpler and more straightforward approach. FDA has created a single docket on *http://www.regulations.gov,* the U.S. Government's consolidated docket Web site for Federal Agencies, for the initial electronic submission of all citizen petitions. The advantage to this change is that it ensures efficiency and ease in communication, quicker interaction between citizen petitioners and FDA, and easier access to FDA to seek input through the citizen petition process.

The regulations in 21 CFR 12.22, issued under section 701(e)(2) of the FD&C Act (21 U.S.C. 371(e)(2)), set forth the instructions for filing objections and requests for a hearing on a regulation or order under § 12.20(d) (21 CFR 12.20(d)). Objections and requests must be submitted within the time specified in § 12.20(e). Each objection, for which a hearing has been requested, must be separately numbered and specify the provision of the regulation or the proposed order. In addition, each objection must include a detailed description and analysis of the factual information and any other document, with some exceptions, supporting the objection. Failure to include this information constitutes a waiver of the right to a hearing on that objection. FDA uses the description and analysis to determine whether a hearing request is justified. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under 21 CFR 12.24 and does not limit the evidence that may be presented if a hearing is granted.

Respondents to this information collection are those parties that may be adversely affected by an order or regulation.

Section 12.45 (21 CFR 12.45) issued under section 701 of the FD&C Act (21 U.S.C. 371), sets forth the format and procedures for any interested person to

file a petition to participate in a formal evidentiary hearing, either personally or through a representative. Section 12.45 requires that any person filing a notice of participation state their specific interest in the proceedings, including the specific issues of fact about which the person desires to be heard. This section also requires that the notice include a statement that the person will present testimony at the hearing and will comply with specific requirements in 21 CFR 12.85, or, in the case of a hearing before a Public Board of Inquiry, concerning disclosure of data and information by participants (21 CFR 13.25). In accordance with § 12.45(e) the presiding officer may omit a participant's appearance.

The presiding officer and other participants will use the collected information in a hearing to identify specific interests to be presented. This preliminary information serves to expedite the prehearing conference and commits participation.

The respondents are individuals or households, State or local governments, not-for-profit institutions and businesses, or other for-profit groups and institutions.

In the **Federal Register** of December 10, 2014 (79 FR 73320), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
10.30—Citizen Petition	207	1	207	24	4,968
10.33—Administrative reconsideration of action	4	1	4	10	40
10.35—Administrative Stay of Action	5	1	5	10	50
10.85—Advisory Opinions	4	1	4	16	64
12.22—Filing Objections and Requests for a Hearing on a Regulation or Order	3	1	3	20	60
12.45—Notice of Participation	4	1	4	3	12
Total					5,194

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates for this collection of information are based on Agency records and experience over the past 3 years.

Dated: May 1, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–10996 Filed 5–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–E–1690]

Determination of Regulatory Review Period for Purposes of Patent Extension; SYNRIBO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SYNRIBO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Campus, Rm. 3180, Silver Spring, MD 20993, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product SYNRIBO (omacetaxine mepesuccinate). SYNRIBO is indicated for treatment of adult patients with chronic or accelerated phase chronic myeloid leukemia with resistance and/or intolerance to two or more tyrosine kinase inhibitors. Subsequent to this approval, the USPTO received a patent term restoration application for SYNRIBO (U.S. Patent No. 6,987,103) from Robin, Mahon, Maisonneuve, Maloisel, and Blanchard, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 30, 2014, FDA

advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of SYNRIBO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SYNRIBO is 4,182 days. Of this time, 3,037 days occurred during the testing phase of the regulatory review period, while 1,145 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* May 17, 2001. The applicant claims May 18, 2001, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 17, 2001, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* September 8, 2009. The applicant claims September 4, 2009, as the date the new drug application (NDA) for SYNRIBO was initially submitted. However, FDA records indicate that the NDA was submitted on September 8, 2009.

3. *The date the application was approved:* October 26, 2012. FDA has verified the applicant's claim that the NDA for SYNRIBO was approved on October 26, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,217 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 6, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 3, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. 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. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11004 Filed 5–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2014–E–0070 and FDA–2014–E–0071]

Determination of Regulatory Review Period for Purposes of Patent Extension; GATTEX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for GATTEX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Campus, Rm. 3180, Silver Spring, MD 20993, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product GATTEX (teduglutide [rDNA origin]). GATTEX is indicated for treatment of adult patients with Short Bowel Syndrome who are dependent on parenteral support. Subsequent to this approval, the USPTO received patent term restoration applications for GATTEX (U.S. Patent Nos. 5,789,379 and 7,056,886) from NPS Pharmaceuticals, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated March 26, 2014, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of GATTEX represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for

GATTEX is 4,959 days. Of this time, 4,571 days occurred during the testing phase of the regulatory review period, while 388 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* May 27, 1999. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 27, 1999.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* November 30, 2011. FDA has verified the applicant's claim that the new drug application (NDA) for GATTEX (NDA 203441) was submitted on November 30, 2011.

3. *The date the application was approved:* December 21, 2012. FDA has verified the applicant's claim that NDA 203441 was approved on December 21, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,388 days or 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 6, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 3, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. 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. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11000 Filed 5–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–E–0296]

Determination of Regulatory Review Period for Purposes of Patent Extension; COFLEX INTERLAMINAR TECHNOLOGY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for COFLEX INTERLAMINAR TECHNOLOGY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patents and Trademarks Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Bldg., Rm. 3180, Silver Spring, MD 20993–0002, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device COFLEX INTERLAMINAR TECHNOLOGY. COFLEX INTERLAMINAR TECHNOLOGY is indicated for use in one- or two-level lumbar stenosis from L1–L5 in skeletally mature patients with at least moderate impairment in function, who experience relief in flexion from their symptoms of leg/buttocks/groin pain, with or without back pain, and who have undergone at least 6 months of non-operative treatment. Subsequent to this approval, USPTO received a patent term restoration application for COFLEX INTERLAMINAR TECHNOLOGY (U.S. Patent No. 5,645,599) from Paradigm Spine, LLC, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 24, 2013, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of COFLEX INTERLAMINAR TECHNOLOGY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for COFLEX INTERLAMINAR TECHNOLOGY is 2,382 days. Of this time, 1,787 days occurred during the testing phase of the regulatory review period, while 595 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C act) (21 U.S.C. 360j(g)) involving this device became effective:* April 12, 2006. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C act for human tests to begin became effective on March 10, 2006. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on April 12, 2006, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* March 3, 2011. The applicant claims March 4, 2011, as the date the premarket approval application (PMA) for COFLEX INTERLAMINAR TECHNOLOGY (PMA P110008) was initially submitted. However, FDA records indicate that PMA P110008 was submitted on March 3, 2011.

3. *The date the application was approved:* October 17, 2012. FDA has verified the applicant's claim that PMA P110008 was approved on October 17, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,503 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 6, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 3, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. 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. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–10998 Filed 5–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2013–E–0968 and FDA–2013–E–0969]

Determination of Regulatory Review Period for Purposes of Patent Extension; OVUGEL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for OVUGEL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of U.S. Patents and Trademarks Office (USPTO), Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Bldg., Rm. 3180, Silver Spring, MD 20993–0002, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA has approved for marketing the animal drug product OVUGEL (triptorelin acetate). OVUGEL, an animal drug product, is indicated for the synchronization of time of insemination in weaned sows to facilitate a single fixed-time artificial insemination. Subsequent to this approval, the USPTO received patent term restoration applications for OVUGEL (U.S. Patent Nos. 5,985,320 and RE 42,072) from Penn State Research Foundation and Massachusetts Institute of Technology, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated March 25, 2014, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of OVUGEL represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for OVUGEL is 3,692 days. Of this time, 3,644 days occurred during the testing phase of the regulatory review period, while 48 days occurred during the

approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* August 12, 2002. The applicant claims February 13, 2002, as the date the investigational new animal drug application (INAD) became effective. However, FDA records indicate that the INAD effective date was August 12, 2002, which was the date a major health or environmental effects test is begun or the date on which the Agency acknowledges the filing of a notice of claimed investigational exemption for a new animal drug, whichever is earlier.

2. *The date the application was initially submitted with respect to the animal drug product under section 512 of the FD&C Act (21 U.S.C. 360b):* August 2, 2012. The applicant claims July 20, 2012, as the date the new animal drug Application (NADA) for OVUGEL RE42072 (NADA 141–339) was initially submitted. However, FDA records indicate that NADA 141–339 was submitted on August 2, 2012.

3. *The date the application was approved:* September 18, 2012. FDA has verified the applicant's claim that NADA 141–339 was approved on September 18, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 331 or 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 6, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 3, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. 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. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11003 Filed 5–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–E–1652]

Determination of Regulatory Review Period for Purposes of Patent Extension; HVAD ROTARY BLOOD PUMP

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for HVAD ROTARY BLOOD PUMP and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Campus, Rm. 3180, Silver Spring, MD 20993, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device HVAD ROTARY BLOOD PUMP. HVAD ROTARY BLOOD PUMP is indicated for use as a bridge to cardiac transplantation in patients who are at risk of death from refractory end-stage left ventricular heart failure. Subsequent to this approval, the USPTO received a patent term restoration application for HVAD ROTARY BLOOD PUMP (U.S. Patent No. 6,234,772) from HeartWare, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 18, 2014, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of HVAD ROTARY BLOOD PUMP represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for HVAD ROTARY BLOOD PUMP is 1,667 days. Of this time, 973 days occurred during the testing phase of the regulatory review period, while 694 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* April 30, 2008. FDA has verified the applicant's claim that the date the investigational device exemption required under section 520(g) of the FD&C act for human tests to begin became effective April 30, 2008.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD& C Act (21 U.S.C. 360e):* December 28, 2010. The applicant claims December 23, 2010, as the date the premarket approval application (PMA) for HVAD ROTARY BLOOD PUMP (PMA P100047) was initially submitted. However, FDA records indicate that PMA P100047 was submitted on December 28, 2010.

3. *The date the application was approved:* November 20, 2012. FDA has verified the applicant's claim that PMA P100047 was approved on November 20, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 818 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 6, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 3, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. 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. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11001 Filed 5–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0878]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled, ''Premarket Notification for a New Dietary Ingredient'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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: On February 27, 2015, the Agency submitted a proposed collection of information entitled, ''Premarket Notification for a New Dietary Ingredient'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0330. The approval expires on March 31, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: May 4, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–10997 Filed 5–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–0100]

Determination of Regulatory Review Period for Purposes of Patent Extension; SIGNIFOR

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SIGNIFOR and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Campus, Rm. 3180, Silver Spring, MD 20993, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts

with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product SIGNIFOR (pasireotide diaspartate). SIGNIFOR is indicated for treatment of adult patients with Cushing's disease for whom pituitary surgery is not an option or has not been curative. Subsequent to this approval, the USPTO received a patent term restoration application for SIGNIFOR (U.S. Patent No. 7,473,761) from Novartis AG, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 26, 2014, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of SIGNIFOR represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SIGNIFOR is 3,440 days. Of this time, 3,138 days occurred during the testing phase of the regulatory review period, while 302 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* July 17, 2003. The applicant claims July 16, 2003, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 17, 2003, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* February 17, 2012. FDA has verified the applicant's claim that the new drug application (NDA) for SIGNIFOR (NDA 200677) was submitted on February 17, 2012.

3. *The date the application was approved:* December 14, 2012. FDA has verified the applicant's claim that NDA 200677 was approved on December 14, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 503 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 6, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 3, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. 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. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–10994 Filed 5–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–0155]

Determination of Regulatory Review Period for Purposes of Patent Extension; OSENI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for OSENI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Bldg., Rm. 3180, Silver Spring, MD 20993, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all

of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product OSENI (alogliptin benzoate and pioglitazone hydrochloride). OSENI is indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus. Subsequent to this approval, the USPTO received a patent term restoration application for OSENI (U.S. Patent No. 6,329,404) from Takeda Pharmaceutical Company Limited, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 2, 2014, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of OSENI represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for OSENI is 2,482 days. Of this time, 895 days occurred during the testing phase of the regulatory review period, while 1,587 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* April 12, 2006. The applicant claims April 13, 2006, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was April 12, 2006, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* September 22, 2008. FDA has verified the applicant's claim that the new drug application (NDA) for OSENI (NDA 22–426) was submitted on September 22, 2008.

3. *The date the application was approved:* January 25, 2013. FDA has verified the applicant's claim that NDA 22–426 was approved on January 25, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by July 6, 2015. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 3, 2015. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. 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. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–11002 Filed 5–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0110]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Reporting: Manufacturer, Importer, User Facility, and Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on medical device reporting (MDR); manufacturer, importer, user facility, and distributor reporting.

DATES: Submit either electronic or written comments on the collection of information by July 6, 2015.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the 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: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques, when appropriate, and other forms of information technology.

Medical Device Reporting: Manufacturer, Importer, User Facility, and Distributor Reporting (21 CFR part 803) OMB Control Number 0910–0437—Extension

Section 519(a)(1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360i(a)(1)) requires every manufacturer or importer to report whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury or has malfunctioned and that such device or a similar device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

Section 519(b)(1)(A) of the FD&C Act requires whenever a device user facility receives or otherwise becomes aware of information that reasonably suggests that a device has or may have caused or contributed to the death or serious illness, of a patient of the facility, the facility shall, as soon as practicable but not later than 10 working days after becoming aware of the information, report the information to the Secretary of HHS and, if the identity of the manufacturer is known, to the manufacturer of the device.

Section 519(b)(1)(B) of the FD&C Act requires whenever a device user facility receives or otherwise becomes aware of information that reasonably suggests that a device has or may have caused or contributed to the serious illness of, or serious injury to, a patient of the facility, shall, as soon as practicable but not later than 10 working days after becoming aware of the information, report the information to the manufacturer of the device or to the Secretary of HHS if the identity of the manufacturer is not known.

Complete, accurate, and timely adverse event information is necessary for the identification of emerging device problems. Information from these reports will be used to evaluate risks associated with medical devices which will enable FDA to take appropriate regulatory measures in protection of the public health under section 519 of the FD&C Act. Thus FDA is requesting approval for these information collection requirements which are being implemented under part 803.

Respondents to this collection of information are businesses or other for-profit and nonprofit organizations including user facilities, manufacturers, and importers of medical devices.

Part 803 requires user facilities to report to the device manufacturer and to FDA in case of a death, incidents where a medical device caused or contributed to a death or serious injury. Additionally, user facilities are required to annually submit the number and summary of advents reported during the calendar year using Form FDA 3419. Manufacturers of medical devices are required to report to FDA when they become aware of information indicating that one of their devices may have caused or contributed to death or serious injury or has malfunctioned in such a way, that should the malfunction recur, it would be likely to cause or contribute to a death or serious injury. Device importers report deaths and serious injuries to the manufacturers and FDA. Importers report malfunctions only to the manufacturers, unless they are unknown, then the reports are sent to FDA.

The number of respondents for each CFR section in table 1 is based upon the number of respondents entered into FDA's internal databases. FDA estimates, based on its experience and interaction with the medical device community, that all reporting CFR sections are expected to take 1 hour to complete, with the exception of § 803.19. Section 803.19 is expected to take approximately 3 hours to complete, but is only required for reporting the summarized data quarterly to FDA. By summarizing events, the total time used to report for this section is reduced because the respondents do not submit a full report for each event they report in a quarterly summary report.

The Agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information to meet the MDR requirements as part of their internal quality control system. There are an estimated 30,000 medical device distributors. Although they do not submit MDR reports, they must maintain records of complaints under § 803.18(d).

The Agency has estimated that on average 220 user facilities, importers, and manufacturers would annually be required to establish new procedures, or revise existing procedures, in order to comply with this provision.

Therefore, FDA estimates the one-time burden to respondents for establishing or revising procedures under § 803.17 to be 2,200 hours (220 respondents × 10 hours). For those entities, a one-time burden of 10 hours is estimated for establishing written MDR procedures. The remaining manufacturers, user facilities, and importers, not required to revise their written procedures to comply with this provision, are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered ''usual and customary'' under 5 CFR 1320.3(b)(2).

Under § 803.18, 30,000 respondents represent distributors, importers, and other respondents to this information collection. FDA estimates that it should take them approximately 1.5 hours to complete the recordkeeping requirement for this section. Total hours for this section equal 45,000 hours.

Reporting Requirements

Part 803 requires user facilities to report incidents where a medical device caused or contributed a death or serious injury to the device manufacturer and to FDA in the case of a death. Manufacturers of medical devices are required to report to FDA when they become aware of information indicating that one of their devices may have caused or contributed to death or serious injury or has malfunctioned in such a way that, should the malfunction recur, it would be likely to cause or contribute to a death or serious injury. Device importers report deaths and serious injuries to the manufacturers and FDA. Importers report malfunctions only to the manufacturers (see third-party disclosure burden table), unless the manufacturers are unknown, then the reports are sent to FDA.

FDA estimates, based on its experience and interaction with the medical device community, that all reporting CFR sections are expected to take 1 hour to complete with the exception of § 803.19. Section 803.19 is expected to take approximately 3 hours to complete, but is only required to report the summarized data quarterly to FDA. By summarizing events, the total time used to report for this section is reduced because the respondents do not submit a full report for each event they report in a quarterly summary report.

Recordkeeping Requirements

The Agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information to meet the MDR requirements as part of their internal quality control system. There are an estimated 30,000 medical device distributors. Although they do not submit MDR reports, they must maintain records of complaints under § 803.18(d). We estimate that it will take

each respondent 1.5 hours annually to maintain the records.

The Agency has estimated that on average, 220 user facilities, importers, and manufacturers would annually be required, under § 803.17, to establish new procedures, or revise existing procedures, in order to comply with this provision. We estimate that it will take each respondent 10 hours annually to establish new procedures, or revise existing procedures.

Third-Party Disclosure Burden

Under §§ 803.40 and 803.42, device importers report deaths and serious injuries to the manufacturers and FDA. Importers report malfunctions only to the manufacturers, unless they are unknown, then the reports are sent to FDA. We estimate that it will take respondents 1 hour annually to report the information.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

CFR section	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Exemptions—803.19		57	4	228	3	684
User Facility Reporting—803.30 and 803.32		544	9	4,896	1	4,896
User Facility Annual Reporting—803.33	3419	195	1	195	1	195
Importer Reporting, Death and Serious Injury—803.40 and 803.42		1	1	1	1	1
Manufacturer Reporting—803.50, through 803.53		1,239	243	301,077	1	301,077
Supplemental Reports—803.56		124	302	37,448	1	37,448
Total						344,301

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per record	Total hours
MDR Procedures—803.17	220	1	220	10	2,200
MDR Files—803.18	30,000	1	30,000	1.5	45,000
Total					47,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Importer Reporting, Malfunctions—803.40 and 803.42	1	25	25	1	25

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 4, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–10995 Filed 5–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Joint Meeting of the Bone, Reproductive, and Urologic Drugs Advisory Committee, and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of two public advisory committees of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Bone, Reproductive, and Urologic Drugs Advisory Committee, and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 4, 2015, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions

including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Contact Person: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *BRUDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committees will discuss new drug application (NDA) 022526, flibanserin 100 milligram (mg) tablets, submitted by Sprout Pharmaceuticals Inc., proposed for the treatment of hypoactive sexual desire disorder (HSDD) in premenopausal women.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 20, 2015. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 12, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 13, 2015.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 4, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–11013 Filed 5–6–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–0424–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Assistant Secretary for Health, Office of Adolescent Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before July 6, 2015.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–0424–60D for reference.

Information Collection Request Title: Positive Adolescent Futures (PAF) Study.

Abstract: The Office of Adolescent Health (OAH), U.S. Department of Health and Human Services (HHS) is requesting approval by OMB on a revised data collection. The Positive Adolescent Futures (PAF) Study will provide information about program design, implementation, and impacts through a rigorous assessment of program impacts and implementation of two programs designed to support expectant and parenting teens. These programs are located in Houston, Texas and throughout the state of California. The revision to this information collection request includes the 12-month follow-up survey instrument related to the impact study. The collected data from this instrument will provide a detailed understanding of the program impacts within the two study sites about one year after youth are enrolled in the study. Plus, have first access to the programming offered by each site. Clearance is requested for three years.

Need and Proposed Use of the Information: The data will serve two main purposes. First, the data will be used to determine program effectiveness by comparing outcomes on repeat pregnancies, sexual risk behaviors, health and well-being, and parenting behaviors between treatment (program) and control youth. Second, the data will be used to understand whether the programs are more effective for some youth than others. The findings from these analyses of program impacts will be of interest to the general public, to policymakers, and to organizations interested in supporting expectant and parenting teens.

Likely Respondents: 1,913 study participants.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
12-month follow-up survey of impact study participants	639	1	.5	319
Total				319

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2015–10634 Filed 5–6–15; 8:45 am]

BILLING CODE 4168–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: June 10–11, 2015.

Open: June 10, 2015, 1:30 p.m. to 5:00 p.m.

Agenda: NHLBI's Strategic Visioning research priorities.

Place: National Institutes of Health, Building 35A, Porter Building, Room 640, 35A Convent Drive, Bethesda, MD 20892.

Open: June 11, 2015, 8:00 a.m. to 12:00 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Building 35A, Porter Building, Room 640, 35A Convent Drive, Bethesda, MD 20892.

Closed: June 11, 2015, 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 35A, Porter Building, Room 640, 35A Convent Drive, Bethesda, MD 20892.

Contact Person: Stephen C. Mockrin, Ph.D., Director, Division of Extramural Research Activities National Heart, Lung, and Blood Institute National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435–0260, *mockrins@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: May 1, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–10626 Filed 5–6–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Biological Aging Review Committee.

Date: June 2–3, 2015.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Long Beach, 500 East First Street, Long Beach, CA 90802.

Contact Person: BITA NAKHAI, Ph.D., SCIENTIFIC REVIEW BRANCH, NATIONAL INSTITUTE ON AGING, GATEWAY BLDG., 2C212, 7201 WISCONSIN AVENUE, BETHESDA, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group; Clinical Aging Review Committee.

Date: June 4–5, 2015.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Long Beach, 500 East First Street, Long Beach, CA 90802.

Contact Person: ALICJA L. MARKOWSKA, Ph.D., DSC, NATIONAL INSTITUTE ON AGING, NATIONAL INSTITUTES OF HEALTH, GATEWAY BUILDING 2C212, 7201 WISCONSIN AVENUE, BETHESDA, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 1, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–10625 Filed 5–6–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0017]

Notice of Workshop Meeting Regarding Information Sharing and Analysis Organizations

AGENCY: Office of Cybersecurity and Communications, National Protection and Programs Directorate, Department of Homeland Security.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public workshop on June 9, 2015 to discuss Information Sharing and Analysis Organizations, Automated Indicator Sharing, and Analysis, as related to E.O. 13691, ''Promoting Private Sector Cybersecurity Information Sharing'' of February 13, 2015.

DATES: The workshop will be held on June 9, 2015, from 8:00 a.m. to 5:00 p.m. The meeting may conclude before the allotted time if all matters for discussion have been addressed.

ADDRESSES: The meeting location is the Cambridge Massachusetts Volpe Center—55 Broadway, Cambridge, MA 02142. *See Supplementary Information section for the address to submit written or electronic comments.*

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting, please contact *ISAO@hq.dhs.gov* or Michael A. Echols, Director, JPMO, Department of Homeland Security, *michael.echols@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

On February 13, 2015, President Obama signed E.O. 13691 intended to enable and facilitate ''private companies, nonprofit organizations, and executive departments and agencies . . . to share information related to cybersecurity risks and incidents and collaborate to respond in as close to real time as possible.'' The order addresses two concerns the private sector has raised:

- How can companies share information if they do not fit neatly into the sector-based structure of the existing Information Sharing and Analysis Centers (ISACs)?
- If a group of companies wants to start an information sharing organization, what model should they follow? What are the best practices for such an organization?

ISAOs may allow organizations to robustly participate in DHS information sharing programs even if they do not fit into an existing critical infrastructure sector, seek to collaborate with other companies in different ways (regionally, for example), or lack sufficient resources to share directly with the government. ISAOs may participate in existing DHS cybersecurity information sharing programs and contribute to near-real-time sharing of cyber threat indicators.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact *ISAO@hq.dhs.gov* and write ''Special Assistance'' in the subject box or contact the meeting coordinator the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Meeting Details

Members of the public may attend this workshop by RSVP only up to the seating capacity of the room. DHS will audio record the Workshop Panels that take place in the VOLPE Center Auditorium and make the audio recording publicly available on the ISAO Web page *DHS.gov/ISAO.* Each individual will be scanned, and valid government-issued photo identification (for example, a driver's license) will be required for entrance to the building and meeting space. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should RSVP through the link provided on the ISAO Web page *DHS.gov/ISAO* no later than 14 days prior to the meeting. Requests made after May 26, 2015 might not be able to be accommodated.

We encourage you to participate in this meeting by submitting comments to the ISAO inbox *ISAO@hq.dhs.gov,* commenting orally, or submitting written comments to the DHS personnel attending the meeting who are identified to receive them.

Submitting Other Written Comments

You may also submit written comments to the docket before or after the meeting using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Although comments are being submitted to the Federal eRulemaking Portal, this is a tool to provide transparency to the general public, not because this is a rulemaking action.

(2) *Email: ISAO@hq.dhs.gov.* Include the docket number in the subject line of the message.

(3) *Fax:* 703–235–4981, Attn: Michael A. Echols.

(4) *Mail:* Michael A. Echols, Director, JPMO—ISAO Coordinator, NPPD, Department of Homeland Security, 245 Murray Lane, Mail Stop 0615, Arlington VA 20598–0615.

To avoid duplication, please use only one of these four methods. All comments and related material submitted after the meeting must either be submitted to the online docket on or before July 8, 2015, or reach the Docket Management Facility by that date.

Authority: 6 U.S.C. 131–134; 6 CFR. 29; E.O. 13691.

Dated: May 1, 2015.

Andy Ozment,

Assistant Secretary, Cybersecurity and Communications, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2015–10683 Filed 5–6–15; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2015–N081; FXES11130300000–154–FF03E00000]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered or threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: We must receive any written comments on or before June 8, 2015.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Endangered Species Permits, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Regional Recovery Permit Coordinator, by telephone at (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species, found at 50 CFR part 17. Submit your written data, comments, or request for a copy of the complete application to the mailing address or email address shown in **ADDRESSES**.

Permit Applications

Permit Application Number: TE697830–9

Applicant: Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, Bloomington, MN.

The applicant requests a permit amendment to add species listed or proposed for listing since January 2012, and that occur within the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE62218B

Applicant: Douglas J. Taron, Chicago Academy of Sciences, Chicago, IL.

The applicant requests a permit to take Karner blue butterfly (*Lycaeides melissa samuelis*) within the States of Illinois and Indiana. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE130900

Applicant: Gregory F. Zimmerman, EnviroScience, Inc., Stow, OH.

The applicant requests an amendment to add dwarf wedgemussel (*Alasmidonta heterodon*), James spinymussel (*Pleurobema collina*), scaleshell mussel (*Leptodea leptodon*), and spectaclecase (*Cumberlandia monodonta*) to their permit. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE120231

Applicant: John C. Timpone, Coeur d'Alene, ID.

The applicant requests renewal of their permit and an amendment to add the northern long-eared bat (*Myotis septentrionalis*) and the States of Kansas, Louisiana, Maine, Minnesota, Nebraska, North Dakota, and South Dakota. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE60257B

Applicant: Jason W. Crites, Missouri Department of Conservation, Cape Girardeau, MO.

The applicant requests a permit to take grotto sculpin (*Cottus specus*) in the State of Missouri. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE60133B

Applicant: Jay T. Hatch, University of Minnesota, Minneapolis, MN.

The applicant requests a permit to take Topeka shiner (*Notropis topeka*) in the State of Minnesota. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE40451B

Applicant: Katie N. Bertrand, South Dakota State University, Brookings, SD.

The applicant requests a permit to take Topeka shiner (*Notropis topeka*) in the States of Minnesota and South Dakota. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE15027A

Applicant: Stantec Consulting Services, Inc., Columbus, OH.

The applicant requests permit amendment to take northern long-eared bats (*Myotis septentrionalis*) and add the States of Connecticut, Delaware, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, North Dakota, Rhode Island, South Carolina, South Dakota and Wyoming to their permit. The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE82666A

Applicant: Justin G. Boyles, Southern Illinois University, Carbondale, IL.

The applicant requests an amendment to add the northern long-eared bat (*Myotis septentrionalis*) to their permit. The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE105320

Applicant: Michael D. Johnson, Tragus Environmental Consulting, Inc., Akron, OH.

The applicant requests a permit amendment to take the northern long-eared bat (*Myotis septentrionalis*) and add the States of Louisiana, Maine, Massachusetts, Minnesota, New Hampshire, North Dakota, Rhode Island, South Dakota, and Wisconsin to their permit. The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE21831B

Applicant: Katherine L. Caldwell, Ball State University, Muncie, IN.

The applicant requests a permit amendment to take Indiana bats (*Myotis sodalis*) in the States of Alabama, Arkansas, Connecticut, Illinois, Iowa, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia, and West Virginia. The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64241B

Applicant: Mary Thomsen, Barker Lemar Engineering Consultants, West Des Moines, IA.

The applicant requests a permit to take Indiana bats (*Myotis sodalis*) in the States of Illinois and Iowa. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64239B

Applicant: Nathanael R. Light, Ozark, MO.

The applicant requests a permit to take Indiana bats (*Myotis sodalis*), gray bats (*Myotis grisescens*), and northern long-eared bats (*Myotis septentrionalis*) in the States of Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia, and West Virginia. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE06797A

Applicant: Rod D. McClanahan, Anna, IL.

The applicant requests a permit amendment to take northern long-eared bat (*Myotis septentrionalis*). The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE98063A

Applicant: Kathryn M. Womack, Columbia, MO.

The applicant requests a permit amendment to take northern long-eared bat (*Myotis septentrionalis*). The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE38842A

Applicant: Christopher W. Sanders, Sanders Environmental Inc., Bellefonte, PA.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*). The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE77530A

Applicant: Douglas J. Kapusinski, Chagrin Valley Engineering, Ltd., Cleveland, OH.

The applicant requests a permit renewal to take clubshell (*Pleurobema clava*), cracking pearlymussel (*Hemistena lata*), dwarf wedgemussel (*Alasmidonta heterodon*), fanshell (*Cyprogenia stegaria*), fat pocketbook (*Potamilus capax*), Higgins' eye pearlymussel (*Lampsilis higginsii*), James spinymussel (*Pleurobema collina*), northern riffleshell (*Epioblasma torulosa rangiana*), orangefoot pimpleback pearlymussel (*Plethobasus cooperianus*), pink mucket pearlymussel (*Lampsilis abrupta*), purple cat's paw pearlymussel (*Epioblasma obliquata obliquata*), rayed bean (*Villosa fabalis*), ring pink (*Obovaria retusa*), rough pigtoe (*Pleurobema plenum*), scaleshell (*Leptodea leptodon*), sheepnose (*Plethobasus cyphyus*), snuffbox (*Epioblasma triquetra*), spectaclecase (*Cumberlandia monodonta*), tubercled blossom (*Epioblasma torulosa torulosa*), white cat's paw pearlymussel (*Epioblasma obliquata perobliqua*), white wartyback (*Plethobasus cicatriocosus*), and winged mapleleaf (*Quadrula fragosa*). Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE144832

Applicant: Detroit Zoological Society, Royal Oak, MI.

The applicant requests a permit renewal to take Karner blue butterflies (*Lycaeides melissa samuelis*) in the States of Ohio and Michigan, and to take piping plovers (*Charadrius melodus*) in the States of Michigan and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE206778–6

Applicant: U.S. Fish and Wildlife Service, Twin Cities Field Office, Bloomington MN.

The applicant requests an amendment to add additional activities and personnel to their permit. The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE06845A

Applicant: Lochmueller Group, Inc., Evansville, IN.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*). The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE98032A

Applicant: James Gardner, Jefferson City, MO.

The applicant requests a permit amendment to the existing permit to take northern long-eared bats (*Myotis septentrionalis*). The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE98295A

Applicant: Dallas Settle, Fayetteville, WV.

The applicant requests a permit amendment to the existing permit to take northern long-eared bats (*Myotis septentrionalis*). The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE66742A

Applicant: Timothy Krynak, Cleveland Parks, Parma, OH.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*). The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE60958A

Applicant: Bryan Arnold, affiliated with Illinois College, Jacksonville, IL.

The applicant requests a permit amendment to take northern long-eared bat (*Myotis septentrionalis*), and add additional States and personnel to their permit. The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE38769A

Applicant: Sarah Bradley, Salem, MO.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*). The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE62297A

Applicant: Michael Whitby, University of Nebraska, Lincoln, NE.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*). The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE151107

Applicant: Redwing Ecological Services, Inc., Louisville, KY.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*). The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE62286A

Applicant: Jason Whittle, Cuyahoga Falls, OH.

The applicant requests a permit amendment to take northern long-eared bat (*Myotis septentrionalis*). The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE38821A

Applicant: Stantec Consulting Services, Louisville, KY.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*), fluted kidneyshell (*Ptychobranchus subtentum*), and slabside pearlymussel (*Pleuronaia dolabelloides*), and to add personnel to their permit. Proposed activities are for the recovery and

enhancement of survival of the species in the wild.

Permit Application Number: TE38789A

Applicant: Power Engineers, Inc., Cincinnati, OH.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*) in the States of Oklahoma, Texas, Minnesota, Wisconsin, Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont, Virginia, West Virginia, Kansas, Montana, Nebraska, North Dakota, South Dakota, and Wyoming. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE38087B

Applicant: Jessica Hickey-Miller, Independence, OH.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*) and Gray bats (*Myotis grisescens*) in the States of Ohio, Michigan, and Missouri. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE35518B

Applicant: Jeremy Sheets, Plymouth, IN.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*). The amendment would also ad the States of Kansas, Minnesota, Nebraska, North Dakota, and South Dakota to their permit. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE212427

Applicant: Ecology and Environment, Inc., Lancaster, NY.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*) and add the States of Louisiana, Maine, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Texas, and Wyoming to their permit. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE31055B

Applicant: Kory Armstrong, Springfield, MO.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*) and Ozark big-eared bats (*Corynorhinus townsendii ingens*). The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE60958A

Applicant: Bat Call Identification Inc., Kansas City, MO.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*) and add personnel to the permit. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE106220

Applicant: Brianne Walters, Terre Haute, IN.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*) in the States of Illinois, Indiana, and Ohio. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE06846A

Applicant: Peter P. Marra, Smithsonian Institute, Washington, DC

The applicant requests a permit amendment to take Kirtland's warblers (*Setophaga kirtlandii*) in the State of Michigan (a request to increase the number of nests monitored from 100 to 150, and increase the frequency of nest check). Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE98296A

Applicant: Braden A. Hoffman, Alliance Consulting, Inc., Daniels, WV.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*) and Virginia big-eared bats (*Corynorhinus townsendii virginianus*). The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE809630

Applicant: Allen Kurta, Eastern Michigan University, Ypsilanti, MI.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*), and add personnel and the State of Michigan to their permit. The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE10877

Applicant: Ralph Grundel, Porter IN.

The applicant requests a permit amendment to take Karner blue butterflies (*Lycaeides melissa sameulis*) in the States of Wisconsin and Michigan, and add personnel to their permit. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE30970B

Applicant: Jeffrey Miller, Kansas City MO.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*) in the States of Arkansas, District of Colombia, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Rhode Island, Vermont, Virginia, Connecticut, Minnesota, Pennsylvania, South Dakota, Tennessee, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE06778A

Applicant: U.S. Forest Service, Poplar Bluff, MO.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*), and add personnel to their permit. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE35855B

Applicant: Laura D'Acunto, West Lafayette, IN.

The applicant requests a permit amendment to take northern long-eared bats (*Myotis septentrionalis*) in the State of Michigan. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64072B

Applicant: Douglas D. Locy, Aquatic Systems, Inc., Pittsburgh, PA.

The applicant requests a permit to take the clubshell (*Pleurobema clava*), fanshell (*Cyprogenia stegaria*), fat pocketbook (*Potamilus capax*), Higgins' eye (*Lampsilis higginsii*), northern riffleshell (*Epioblasma torulosa rangiana*), orangefoot pimpleback (*Phethobasus cooperianus*), pink mucket (*Lampsilis abrupta*), purple cat's paw pearlymussel (*Epioblasma obliquata obliquata*), rabbitsfoot (*Quadrula cylindrica cylindrica*), rayed bean (*Villosa fabalis*), rough pigtoe (*Pleurobema plenum*), sheepnose (*Plethobasus cyphyus*), snuffbox (*Epioblasma triquetra*), spectaclecase (*Cumberlandia monodonta*), and white cat's paw (*Epioblasma obliquata perobliqua*) mussels in the States of Illinois, Indiana, and Ohio. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64068B

Applicant: Timothy J. Catton, USDA Forest Service, Duluth, MN.

The applicant requests a permit to take northern long-eared bats (*Myotis septentrionalis*) in the States of Minnesota, Wisconsin, and Michigan. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64070B

Applicant: Jeff Towner, SWCA, Inc., Bismarck, ND.

The applicant requests a permit to take Dakota skippers (*Hesperia dacotae*) and Poweshiek skipperlings (*Oarisma poweshiek*) in the States of Minnesota, Michigan, Wisconsin, Iowa, North Dakota, South Dakota. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64071B

Applicant: Gerald Lawrence Zuercher, Dubuque, IA.

The applicant requests a permit to take northern long-eared bats (*Myotis septentrionalis*) and Indiana bat (*Myotis sodalis*) in the State of Iowa. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64069B

Applicant: Kari Beth Jensen Kirschbaum, East Lansing, MI.

The applicant requests a permit to take northern long-eared bats (*Myotis septentrionalis*) and Indiana bat (*Myotis sodalis*) in the States of Minnesota, Wisconsin, and Michigan. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64073B

Applicant: Gerald Selby, Ecological & GIS Services, Indianola, IA.

The applicant requests a permit to take Dakota skippers (*Hesperia dacotae*) and Poweshiek skipperlings (*Oarisma poweshiek*) in the States of Minnesota, Iowa, North Dakota, and South Dakota. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64074B

Applicant: Julie A. Zeyzus, Fayetteville, PA.

The applicant requests a permit to take northern long-eared bats (*Myotis septentrionalis*), gray bats (*Myotis grisescens*), Virginia big-eared bats (*Corynorhinus townsendii virginianus*), and Indiana bats (*Myotis sodalis*) in the States of Oklahoma, Illinois, Indiana, Iowa, Ohio, Michigan, Minnesota, Missouri, Wisconsin, Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Kansas, Montana, Nebraska, North Dakota, South Dakota, and Wyoming. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64075B

Applicant: Rodney Rovang, Effigy Mounds National Monument, Harper's Ferry, IA.

The applicant requests a permit to take northern long-eared bats (*Myotis septentrionalis*) and Indiana bats (*Myotis sodalis*) in the State of Iowa. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64076B

Applicant: Sarah Ebel, Field Museum of Natural History, Chicago, IL.

The applicant requests a permit to take federally listed species (salvage dead threatened and endangered species for scientific museum collections and public education/display) in the States of Illinois, Indiana, Minnesota, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64077B

Applicant: Scott Reed, HDR, Minneapolis, MN.

The applicant requests a permit to take Dakota skippers (*Hesperia dacotae*) and Poweshiek skipperlings (*Oarisma poweshiek*) in the States of Minnesota, Montana, North Dakota, South Dakota. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE74078B

Applicant: Wyn Hall, Toledo Zoological Gardens, Toledo, OH.

The applicant requests a permit to take and/or possess gray wolves (*Canis lupus*) for zoological purposes. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64079B

Applicant: Erik Runquist, Minnesota Zoological Garden, Apple Valley, MN.

The applicant requests a permit to take Dakota skippers (*Hesperia dacotae*) and Poweshiek skipperlings (*Oarisma poweshiek*) in the State of Minnesota. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64080B

Applicant: Brian Klatt, Michigan State University, Michigan Natural Features Inventory, East Lansing, MI.

The applicant requests a permit to take the following species in the State of Michigan. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Species common name	Species scientific name
Copperbelly water snake	*Nerodia erythrogaster neglecta.*
Eastern massasauga	*Sistrurus catenatus catenatus.*
Piping plover	*Charadrius melodus.*
Kirtland's warbler	*Dendroica kirtlandii.*
Gray wolf	*Canis lupus.*
Cougar	*Felis concolor.*
Lynx	*Lynx canadensis.*
Northern long-eared bat	*Myotis septentrionalis.*
Indiana bat	*Myotis sodalis.*
Hungerford's crawling water beetle	*Brychius hungerfordi.*
American burying beetle	*Nicrophorus americanus.*
Karner blue butterfly	*Lycaeides melissa samuelis.*
Mitchell's satyr	*Neonympha mitchellii mitchellii.*
Poweshiek skipperling	*Oarisma poweshiek.*
Hine's emerald dragonfly	*Somatochlora hineana.*

Species common name	Species scientific name
White cat's paw	*Epioblasma obliquata perobliqua*.
Northern riffleshell	*Epioblasma torulosa rangiana*.
Snuffbox	*Epioblasma triquetra*.
Scaleshell	*Leptodea leptodon*.
Clubshell	*Pleurobema clava*.
Rayed bean	*Villosa fabalis*.
Hart's-tongue fern	*Asplenium scolopendrium* var.
Pitcher's thistle	*Cirsium pitcheri*.
Lakeside daisy	*Hymenoxys herbacea (Tetraneuris herbacea)*.
Dwarf lake iris	*Iris lacustris*.
Small whorled pogonia	*Isotria medeoloides*.
Michigan monkey flower	*Mimulus michiganensis* (*Mimulus glabratus* var. *michiganensis*).
Prairie white-fringed orchid	*Platanthera leucophaea* (*Habenaria leucophaea*).
Houghton's goldenrod	*Solidago houghtonii*.

Permit Application Number: TE64081B

Applicant: Joseph R. Hoyt, Santa Cruz, CA.

The applicant requests a permit to take northern long-eared bats (*Myotis septentrionalis*) and Indiana bats (*Myotis sodalis*) in the States of Illinois, Michigan, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64082B

Applicant: Daniel W. Beckman, Springfield, MO.

The applicant requests a permit to take Topeka shiners (*Notropis topeka*) in the State of Missouri. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64234B

Applicant: Christopher Miles Barnhart, Springfield, MO.

The applicant requests a permit to take fanshell (*Cyprogenia stegaria*), Ouachita rock pocketbook (*Arkansia wheeleri*), fat pocketbook (*Potamilus capax*), snuffbox (*Epioblasma triquetra*), winged mapleleaf (*Quadrula fragosa*), rabbitsfoot (*Quadrula cylindrica cylindrica*), scaleshell (*Leptodea leptodon*), Arkansas fatmucket (*Lampsilis powellii*), Neosho mucket (*Lampsilis rafinesqueana*) pink mucket (*Lampsilis abrupta*), and spectaclecase (*Cumberlandia monodonta*) mussels, in the State of Missouri. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64235B

Applicant: William G. O'Leary, Murphysboro, IL.

The applicant requests a permit to take least terns (*Sternula antillarum*) in the State of Indiana. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64236B

Applicant: Josiah J. Maine, Kansas City, MO.

The applicant requests a permit to take northern long-eared bats (*Myotis septentrionalis*) and Indiana bats (*Myotis sodalis*) in the States of Oklahoma, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, Wisconsin, Arkansas, Kentucky, Tennessee, Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Kansas, and South Dakota. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64237B

Applicant: Megan B. York-Harris, Fairdealing, MO.

The applicant requests a permit to take northern long-eared bats (*Myotis septentrionalis*), gray bats (*Myotis grisescens*), and Indiana bats (*Myotis sodalis*) in the States of Oklahoma, Illinois, Indiana, Iowa, Ohio, Michigan, Minnesota, Missouri, Wisconsin, Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Kansas, Montana, Nebraska, North Dakota, South Dakota, and Wyoming. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64238B

Applicant: Jocelyn R. Karsk, Muncie, IN.

The applicant requests a permit to take northern long-eared bats (*Myotis septentrionalis*) and Indiana bats (*Myotis sodalis*) in the State of Indiana. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE64264B

Applicant: Carly RW Kalina, Barker Lemar Engineering Consultants, West Des Moines, IA.

The applicant requests a permit to take northern long-eared bats (*Myotis septentrionalis*) and Indiana bats (*Myotis sodalis*) in the States of Iowa and Illinois. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE02373A

Applicant: Environmental Solutions and Innovations, Inc., Cincinnati, OH.

The applicant requests a permit renewal, with amendments, to take northern long-eared bats (*Myotis septentrionalis*), Tar River spinymussel (*Elliptio steinstansana*), sheepnose (*Plethobasus cyphyus*), rayed bean (*Villosa fabalis*), fanshell (*Cyprogenia stegaria*), clubshell (*Pleurobema clava*), rabbitsfoot (*Quadrula cylindrica cylindrica*), James spinymussel (*Pleurobema collina*), and snuffbox (*Epioblasma triquetra*) mussels. The proposed amendments would occur in the states currently covered in the permit. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE697830

Applicant: U.S. Fish and Wildlife Service, Chicago Field Office, Chicago, IL.

The applicant requests permit renewal and an amendment to add additional activities and personnel. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Permit Application Number: TE06809A

Applicant: Sybill Amelon, USDA Forest Service, Columbia, MO.

The applicant requests an amendment to add the northern long-eared bat (*Myotis septentrionalis*) and additional personnel to their permit. The applicant also requests a permit renewal. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Request for Public Comments

We seek public review and comments on these permit applications. Please refer to the appropriate permit application number(s) when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and it's implementing regulations (50 CFR 17.22).

Dated: April 28, 2015.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2015–10985 Filed 5–6–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2015–N075; FXES11120100000–156–FF01E00000]

Draft Environmental Assessment and Draft Habitat Conservation Plan for the Fender's Blue Butterfly on Private Lands in Yamhill County, Oregon; Reopening of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reopening the comment period for an application from the Yamhill Soil and Water Conservation District (SWCD) for an incidental take permit (permit) under the Endangered Species Act of 1973, as amended (ESA). The permit application includes a draft Habitat Conservation Plan (HCP) addressing private land management activities within upland prairie in Yamhill County, Oregon, that may result in the incidental take of the endangered Fender's blue butterfly. The Service also announces the availability of a draft environmental assessment (EA) addressing the proposed HCP and issuance of a permit that was prepared in accordance with the National Environmental Policy Act of 1969, as amended (NEPA). We invite comments from all interested parties on the permit application, including the HCP and the EA. We are reopening the comment period to correct a technical error with the electronic email box associated with the email address provided in our original **Federal Register** notice. The public could send comments to the Service's email address but we were not able to retrieve the comments for review; therefore, the comments could not be considered and recognized as part of the record. If you have previously submitted comments via email, please resubmit them to the new email address in order to be considered since they were unfortunately not retrievable for consideration.

DATES: To ensure consideration, written comments must be received from interested parties no later than June 8, 2015.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Yamhill SWCD HCP.

- *Internet:* Documents may be viewed on the Internet at *http://www.fws.gov/oregonfwo/ToolsForLandowners/HabitatConservationPlans/#HCP*.
- *Email: YamhillSWCDcomments@fws.gov.* Include ''Yamhill SWCD HCP'' in the subject line of the message.
- *U.S. Mail:* U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Ave., Suite 100, Portland, OR 97266. Include ''Yamhill SWCD HCP'' in the subject line of the message.
- *Fax:* 503–231–6195, Attn: Yamhill SWCD HCP.
- *In-Person Viewing or Pickup:* Documents will be available for public inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Ave., Suite 100, Portland, OR.

FOR FURTHER INFORMATION CONTACT: Richard Szlemp, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **ADDRESSES**), telephone: 503–231–6179. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On February 23, 2015, we published a **Federal Register** notice (80 FR 9477) announcing the availability of the draft HCP and the draft EA for a 30-day review and comment period. We are providing interested parties another opportunity to review and comment on these documents by reopening the comment period for 30 days. We are reopening the comment period to correct a technical error with the electronic email box associated with the email address provided in our original **Federal Register** notice (80 FR 9477). The public could send comments to the Service's email address but we were not able to retrieve the comments for review; therefore the comments could not be considered and recognized as part of the record. Therefore, if you submitted comments via email to the previously provided address, please resubmit your comments to the new email address or by using any of the methods provided in the **ADDRESSES** section above.

For background and more information on the draft HCP and draft EA, see our February 23, 2015, notice. For information on where to view the documents and how to submit comments, please see the **ADDRESSES** section above.

Public Availability of Comments

All comments and materials we receive will become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we use in preparing the EA, will be available for public inspection by appointment, during normal business hours, at our Oregon Fish and Wildlife Office (see **ADDRESSES**).

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*), and NEPA (42 U.S.C. 4321 *et seq.*) and their

implementing regulations (50 CFR 17.22 and 40 CFR 1506.6, respectively).

Dated: April 21, 2015.

Richard Hannan,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2015–10980 Filed 5–6–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[156D0102DM DS61100000 DLSN00000.000000 DX61101]

Proposed Renewal of Information Collection: OMB Control Number 1094–0001; Alternatives Process in Hydropower Licensing

AGENCY: Office of the Secretary, Office of Environmental Policy and Compliance, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Environmental Policy and Compliance, Office of the Secretary, Department of the Interior announces the proposed extension of a public information collection and seeks public comments on the provisions thereof.

DATES: Consideration will be given to all comments received by July 6, 2015.

ADDRESSES: Send your written comments to Shawn Alam, Office of Environmental Policy and Compliance, U.S. Department of the Interior, 1849 C Street NW., MS 2462–MIB, Washington, DC 20240, fax 202–208–6970, or by electronic mail to *Shawn_Alam@ios.doi.gov*. Please mention that your comments concern the Alternatives Process in Hydropower Licensing, OMB Control Number 1094–0001.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, any explanatory information and related forms, please use the contact information provided in the **ADDRESSES** section above.

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice is for renewal of information collection.

The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)).

On March 31, 2015, the Departments of Agriculture, the Interior, and Commerce published revised interim final rules they originally published in November 2005 at 7CFR part 1, 43 CFR part 45, and 50 CFR part 221 to implement section 241 of the Energy Policy Act of 2005 (EP Act), Public Law 109–58, which the President signed into law on August 8, 2005. Section 241 of the EP Act adds a new section 33 to the Federal Power Act (FPA), 16 U.S.C. 823d, that allows the license applicant or any other party to the license proceeding to propose an alternative to a condition or prescription that one or more of the Departments develop for inclusion in a hydropower license issued by the Federal Energy Regulatory Commission (FERC) under the FPA. This provision requires that the Department of Agriculture, the Department of the Interior, and the Department of Commerce collect the information covered by 1094–0001.

Under FPA section 33, the Secretary of the Department involved must accept the proposed alternative if the Secretary determines, based on substantial evidence provided by a party to the license proceeding or otherwise available to the Secretary, (a) that the alternative condition provides for the adequate protection and utilization of the reservation, or that the alternative prescription will be no less protective than the fishway initially proposed by the Secretary, and (b) that the alternative will either cost significantly less to implement or result in improved operation of the project works for electricity production.

In order to make this determination, the regulations require that all of the following information be collected: (1) A description of the alternative, in an equivalent level of detail to the Department's preliminary condition or prescription; (2) an explanation of how the alternative: (i) If a condition, will provide for the adequate protection and utilization of the reservation; or (ii) if a prescription, will be no less protective than the fishway prescribed by the bureau; (3) an explanation of how the alternative, as compared to the preliminary condition or prescription, will: (i) Cost significantly less to implement; or (ii) result in improved operation of the project works for electricity production; (4) an explanation of how the alternative or revised alternative will affect: (i) Energy supply, distribution, cost, and use; (ii) flood control; (iii) navigation; (iv) water supply; (v) air quality; and (vi) other aspects of environmental quality; and (5) specific citations to any scientific studies, literature, and other documented information relied on to support the proposal.

This notice of proposed renewal of an existing information collection is being published by the Office of Environmental Policy and Compliance, Department of the Interior, on behalf of all three Departments and the data provided below covers anticipated responses (alternative conditions/prescriptions and associated information) for all three Departments.

II. Data

(1) Title: 7 CFR part 1; 43 CFR part 45; 50 CFR part 221; the Alternatives Process in Hydropower Licensing.

OMB Control Number: 1094–0001.

Current Expiration Date: November 30, 2015.

Type of Review: Information Collection Renewal.

Affected Entities: Business or for-profit entities.

Estimated annual number of respondents: 5.

Frequency of responses: Once per alternative proposed.

(2) *Annual reporting and recordkeeping burden:*

Total annual reporting per response: 500 hours.

Total number of estimated responses: 5.

Total annual reporting: 2,500 hours.

(3) Description of the need and use of the information: The purpose of this information collection is to provide an opportunity for license parties to propose an alternative condition or prescription to that proposed by the Federal Government for inclusion in the hydropower licensing process.

III. Request for Comments

The Departments invite comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden of the collection of information and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

''Burden'' means the total time, effort, and 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 use technology and systems for the purposes 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, and to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments, with names and addresses, will be available for public inspection. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to the extent allowable by law. If you wish to view any comments received, you may do so by scheduling an appointment with the Office of Environmental Policy and Compliance by using the contact information in the **ADDRESSES** section above. A valid picture identification is required for entry into the Department of the Interior.

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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: April 30, 2015.

Mary Josie Blanchard,

Deputy Director, Office of Environmental Policy and Compliance.

[FR Doc. 2015–10695 Filed 5–6–15; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[134D0102DM DMSN00000.000000 DS68200000 DX68201DAGENLAM]

Privacy Act of 1974, as Amended; Notice To Amend an Existing System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of amendment to an existing system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior is issuing public notice of its intent to amend the Office of the Secretary Privacy Act system of records, ''Hearings and Appeals Files—Interior, OS–09''. The amendment will update the system location, categories of records, routine uses of records maintained, policies and practices for storing, retrieving, accessing, retaining and disposing of records, and citations to amended Department of the Interior regulations.

DATES: Comments must be received by June 16, 2015. The amendments to the system will be effective June 16, 2015.

ADDRESSES: Any person interested in commenting on this notice may do so by: submitting comments in writing to Teri Barnett, Departmental Privacy Officer, 1849 C Street NW., Mail Stop 5547 MIB, Washington, DC 20240; hand-delivering comments to Teri Barnett, Departmental Privacy Officer, 1849 C Street NW., Mail Stop 5547 MIB, Washington, DC 20240; or emailing comments to *Privacy@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Director, Office of Hearings and Appeals, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203, or by telephone at 703–235–3810.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Interior (DOI), Office of Hearings and Appeals (OHA), maintains the ''Hearings and Appeals File—Interior, OS–09,'' system of records. The primary purpose of this system is to support the adjudication or other resolution of administrative disputes assigned to OHA. The amendments to the system will include updating the system location, categories of records, routine uses of records maintained, and policies and practices for storing, retrieving, accessing, retaining and disposing of records, as well as updating citations to amended DOI regulations. The categories of records in the system is being updated to delete a reference regarding contract disputes considered and decided by the Interior Board of Contract Appeals, which was replaced by Congress with the Civilian Board of Contract Appeals (Sec. 847, Pub. L. 109–163, 119 Stat. 3391), and to add a reference to hearings in hydropower licensing proceedings (43 CFR part 45). This system notice was last published in the **Federal Register** on November 27, 2006, 71 FR 68633.

The list of routine uses of records maintained in the system is being revised in several respects. Routine use (1) is expanded to cover not only parties and their authorized representatives but also intervenors, witnesses, parties' family members, any other persons whose connections to the parties and/or the proceedings could warrant attendance and/or participation at a hearing, and authorized representatives of any of these additional persons. Routine use (1) is also expanded to expressly include service lists as documents that may be disclosed. It is typical for service lists to show, among other things, the name and address of each party or party's representative.

Routine use (2) is added to permit disclosure of case docket lists that provide limited information on pending cases, such as, docket number, case title (which may be an individual's name), and docketed date. Finally, routine use (3) is added to permit disclosure of decisions and orders whose disclosure is not required under the Freedom of Information Act, 5 U.S.C. 552(a)(2).

The amendments to the system will be effective as proposed at the end of the comment period (the comment period will end 40 days after the publication of this notice in the **Federal Register**), unless comments are received which would require a contrary determination. DOI will publish a revised notice if changes are made based upon a review of the comments received.

II. Privacy Act

The Privacy Act of 1974, as amended (5 U.S.C. 552a), embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' personal information. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information about an individual is retrieved by the name or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a U.S. citizen or lawful permanent resident. As a matter of policy, DOI extends administrative Privacy Act protections to all individuals. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of the DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that

the agency maintains, the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such records within the agency. The amended system notice for the ''Hearings and Appeals Files—Interior, OS–09,'' is published in its entirety below.

In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Disclosure

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: May 4, 2015.

Teri Barnett,

Departmental Privacy Officer.

SYSTEM NAME:

Hearings and Appeals Files—Interior, OS–09.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

(1) Director's Office and Appeals Boards, Office of Hearings and Appeals, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203.

(2) Probate Hearings Division, Office of Hearings and Appeals, BIA Building II, 1011 Indian School Road NW., Room 322, Albuquerque, New Mexico 87104.

(3) Departmental Cases Hearings Division, Office of Hearings and Appeals, 351 South West Temple St., Suite 6.300, Salt Lake City, Utah 84101.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved or otherwise identified in hearings and appeals proceedings before the Office of the Director, Appeals Boards, and Hearings Divisions of OHA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include information assembled in case files and docket systems pertaining to individuals involved in the categories of hearings and appeals proceedings listed below. The types of records vary from category to category and case to case, but may include correspondence, pleadings, and briefs; administrative record materials, other documentary evidence, and transcripts of testimony; notices, orders, and decisions issued by administrative law judges, administrative judges, and other deciding officials; and associated docket cards and docket system data entries. During the active consideration of a case, records may also include deliberative process materials such as a judge's notes, draft orders or decisions, and comments on such drafts from other judges or staff. Records in the system may contain names, addresses, telephone numbers, family relationship information (including adoption and foster care relationship information), tribal enrollment information, and dates of birth of individuals involved or otherwise identified in hearings and appeals.

Categories of hearings and appeals proceedings covered by OS–09:

(1) Indian probate matters, considered and decided by the Probate Hearings Division, including determination of heirs, approval of wills, allowance of claims, and the purchase of decedents' interests in trust and restricted lands; and appeals in such matters, considered and decided by the Interior Board of Indian Appeals (IBIA).

(2) Heirship determinations under the White Earth Reservation Land Settlement Act of 1985, considered and decided by the Departmental Cases Hearings Division (DCHD); and appeals in such matters, considered and decided by IBIA.

(3) Appeals pertaining to administrative actions of the Bureau of Indian Affairs, considered and decided by IBIA.

(4) Contest proceedings and other hearings relating to the use and disposition of public lands and their resources, considered and decided by the DCHD, including land selections arising under the Alaska Native Claims Settlement Act; appeals in such matters, considered and decided by the Interior Board of Land Appeals (IBLA); and appeals from decisions of the Bureau of Land Management relating to the use and disposition of public lands and their resources, considered and decided by IBLA.

(5) Appeals from decisions of Departmental officials relating to the use and disposition of mineral resources in certain acquired lands of the United States and in the submerged lands of the Outer Continental Shelf, considered and decided by IBLA.

(6) Hearings in appeals relating to surface coal mining and reclamation operations, considered and decided by the DCHD; appeals in such matters, considered and decided by IBLA; and appeals from decisions of the Office of Surface Mining Reclamation and Enforcement relating to surface coal mining and reclamation operations, considered and decided by IBLA.

(7) Hearings related to mandatory conditions and prescriptions proposed for inclusion in hydropower licenses, considered and decided by the DCHD.

(8) Hearings and appeals in various matters considered and decided by the Director or his or her designees, including employee debt collection matters, requests for waiver of claims for erroneous payments, determinations of employee liability for loss or damage to government property, adjustment of rental rates for government quarters, acreage limitations under the Reclamation Reform Act, Relocation Assistance Act claims, enforcement actions under the Indian Gaming Regulatory Act, and Director's review matters under 43 CFR 4.5(b).

(9) Any other hearings or appeals proceedings conducted by OHA under statutes or Departmental regulations providing for a hearing and/or a right to appeal within the Department.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 551 *et seq.*; 16 U.S.C. 791 *et seq.*; 25 U.S.C. 2, 9, 372, 373, 373a, 373b, 374, 2201 *et seq.*; 30 U.S.C. chap. 2, 3, 3A, 5, 7, 16, 23, 25 and 29; 41 U.S.C. 7101 *et seq.*; 43 U.S.C. 315a, 1201, 1331 *et seq.,* 1601 *et seq.,* 1701 *et seq.*; 43 CFR parts 4, 30, and 45.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the Hearings and Appeals Files system of records is to support administrative determinations and adjudications assigned to OHA. Final opinions rendered in the adjudication of cases will be disclosed outside DOI as required by law and regulation (5 U.S.C. 552(a)(2), 43 CFR 2.1(g); 2.67(b)). In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To parties and their authorized representatives, as well as intervenors, witnesses, parties' family members, any other persons whose connections to the parties and/or the proceedings could warrant attendance and/or participation at a hearing, and authorized representatives of any of these additional persons, upon request or in

the course of case adjudication, including persons in attendance at formal hearings (*e.g.,* parties' family members), when the disclosure involves documents of record in the proceeding, including service lists but excluding documents protected from disclosure under 43 CFR 4.31.

(2) To the public of case docket lists that provide limited information on pending cases, *e.g.,* docket number, case title, and docketed date.

(3) To the public of decisions and orders that are not required to be disclosed under 5 U.S.C. 552(a)(2), *e.g.,* ALJ decisions and orders and IBLA orders, either in their original form or as redacted, if:

(i) Such disclosure would not cause a clearly unwarranted invasion of personal privacy; and

(ii) Such documents would not otherwise be exempt from disclosure under 5 U.S.C. 552(b).

(4)(a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before OHA;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(5) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(6) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(7) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(8) To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(9) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(10) To state, territorial and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(11) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(12) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(13) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(14) To the Department of the Treasury to recover debts owed to the United States.

(15) To agency contractors, grantees, or volunteers for DOI or other Federal Departments who have been engaged to assist the Government in the performance of a contract, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity.

(16) To the news media and the public, with the approval of the Public Affairs Officer in consultation with Counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy or otherwise violate the FOIA.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1996 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case file records in manual form are maintained in file folders. Electronic records, including those created for the purpose of tracking case files, are maintained on the OHA computer network in user-authenticated, password-protected systems that are compliant with the Federal Information Security Management Act. All records are accessed only by authorized personnel who have a need to access the records in the performance of their official duties.

RETRIEVABILITY:

Both manual and electronic records are retrieved by the name of the appellant, claimant, or other party, or by designated OHA docket number.

SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security

rules and policies. Most of the records covered by this notice are in paper form. Access is provided on a need-to-know basis. Manual records are maintained in locked file cabinets located in secured rooms or DOI facilities. Electronic data are protected through user identification, passwords, database permissions, and software controls. Computers and storage media are encrypted in accordance with DOI security policy. Computers containing files are password protected to restrict unauthorized access. The DOI computers and servers storing this information are located in secured DOI facilities with access codes, security codes, and security guards. Access to electronic data is limited to DOI personnel who have a need to know the information for the performance of their official duties.

Personnel authorized to access systems must complete all Security, Privacy, and Records Management training and sign the DOI Rules of Behavior. A separate Privacy Impact Assessment for the electronic database (the OHA Docket Management System) has been conducted to ensure appropriate controls and safeguards are in place to protect the information within the system.

RETENTION AND DISPOSAL:

Records other than Indian trust records are retained and disposed of in accordance with the OHA Records Disposal Schedule, which has been approved by the National Archives and Records Administration (Job No. N1–048–07–4), and the Office of the Secretary Records Disposal Schedule. The disposition is temporary. The disposition schedule varies, but most records are destroyed or deleted 7 years after closure of agency business. Paper records are disposed of by shredding or pulping, and records contained on electronic media are degaussed or erased in accordance with 384 Departmental Manual 1.

Indian trust records are retained in accordance with a schedule, ''Office of Hearings and Appeals—Trust Case Files,'' that has been approved by the National Archives and Records Administration (Job No. N1–048–10–8). The disposition is permanent.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should both be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.235.

RECORDS ACCESS PROCEDURES:

An individual requesting records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request should describe the records sought as specifically as possible. The request envelope and letter should both be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORDS PROCEDURES:

An individual requesting corrections or the removal of material from his or her records should send a signed, written request to the System Manager identified above. A request for corrections or removal must meet the requirements of 43 CFR 2.246.

RECORD SOURCE CATEGORIES:

Records in the system contain information submitted by individuals involved in hearings and appeals, including but not limited to appellants, claimants, intervenors, witnesses, government and Tribal officials, and other persons involved in the proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2015–11040 Filed 5–6–15; 8:45 am]

BILLING CODE 4334–12–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing Same, DN 3067;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Pacific Bioscience Laboratories, Inc. on April 30, 2015. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electric skin care devices, brushes and chargers therefor, and kits containing same. The complaint names as respondents Our Family Jewels, Inc. d/b/a Epipür Skincare of Parker, CO; Accord Media, LLC d/b/a Truth in Aging of New York, NY; Xnovi Electronic Co., Ltd. of China; Michael Todd True Organics LP of Port St. Lucie, FL; MTTO LLC of Port St. Lucie, FL; Shanghai Anzikang Electric Co., Ltd. of China; Nutra-Luxe M.D., LLC of Fort Myers, FL; Beauty Tech, Inc. of Coral Gables, FL; Anex Corporation of Korea; RN Ventures Ltd. of United Kingdom; Korean Beauty Co., Ltd. of Korea; H2Pro Beautylife, Inc. of Placentia, CA; Serious Skin Care, Inc. of Carson City, NV; Home Skinovations Inc. of Canada; Home Skinovations Ltd. of Israel; Wenzhou AI ER Electrical Technology Co., Ltd d/b/a Cnaier of

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

China; Coreana Cosmetics Co., Ltd. of Korea; and Flageoli Classic Limited of Las Vegas, NV. The complainant requests that the Commission issue a permanent general exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3067'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: May 1, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–10950 Filed 5–6–15; 8:45 am]

BILLING CODE 7020–02–P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–613]

Certain 3G Mobile Handsets and Components Thereof, Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given regarding the Recommended Determination (''RD'') on Remedy and Bonding issued in the above-captioned investigation. On April 27, 2015, the presiding administrative law judge issued a Final Initial Determination on Remand. The Commission is soliciting comments on public interest issues raised by the RD issued in the original investigation on August 14, 2009, specifically a limited exclusion order against certain 3G mobile handsets and components thereof manufactured or imported by or on behalf of respondents Nokia Corporation of Espoo, Finland and Nokia Inc. of Irving, Texas. The RD also recommends issuance of a cease and desist order against respondents.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on August 14, 2009. Comments should address whether issuance of a limited exclusion order and cease and desist order in this investigation would affect the public health and welfare in the United States,

competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the limited exclusion order and cease and desist orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on June 3, 2015.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–613 REMAND'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

By order of the Commission.

Issued: May 4, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–11016 Filed 5–6–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–15–016]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 19, 2015 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 701–TA–514 and 731–TA–1250 (Final)(53-Foot Domestic Dry Containers from China). The Commission is currently scheduled to complete and file its determinations and views of the Commission on May 29, 2015.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 4, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–11094 Filed 5–5–15; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–523 and 731–TA–1259 (Final)]

Boltless Steel Shelving Units Prepackaged for Sale From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–523 and 731–TA–1259 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of boltless steel shelving units prepackaged for sale from China, provided for in subheadings 9403.10.00 and 9403.20.00 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be subsidized and sold at less-than-fair-value.[1]

DATES: *Effective Date:* April 1, 2015.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise boltless steel shelving units prepackaged for sale, with or without decks.'' For a full description of the scope of the investigations, including product exclusions, *see Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 80 FR 5089, January 30, 2015.

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of boltless steel shelving units prepackaged for sale, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on August 26, 2014, by Edsal Manufacturing Co., Inc., Chicago, Illinois.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on July 29, 2015, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on August 13, 2015, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 7, 2015. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on Tuesday, August 11, 2015, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is August 5, 2015. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is Thursday, August 20, 2015. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before August 20, 2015. On September 9, 2015, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before September 11, 2015, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: May 1, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–10627 Filed 5–6–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on April 14, 2015, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODVA, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bedrock Automation

Platforms, Inc., San Jose, CA; Control Technology Inc., Knoxville, TN; High Grade Controls Corporation, Sudbury, Ontario, CANADA; Jenny Science AG, Rain, SWITZERLAND; PCN Technology, Inc., San Diego, CA; Prozess Technologie, Inc., St. Louis, MO; and Welding Technology Corp., Farmington Hills, MI, have been added as parties to this venture.

Also, Conxall Corporation Inc., Chicago, IL; FieldServer Technologies (Div Sierra Monitor Corporation), Milpitas, CA; New Age Micro, Mansfield, MA; Power Electronics S.L., Paterna, SPAIN, UNIPULSE Corporation, Koshigaya City, JAPAN; and Warwick Instruments, London, UNITED KINGDOM, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on January 20, 2015. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 17, 2015 (80 FR 8348).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–11007 Filed 5–6–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wireless Industrial Technology Konsortium, Inc.

Notice is hereby given that, on April 2, 2015, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Wireless Industrial Technology Konsortium, Inc. (''WITEK'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Nivis LLC, Atlanta, GA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and WITEK intends to file additional written notifications disclosing all changes in membership.

On August 8, 2008, WITEK filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 18, 2008 (73 FR 54170).

The last notification was filed with the Department on September 25, 2012. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 18, 2012 (77 FR 64128).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–11021 Filed 5–6–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on March 31, 2015, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ericcson Broadcast & Media Services, London, UNITED KINGDOM; and SDVI Corporation, Menlo Park, CA, have been added as parties to this venture.

Also, National Archives & Records Administration, College Park, MD; San Solutions, Inc., Reno, NV; and Lawrence R. Kaplan (individual member), Menlo Park, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on December 23, 2014. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 6, 2015 (80 FR 6768).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015–11019 Filed 5–6–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation and Proposed Order Under the Comprehensive Environmental Response, Compensation, and Liability Act

On May 1, 2015, the Department of Justice lodged a Stipulation and Proposed Order Amending the Requirements Set Forth in Paragraph 13(c) of the Consent Decree (''Stipulation and Proposed Order'') with the United States District Court for the Southern District of Ohio in the lawsuit entitled *United States of America* v. *Elsa Morgan-Skinner, et al,* 1:00–cv–424.

In its February 21, 2001, amended complaint in this action, brought under Sections 106 and 107(a) of the Comprehensive Environmental Response. Compensation, and Liability Act, 42 U.S.C. 9606 and 9607(a), the United States sought: (1) Reimbursement of costs incurred by the United States for response actions at the Skinner Landfill Superfund Site in West Chester, Ohio (''Site''); and (2) performance of response work. On April 3, 2001, the Court entered a Consent Decree that required the Settling Generator/Transporter Defendants to conduct a remedial action at the Site. In particular, Paragraph 13(c) of the Consent Decree required the construction of an upgradient groundwater control system if the Environmental Protection Agency (''EPA'') determined that there would be prolonged contact between groundwater and waste material at the Site. Although monitoring established that such contact existed, EPA has determined that

upgradient groundwater control is not needed because the contact has not caused significant groundwater contamination. In the lodged Stipulation and Proposed Order, the Parties seek to amend Paragraph 13(c) by striking the requirement for upgradient groundwater control. In the event that future monitoring identifies significant groundwater contamination, the amended Paragraph 13(c) requires the Settling Generator/Transporter Defendants to submit a plan to address the problem.

The publication of this notice opens a period for public comment on the Stipulation and Proposed Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Elsa Morgan-Skinner, et al,* D.J. Ref. No. 90–11–3–1620.

All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Stipulation and Proposed Order may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Stipulation and Proposed Order upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $1.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–10955 Filed 5–6–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0152]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired; Survey: Survey of Prison Inmates (Formerly Named the Survey of Inmates in State and Federal Correctional Facilities)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 80 FR 9749, February 24, 2015, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 8, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Glaze, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: *Lauren.Glaze@usdoj.gov;* telephone: 202–305–9628). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Survey of Prison Inmates, 2015–2016 (formerly named the Survey of Inmates in State and Federal Facilities).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number of the questionnaire is NPS–25. The applicable component within the Department of Justice is the Bureau of Justice Statistics (Corrections Unit), in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Others: State government and Federal government. Affected public are prison inmates age 18 or older held in adult state or federal correctional facilities and the adult state and federal correctional facilities. The purposes of this omnibus survey are to generate reliable, nationally-representative estimates of the characteristics of prisoners in the United States, track changes in the characteristics of prisoners over time, conduct studies of special populations of prisoners, and identify policy-relevant changes in the prison population. The survey will also be used to produce subnational estimates of prisoners within jurisdictions that have the largest prison populations (*i.e.* 100,000 or more) in the nation. The 2015–2016 SPI survey builds upon prior surveys and is organized around the concepts of harm, risk, and reentry. Specifically, the harms that prisoners have perpetrated on society as measured by the severity of the offense, the incident characteristics of the offense and criminal history; the risk they pose for recidivism as measured by harm elements and additional risk factors such as ties to the

community and mainstream institutions of social integration, such as pre-prison employment within the labor market; their challenges and expectations for reentry back into the community as measured by SPI through the extent of substance abuse, mental health, and medical problems of prisoners, treatment they may have received for problems, programs in which they participated while in prison, and their motivation (*i.e.,* intrinsic or extrinsic) to participate in programs.

In addition to collecting the survey data, in an effort to minimize burden on facilities and inmates and to conduct future studies, inmates will be asked to provide consent to link their 2015–2016 SPI survey data to their criminal history records and any updates made to those records over the next 10 years. The administrative records will be used to augment the survey data and to conduct prospective recidivism studies of the 2015–2016 SPI sample of inmates who are released from prison within three to five years of completion of the survey. Inmates will also be asked to provide their Social Security number (SSN) to link their survey data to records from the Social Security Administration (SSA). The goal of this effort is to provide more detailed information about the pre-prison earnings and benefits of inmates without taking up more of their time during the interview.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The 2015–2016 SPI consists of a pretest and a national study. The goal of the pretest is to test the functionality of the Computer Assisted Personal Interviewing (CAPI) instrument prior to fielding it on a national scale. The pretest will include one state and one federal correctional facility providing a roster of inmates at 0.5 hours per facility for a total of 1 hour; prison staff escorting 60 inmates to and from interview sites at 0.5 hours per inmate for a total of 30 hours; and 60 inmates responding to the questionnaire at 1.00 hours per interview for a total of 60 hours. The pretest will result in a total expected burden of approximately 91 hours. For the SPI national study, a maximum of 416 state and federal correctional facilities will provide a roster of inmates at 0.5 hours per facility for a total of 208 hours; prison staff will escort a maximum of 33,200 inmates to and from interview sites at 0.5 hours per inmate for a total of 16,600 hours; a maximum of 33,200 inmates will respond to the questionnaire at 1.00 hours per interview for a total of 33,200 hours; and a maximum of 50 state departments of corrections and the Federal Bureau of Prisoners will provide post-survey follow-up information at 0.25 hours per jurisdiction for a total of 13 hours. The SPI national study will result in an expected maximum burden of approximately 50,021 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden is 50,112 annual hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: May 4, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–11005 Filed 5–6–15; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board; Notice of Meeting

This notice announces a forthcoming meeting of the National Institute of Corrections (NIC) Advisory Board. The meeting will be open to the public.

Name of the Committee: NIC Advisory Board.

General Function of the Committee: To aid the National Institute of Corrections in developing long-range plans, advise on program development, and to support NIC 's efforts in the areas of training, technical assistance, information services, and policy/program development assistance to Federal, state, and local corrections agencies.

Date and Time: 8 a.m.–4:30 p.m. on Monday, June 8, 2015; 8 a.m.–12 p.m. on Tuesday, June 9, 2015.

Location: National Institute of Corrections, 11900 E Cornell Ave., Unit C, Aurora, CO 80014, (202) 514–4222.

Contact Person: Shaina Vanek, Executive Assistant, National Institute of Corrections, 320 First Street NW., Room 5002, Washington, DC 20534. To contact Ms. Vanek, please call (202) 514–4222.

Agenda: On June 8–9, 2015, the Advisory Board will hear updates on the following topics: (1) Agency Report from the NIC Director, (2) a briefing from NIC Academy Division on current activities and future goals, (3) an update from the Advisory Board's Staff Wellness Subcommittee, and (4) partner agency updates.

Procedure: On June 8–9, 2015, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Oral presentations from the public will be scheduled between approximately 11:15 a.m. to 11:30 a.m. and 4 p.m. and 4:15 p.m. on June 8, 2015 and between 11:15 a.m. and 11:30 a.m. on June 9, 2015. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 27, 2015.

General Information: NIC welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shaina Vanek at least 7 days in advance of the meeting. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Jim Cosby,

Director, National Institute of Corrections.

[FR Doc. 2015–10584 Filed 5–6–15; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Computing and Communication Foundations Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Proposal Panel Review for Science and Technology Centers—Integrative Partnerships (#1192) Site Visit

Date/Time: June 1, 2015 6:30 p.m.–8:30 p.m.; June 2, 2015 8:00 a.m.–8:00 p.m.; June 3, 2015 8:30 a.m.–3:00 p.m.

Place: Massachusetts Institute of Technology (MIT), Cambridge, MA 02139.

Type Of Meeting: Partial Closed.

Contact Person: John Cozzens, National Science Foundation, 4201 Wilson Boulevard, Room 1115, Arlington, VA 22230. Telephone: (703) 292–8910.

Purpose Of Meeting: To assess the progress of the STC Award: 1231216 ''A

Center for Brains, Minds and Machines: the Science and the Technology of Intelligence'', and to provide advise and recommendations concerning further NSF support for the Center.

Agenda: MIT Site Visit

Monday, June 1, 2015

6:30 p.m. to 8:30 p.m.: Closed

Site Team and NSF Staff meets to discuss Site Visit materials, review process and charge

Tuesday, June 2, 2015

8:00 a.m. to 1:00 p.m.: Open

Presentations by Awardee Institution, faculty staff and students, to Site Team and NSF Staff; Discussions, question and answer sessions

1:00 p.m.–8:00 p.m.: Closed

Draft report on education and research activities

Wednesday, June 3, 2015

8:30 a.m.–Noon: Open

Response presentations by Site Team and NSF Staff Awardee Institution faculty staff; Discussions, question and answer sessions

Noon to 3:00 p.m.: Closed

Complete written site visit report with preliminary recommendations.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 2015.

Suzanne Plimpton,

Acting, Committee Management Officer.

[FR Doc. 2015–10992 Filed 5–6–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346; NRC–2010–0298]

FirstEnergy Nuclear Operating Company; Davis-Besse Nuclear Power Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental environmental impact statement; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final plant-specific supplement, Supplement 52, to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (GEIS), regarding the renewal of FirstEnergy Nuclear Operating Company's (FENOC) operating license NPF–3 for an additional 20 years of operation for Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse).

DATES: The final Supplement 52 to the GEIS is available as of May 7, 2015.

ADDRESSES: Please refer to Docket ID NRC–2010–0298 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0298. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The final Supplement 52 to the GEIS is in ADAMS under Accession No. ML15112A098 for Volume 1 and Accession No. ML15113A187 for Volume 2.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Elaine Keegan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 1–800–368–5692, ext. 8517; email: *Elaine.Keegan@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with § 51.118 of Title 10 of the *Code of Federal Regulations,* the NRC is making available final Supplement 52 to the GEIS regarding the renewal of FENOC operating license NPF–3 for an additional 20 years of operation for Davis-Besse. Draft Supplement 52 to the GEIS was noticed by the NRC in the **Federal Register** on March 7, 2014 (79 FR 13079), and noticed by the Environmental Protection Agency on March 21, 2014 (79 FR 15741). The public comment period on draft Supplement 52 to the GEIS ended on April 21, 2014, and the comments received are addressed in final Supplement 52 to the GEIS. Final Supplement 52 to the GEIS is available as indicated in the **ADDRESSES** section of this document, and is available for public inspection at the Toledo-Lucas County Public Library, 325 Michigan Street, Toledo, Ohio 43604; and at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio 43452.

II. Discussion

As discussed in Section 9.4 of the final Supplement 52 to the GEIS, the NRC determined that the adverse environmental impacts of license renewal for Davis-Besse are not so great that preserving the option of license renewal for energy-planning decisionmakers would be unreasonable. This recommendation is based on: (1) The analysis and findings in the GEIS; (2) information provided in the environmental report and other documents submitted by FENOC; (3) consultation with Federal, State, local, and Tribal agencies; (4) the NRC staff's independent environmental review; and (5) consideration of public comments received during the scoping process and on the Draft Supplemental Environmental Impact Statement.

Dated at Rockville, Maryland, this 29th day of April 2015.

For the Nuclear Regulatory Commission.

Brian D. Wittick,

Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–10942 Filed 5–6–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271–LA–3; ASLBP No. 15–940–03–LA–BD01]

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

ENTERGY NUCLEAR VERMONT YANKEE, LLC AND ENTERGY NUCLEAR OPERATIONS, INC. (Vermont Yankee Nuclear Power Station)

This proceeding involves an application by Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. for a license amendment for the Vermont Yankee Nuclear Power Station, which is located in Vernon, Vermont. In response to a notice filed in the **Federal Register**, *see* 80 FR 8,355, 8,359 (Feb. 17, 2015), a hearing request was filed on April 20, 2015 by the State of Vermont.

The Board is comprised of the following administrative judges:

William J. Froehlich, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Richard E. Wardwell, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Rockville, Maryland,
Dated: May 1, 2015.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2015–11039 Filed 5–6–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–033; NRC–2008–0566]

DTE Electric Company; Fermi 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined license and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing notice of the issuance of Combined License (COL), NPF–95 to DTE Electric Company (DTE, formerly Detroit Edison Company) and Record of Decision.

ADDRESSES: Please refer to Docket ID NRC–2008–0566 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *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 Douments*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided at the end of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Adrian Muñiz, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4093, email: *Adrian.Muniz@nrc.gov* regarding safety matters; or Mallecia Sutton, at 301–415–0673, email: *Mallecia.Sutton@nrc.gov* regarding environmental matters.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 2.106 of Title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is providing notice of the issuance of COL NPF–95 to DTE and, under 10 CFR 51.102(c), the Record of Decision (ROD). With respect to the application for the COL filed by DTE, the NRC finds that the applicable standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations have been met. The NRC finds that any required notifications to other agencies or bodies have been duly made and that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, as amended, the provisions of the Act, and the Commission's regulations. Furthermore, the NRC finds that the licensee is technically and financially qualified to engage in the activities authorized, and that issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Finally, the NRC finds that the findings required by subpart A of 10 CFR part 51 have been made.

Accordingly, the COL was issued on May 1, 2015, and is effective immediately.

II. Further Information

The NRC has prepared a Final Safety Evaluation Report (FSER) and Final Environmental Impact Statement (FEIS) that document the information reviewed and NRC's conclusion. The Commission has also issued its Memorandum and Order documenting its final decision on the uncontested hearing held on February 4, 2015, which serves as the Record of Decision ROD in this proceeding. The NRC also prepared a document summarizing the ROD to accompany its action on the COL application that incorporates by reference materials contained in the FEIS. In accordance with 10 CFR 2.390 of the NRC's ''Rules of Practice,'' details with respect to this action, including the FSER FEIS, Summary ROD, and accompanying documentation included in the combined license package, as well as the Commission's hearing decision and ROD, are available online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. From this site, persons can access the NRC's ADAMS, which provides text and image files of NRC's public documents.

The ADAMS accession numbers for the documents related to this notice are:

ML14296A540	''Final Safety Evaluation Report for Combined Licenses for Enrico Fermi Unit 3''.
ML12307A172, ML12307A176, ML12307A177, and ML12347A202.	NUREG–2105, ''Final Environmental Impact Statement for the Combined License for Enrico Fermi Unit 3''.
ML14308A337	DTE COL Application—Revision 8 of the application.
ML15120A040	Commission's Memorandum and Order on the uncontested hearing (Record of Decision).
ML15120A221	Summary of the Record of Decision.
ML15084A160	Combined License No. NPF–95.

Dated at Rockville, Maryland, this 1st day of May 2014.

For the Nuclear Regulatory Commission.

Mark Delligatti,

Deputy Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2015–11038 Filed 5–6–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0048]

Compliance With Phase 2 of Order EA–13–109

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing its Japan Lessons-Learned Division Interim Staff Guidance (JLD–ISG), JLD–ISG–2015–01, ''Compliance with Phase 2 of Order EA–13–109, Order Modifying Licenses with Regard to Reliable Hardened Containment Vents Capable of Operation under Severe Accident Conditions.'' This ISG provides guidance and clarifies the Phase 2 requirements in the order to assist the licensees that have Boiling Water Reactors (BWRs) with Mark I and Mark II Containments in the design and implementation of either a vent path from the containment drywell or a strategy that makes it unlikely that venting would be needed from the drywell before alternate reliable containment heat removal and pressure control is reestablished. This ISG also endorses, with clarifications, the industry guidance contained in Nuclear Energy Institute (NEI) 13–02, ''Industry Guidance for Compliance with Order EA–13–109,'' Revision 1.

ADDRESSES: Please refer to Docket ID NRC–2015–0048 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document by using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0048. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced. The JLD–ISG–2015–01 is available in ADAMS under Accession No. ML15104A118. The ISG for complying with Phase 1 requirements of the order (JLD–ISG–2013–02) was issued on November 14, 2013 (ADAMS Accession No. ML13304B836). The NEI 13–02, Revision 1 is available in ADAMS under Accession No. ML15113B318.
- *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.
- *NRC's Interim Staff Guidance Web site:* JLD–ISG documents are also available online under the ''Japan Lessons Learned'' heading at *http://www.nrc.gov/reading-rm/doc-collections/isg/japan-lessons-learned.html.*

FOR FURTHER INFORMATION CONTACT: Rajender Auluck, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1025; email: *Rajender.Auluck@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC developed JLD–ISG–2015–01 to provide guidance and clarification to assist nuclear power reactor licensees with the identification of methods needed to comply with Phase 2 requirements in Order EA–13–109 (ADAMS Accession No. ML13130A067), ''Order Modifying Licenses with Regard to Reliable Hardened Containment Vents Capable of Operation under Severe Accident Conditions.'' This ISG is not a substitute for the requirements in Order EA–13–109, and compliance with the ISG would not be a requirement.

The accident at the Fukushima Dai-ichi nuclear power station reinforced the importance of reliable operation of containment vents for BWR plants with Mark I and Mark II containments. As part of its response to the lessons learned from the accident, on March 12, 2012, the NRC issued Order EA–12–050 (ADAMS Accession No. ML12056A043) requiring licensees to upgrade or install a reliable hardened containment venting system (HCVS) for Mark I and Mark II containments. While developing the requirements for Order EA–12–050, the NRC acknowledged that questions remained about maintaining containment integrity and limiting the release of radioactive materials if licensees used the venting systems during severe accident conditions.

The NRC staff on November 26, 2012, presented the Commission with options to address these issues in SECY–12–0157, ''Consideration of Additional Requirements for Containment Venting Systems for Boiling Water Reactors with Mark I and Mark II Containments'' (ADAMS Accession No. ML12325A704). In the staff requirements memorandum (SRM) for SECY–12–0157, dated March 19, 2013 (ADAMS Accession No. ML13078A017), the Commission directed the staff to: (1) Issue a modification to Order EA–12–050 requiring BWR licensees with Mark I and Mark II containments to upgrade or replace the reliable hardened vents required by Order EA–12–050 with a containment venting system designed and installed to remain functional during severe accident conditions, and (2) develop a technical basis and rulemaking for filtering strategies with drywell filtration and severe accident management of BWR Mark I and II containments. The NRC subsequently issued Order EA–13–109 to define requirements and schedules for licensees for BWRs with Mark I and Mark II containments to install severe accident capable containment venting systems.

In recognition of the relative importance of venting capabilities from the wetwell and drywell, a phased approach to implementation is being used to minimize delays in implementing the requirements originally imposed by Order EA–12–050. Phase 1 involves upgrading the venting capabilities from the containment wetwell to provide reliable, severe accident capable hardened vents to assist in preventing core damage and, if necessary, to provide venting capability during severe accident conditions. Phase 2 involves providing additional protection during severe accident conditions through installation of a reliable, severe accident capable drywell vent system or the development of a reliable containment venting strategy that makes it unlikely that a licensee would need to vent from the containment drywell during severe accident conditions. For implementation of Phase 1 order requirements, the NRC issued JLD–ISG–2013–02 on November 14, 2013 (78 FR 70356), which endorsed, with exceptions and clarifications, the

methodologies described in the industry guidance document NEI 13–02, Rev. 0, ''Industry Guidance for Compliance with Order EA–13–109'' (ADAMS Accession No. ML13316A853). As required by the order, licensees submitted their site-specific overall integrated plans (OIPs) by June 30, 2014. The NRC staff has completed its review of the OIPs and has issued interim staff evaluations.

On March 10, 2015, the NRC staff issued a **Federal Register** notice (80 FR 12649) to request public comments on draft JLD–ISG–2015–01 (ADAMS Accession No. ML15051A143). In response, the NRC received comments from SimplyInfo by letter dated March 11, 2015 (ADAMS Accession No. ML15083A277), and the NEI by letter dated April 9, 2015 (ADAMS Accession No. ML15104A316). Several of these comments have been previously submitted to the NRC for staff's consideration. The resolution of these comments has been documented and publicly available (ADAMS Accession No. ML15114A051).

The focus of this ISG is to provide guidance for implementing Phase 2 requirements of the order. The Phase 2 portion of Order EA–13–109 builds on the Phase 1 activities, and is intended to be consistent with the expected outcome of the development of a regulatory basis for the Containment Protection and Release Reduction (CPRR) rulemaking. Specifically, the industry described a containment venting approach that includes severe accident water addition (SAWA) and severe accident water management (SAWM) strategies that would preserve the use of a wetwell vent path, in addition to providing other benefits. Evaluations performed in support of the CPRR rulemaking confirmed significant benefits to including SAWA as part of a severe accident management strategy. Therefore, SAWA will facilitate implementation of Phase 2 of Order EA–13–109 by establishing the design conditions for a drywell vent and supporting SAWM for licensees choosing to pursue that option as a strategy that makes it unlikely that a licensee would need to vent from the drywell.

On April 23, 2015, NEI submitted NEI 13–02, ''Industry Guidance for Compliance with Order EA–13–109,'' Rev. 1 (ADAMS Accession No. ML15113B318) to assist nuclear power licensees with the identification of measures needed to comply with the Phase 2 requirements of Order EA–13–109 regarding reliable hardened containment vents capable of operation under severe accident conditions. The NEI document includes guidance for implementing order requirements for both Phase 1 and Phase 2, including the industry's proposed approach to use the SAWA and SAWM strategies to control the water levels in the suppression pool and maintain capabilities to address over-pressure conditions without a severe accident drywell vent. This ISG endorses, with clarifications, the methodologies described in the industry guidance document NEI 13–02, Revision 1.

Dated at Rockville, Maryland, this 29th day of April 2015.

For the Nuclear Regulatory Commission.

Jack R. Davis,

Director, Japan Lessons-Learned Division, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–11036 Filed 5–6–15; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74856; File No. SR–MIAX–2015–31]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

May 1, 2015.

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 April 29, 2015, 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 Market Maker Trading Permit Fee.

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.

[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 Exchange proposes to modify the monthly Trading Permit fees that apply to Market Makers (''MMs''). Specifically, the Exchange proposes to adopt the following fees: (i) $7,000 for MM Assignments in up to 10 option classes or up to 20% of option classes by volume; (ii) $12,000 for MM Assignments in up to 40 option classes or up to 35% of option classes by volume; (iii) $17,000 for MM Assignments in up to 100 option classes or up to 50% of option classes by volume; and (iv) $22,000.00 for MM Assignments in over 100 option classes or over 50% of option classes up to all option classes listed on MIAX.

The Exchange issues Trading Permits that confer the ability to transact on the Exchange.[3] Currently, all MMs, whether they are a RMM, LMM or PLMM, are assessed $15,000 per month for a Trading Permit for an assignment in up to 250 option classes, or $22,000 per month for a Trading Permit for an assignment in over 250 option classes up to all option classes listed on the Exchange.[4] The Exchange notes that the

[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

current monthly Trading Permit fees are within the range of competing options exchanges.[5] The MM permit fee for up to 250 classes is higher than that of NYSE Arca Options.[6] The MM permit fee for all options classes on the exchange is lower than NYSE Amex Options, however it is higher than the fee charged by NYSE Arca Options. The Exchange established the current rates to more closely align with the rates charged by competing options exchanges. Now, the Exchange proposes to modify its Trading Permit fee for MMs to establish the ability for MMs to qualify for lower rates in order to encourage additional market participants to become Members of the Exchange and register as MIAX Market Makers.

The Exchange proposes to modify its Trading Permit fees that apply to MMs. Specifically, the Exchange proposes to adopt the following fees: (i) $7,000 for MM Assignments in up to 10 option classes or up to 20% of option classes by volume; (ii) $12,000 for MM Assignments in up to 40 option classes or up to 35% of option classes by volume; (iii) $17,000 for MM Assignments in up to 100 option classes or up to 50% of option classes by volume; and (iv) $22,000.00 for MM Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX. For the calculation of the monthly Trading Permit Fees that apply to MMs, the number of classes is defined as the greatest number of classes the MM was assigned to quote in on any given day within the calendar month and the class volume percentage is based on the total national average daily volume in classes listed on MIAX in the prior calendar quarter.[7] Newly listed option classes are excluded from the calculation of the monthly MM Trading Permit Fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange will assess MMs the monthly Trading Permit Fee based on the greatest number of classes listed on MIAX that the MM was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement. For example, if MM1 elects to quote the top 40 option classes which consist of 58% of the total national average daily volume in the prior quarter, the Exchange would assess $12,000 to MM1 for the month which is the lesser of 'up to 40 classes' and 'above 50% of classes by volume up to all classes listed on MIAX'. If MM2 elects to quote the bottom 1000 option classes which consist of 10% of the total national average daily volume in the prior quarter, the Exchange would assess $7,000 to MM2 for the month which is the lesser of 'above 100 classes' and 'up to 20% of classes by volume'.

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 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 purpose of the proposed fees is to incentivize market participants to register as Market Makers 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. The proposed fee levels and criteria are based upon a business determination of current MM assignments and trading volume. The Exchange believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage MMs to be assigned and quote in option classes with lower total national average daily volume while also equitably allocating the fees in a reasonable manner amongst MM assignments to account for quoting and trading activity.

The Exchange proposes to implement the Trading Permit fees beginning May 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[8] in general, and furthers the objectives of section 6(b)(4) of the Act[9] 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 fees are reasonable, equitable and not unfairly discriminatory. The proposed Trading Permit fees are reasonable in that they are within the range of comparable fees at other competing options exchanges.[10] As such, the proposal is reasonably designed to continue to compete with other options exchange by incentivizing market participants to register as Market Makers 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 fees are fair and equitable and not unreasonably discriminatory because they apply equally to all Market Makers regardless of type and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange designed the fee rates in order to provide objective criteria for MMs of different sizes and business models to be assessed a Trading Permit Fee that best matches their quoting activity on the Exchange. The Exchange notes that trading volume and quoting activity in the options market tends to be concentrated in the top ranked options classes; with the vast majority of options classes being thinly quoted and traded. The Exchange believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage MMs to be assigned and quote in option classes with lower total national average daily volume while also equitably allocating the fees in a reasonable manner amongst MM assignments to account for quoting and trading activity.

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 enabling MMs to qualify for lower Trading Permit fees rates on the Exchange in a manner

reflects the additional review and processing effort needed for Market Maker applications.

[5] *See e.g.,* NYSE Arca Options Fees and Charges, p.1 (assessing market makers $6,000 for up to 100 option issues, an additional $5,000 for up to 250 option issues, an additional $4,000 for up to 750 option issues, and an additional $3,000 for all option issues on the exchange); NYSE Amex Options Fee Schedule, p. 19 (assessing market makers $8,000 for up to 60 plus the bottom 45%, an additional $6,000 for up to 150 plus the bottom 45%, an additional $5,000 for up to 500 plus the bottom 45%, and additional $4,000 for up to 1,100 plus the bottom 45%, and an additional $3,000 for all issues traded on the exchange; plus an addition fee for premium products).

[6] *See supra* note 5.

[7] The Exchange will use the following formula to calculate the percentage of total national average daily volume that the MM assignment is for purposes of the MM trading permit fee for a given month.

MM assignment percentage of national average daily volume = [total volume during the prior calendar quarter in a class in which the MM was assigned]/[total national volume in classes listed on MIAX in the prior calendar quarter]

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *See supra* note 5.

that is designed to provide objective criteria for MMs of different sizes and business models to be assessed a Trading Permit Fee that best matches their quoting activity on the Exchange yet still be in the range of comparable fees on other exchanges. The Exchange believes that the proposal will increase competition amongst MMs of different sizes and business models by encouraging MMs to be assigned and quote in option classes with lower total national average daily volume. 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 modify the Exchange's fees in a manner that continues to encourage market participants to register as Market Makers 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.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–2015–31 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–MIAX–2015–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the 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–2015–31 and should be submitted on or before May 28, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Brent J. Fields,

Secretary.

[FR Doc. 2015–10952 Filed 5–6–15; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74857; File No. SR–MIAX–2015–32]

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

May 1, 2015.

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 April 28, 2015, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to establish monthly fees for Internal Distributors and External Distributors of MIAX Order Feed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''MOR'') data product. The proposed fees are similar to those of another options exchange.[3]

MOR provides real-time information to enable users to keep track of the simple order book for all symbols listed on MIAX.[4] MOR provides real-time data including the limit price, origin, and size of each order for the entire order book to its users. It is a compilation of data for orders residing on the Exchange's order book for options traded on the Exchange that the Exchange provides through a real-time data feed. The Exchange updates the information upon receipt of each order or change in status to any order resting on the book (*e.g.,* routing, trading, or cancelling of the order).

The Exchange proposes to establish monthly fees to Distributors of the MOR market data product that receive a feed of data either directly from MIAX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). The monthly Distributor Fee charged depends on whether the Distributor is an ''Internal Distributor'' [5] or an ''External Distributor''.[6] The Exchange notes that all Distributors are required to execute a MIAX Distributor Agreement. Specifically, the Exchange proposes to assess Internal Distributors of MOR $3,000 per month and External Distributors of MOR from $3,500 per month. Market Data Fees for MOR will be reduced for new Distributors for the first month during which they subscribe to MOR, based on the number of trading days that have been held during the month prior to the date on which they subscribe. Such new Distributors will be assessed a pro-rata percentage of the fees described above, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they begin to receive the MOR feed, divided by the total number of trading days in the affected calendar month. The proposed fees for the MOR data feed are in the range of similar fees found on another exchange.[7]

In addition, the Exchange notes that it is making non-substantive technical changes to the Fee Schedule to consolidate the market data fees in one section and to make corresponding changes to the outline numbering.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with section 6(b) of the Act [8] in general, and furthers the objectives of section 6(b)(4) of the Act [9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes the proposed fees are a reasonable allocation of its costs and expenses among its Members and other persons using its facilities since it is recovering 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. Access to the Exchange is provided on fair and non-discriminatory terms. The proposed fees for MOR are reasonable since they are in the range of similar fees charged by another exchange.[10] The Exchange believes the proposed fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst External Distributors and Internal Distributors for similar services. Moreover, the decision as to whether or not to subscribe to MOR is entirely optional to all parties. Potential subscribers are not required to purchase the MOR market data feed, and the Exchange is not required to make the MOR market data feeds available. Subscribers can discontinue their use at any time and for any reason, including due to their assessment of the reasonableness of fees charged. The allocation of fees among subscribers is fair and reasonable because, if the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of this data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data [sic] when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[11]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

In July, 2010, Congress adopted H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended section 19 of the Act. Among other things, section 916 of the Dodd-Frank Act amended paragraph (A) of section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees or other charges are immediately effective upon filing regardless of whether such dues, fees or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of section 19(b)(3) of the Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine

[3] *See* NASDAQ OMX PHLX LLC Pricing Schedule, section IX. The Exchange notes that while the proposed fees for Distributors is similar to the distributor fees for PHLX Orders; the Exchange does not at this time propose to establish the additional $1 per month for Non-Professional Subscribers and the $40 per month for Professional Subscribers that PHLX charges for PHLX Orders.

[4] *See* Securities Exchange Act Release No. 74759 (April 17, 2015), 80 FR 22749 (April 23, 2015) (SR–MIAX–2015–28).

[5] An Internal Distributor is an organization that subscribes to the Exchange for the use of MOR, and is permitted by agreement with the Exchange to provide MOR data to internal users (*i.e.,* users within their own organization).

[6] An External Distributor is an organization that subscribes to the Exchange for the use of MOR, and is permitted by agreement with the Exchange to provide MOR data to both internal users and to external users (*i.e.,* users outside of their own organization).

[7] *See* NASDAQ OMX PHLX LLC Pricing Schedule, Section IX.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *See supra* note 3.

[11] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

whether the proposed rule should be approved or disapproved.''

The Exchange believes that these amendments to section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although section 19(b) had formerly authorized immediate effectiveness for a ''due, fee or other charge imposed by the self-regulatory organization,'' the Commission adopted a policy and subsequently a rule stating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. The Exchange believes that the amendment to section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned, not-for-profit corporations into for-profit, investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, the Exchange believes that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces. The Exchange therefore believes that the fees for MOR are properly assessed on non-member Distributors.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' [12]

The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* Court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. The Exchange believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. 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 execution are a representative 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 platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little.

Without trade executions, exchange data products cannot exist. Data products are valuable to many end subscribers only insofar as they provide information that end subscribers expect will assist them or their customers in making trading decisions. 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 customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it.

Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to the broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' [13] However, the existence of fierce competition for order flow

[12] *NetCoalition,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323).

[13] *NetCoalition* at 24.

implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return 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 information (or provide information 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 information, 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. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of aftermarket alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including eleven existing options markets. Each SRO market competes to produce transaction reports via trade executions. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO is currently permitted to produce proprietary data products, and many in addition to MIAX currently do, including NASDAQ, CBOE, ISE, NYSE Amex, and NYSEArca. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end subscribers will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. The Exchange and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, BATS Trading and Direct Edge. Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

The Court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the Court's view, the Commission had not adequately demonstrated that the proprietary data at issue in the case is used to attract order flow. The Exchange believes, however, that evidence not then before the court clearly demonstrates that availability of data attracts order flow. Due to competition among platforms, the Exchange intends to improve its platform data offerings on a continuing basis, and to respond promptly to customers' data needs.

The intensity of competition for proprietary information is significant and the Exchange believes that this proposal itself clearly evidences such competition. The Exchange is offering MOR in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new Member Applicants and customers. MIAX competitors continue to create new market data products and innovative pricing in this space. The Exchange expects to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, the Exchange

expects firms to make decisions on how much and what types of data to consume on the basis of the total cost of interacting with MIAX or other exchanges. Of course, the explicit data fees are only one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this proprietary information is highly competitive and continually evolves as products develop and change.

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.[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–MIAX–2015–32 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–2015–32. 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–MIAX–2015–32, and should be submitted on or before May 28, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2015–10957 Filed 5–6–15; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74858; File No. SR–MSRB–2015–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of the Specifications for the Selection of Examination Questions and Content Outline for the Municipal Advisor Representative Qualification Examination

May 1, 2015.

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 April 22, 2015, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission the specifications for the selection of examination questions (''selection specifications'') and content outline for the Municipal Advisor Representative Qualification Examination (''Series 50 examination'') (the ''proposed rule change'').[3] The MSRB is not proposing in this filing any textual changes to its rules.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2015-Filings.aspx,* at the MSRB'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 MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The MSRB is also proposing the question bank for the Series 50, but based upon instructions from the Commission staff, the MSRB is submitting SR–MSRB–2015–04 for immediate effectiveness pursuant to Section 19(b)(3)(A)(i) of the Act and Rule 19b–4(f)(6) thereunder, and is not filing the question bank for Commission review. *See* letter to Diane G. Klinke, General Counsel, MSRB, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000, attached as Exhibit 3b. The question bank is available for Commission review. The selection specifications for the Series 50 examination, Exhibit 3c, have been omitted and filed separately with the Commission for confidential treatment pursuant to Rule 24b–2 of the Securities Exchange Act.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 15B of the Act requires the MSRB to establish professional standards for municipal advisors.[4] The Act further requires associated persons of municipal advisors to pass such examinations as the Board may establish to demonstrate that such individuals meet the standards as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.[5] A professional qualification examination is intended to determine whether an individual meets the MSRB's basic qualification standards for a particular registration category. The examination measures a candidate's knowledge of the business activities, as well as the regulatory requirements, including MSRB rules, SEC rules, rule interpretations and other federal law, applicable to a particular registration category.

On February 26, 2015, the Commission approved amendments to MSRB Rule G–3, which established the qualification examination requirements for municipal advisor representative and municipal advisor principal candidates.[6] Individuals who engage in municipal advisory activities must qualify as municipal advisor representatives and individuals who engage in the management, direction or supervision of the municipal advisory activities of municipal advisors and their associated persons must qualify as municipal advisor principals. To qualify as either a municipal advisor representative or municipal advisor principal, an individual must pass the Series 50 examination. The examination requirement in MSRB Rule G–3(d) is intended, among other things, to increase municipal advisor representative and municipal advisor principal candidates' awareness and knowledge that they are operating in a regulated environment designed to protect municipal entities, obligated persons and the integrity of the municipal market.

The MSRB developed the Series 50 examination content outline in accordance with *The Standards for Educational and Psychological Testing* (''APA Standard''),[7] including the engagement of a psychometrician and a committee of industry subject matter experts. The Series 50 examination content outline has been developed to provide reasonable assurance that municipal advisor representative candidates understand their professional responsibilities, including key regulatory requirements and duties and obligations. The examination will test applicants on their general knowledge of the municipal advisory industry and the associated municipal advisor regulatory framework.[8] To develop the examination to fulfill these purposes, the MSRB in July of 2014 completed a job analysis of municipal advisors based on a web-based survey that was sent to all MSRB-registered municipal advisors.[9] The MSRB received 565 responses to the survey from individuals who engage in a variety of municipal advisory activities for different-sized firms in different areas of the country. The survey results provided the MSRB with certain data on municipal advisors, such as the duties, tasks, and responsibilities performed by individuals who engage in various municipal advisory activities and the level of knowledge an individual should possess to be sufficiently qualified to perform municipal advisory activities. The job analysis, coupled with focus panels, provided the empirical basis for the representation of topic areas on the Series 50 examination.

The Series 50 examination will consist of 100 multiple-choice questions. Candidates are allowed 180 minutes to complete the examination.[10] Consistent with other financial regulatory qualification examinations, candidates may receive (at the option of their firm) an informational breakdown of their performance on each section of the examination and their pass/fail status at the completion of the testing session. As provided for in MSRB Rule G–3(g) and consistent with other MSRB examinations, candidates that fail to pass the Series 50 examination are permitted to take the examination again after a period of 30 days has elapsed from the date of the prior examination. Any person, however, who fails to pass the Series 50 examination three or more times in succession is prohibited from taking the Series 50 examination again until six months has elapsed from the date the candidate last failed the examination.

The Series 50 examination content outline has been developed to assist municipal advisor representative candidates in preparing for the Series 50 examination and will be available on the MSRB's Web site. The Series 50 examination content outline describes the following five topical sections comprising the examination: (1) Understanding SEC and MSRB Rules Regarding Municipal Advisors (12 questions); (2) Understanding Municipal Finance (35 questions); (3) Performing Issuer's Credit Analysis and Due Diligence (12 questions); (4) Structuring, Pricing and Executing Municipal Debt Products (31 questions); and (5) Understanding Requirements Related to the Issuance of Municipal Debt (10 questions).

The reference materials section of the Series 50 examination content outline is intended to provide candidates with a list of resources, which when used in conjunction with the Series 50 examination content outline, can assist candidates in preparing for the Series 50 examination. The reference materials were recommended by municipal advisors as having been helpful resources in carrying out the job functions of a municipal advisor. The reference materials are not intended to be all-inclusive, nor are the reference materials intended to specifically represent content that may be covered on the examination.

Prior to announcing the effective date of the Series 50 examination, the MSRB will conduct a pilot for the Series 50 examination. The Series 50 pilot examination will assist the MSRB in validating the bank of examination questions and establishing the passing score. The Series 50 pilot examination will consist of 120–125 questions. Candidates will have 240 minutes to complete the Series 50 pilot examination.[11] The Series 50 pilot examination will be available for a limited time this fall and open to all municipal advisor representative and municipal advisor principal candidates. Those candidates who take and pass the

[4] 15 U.S.C. 78*o*–4(b)(2)(L)(iii).

[5] *See* Section 15B(b)(2)(A)(iii) of the Act, 15 U.S.C. 78*o*–4(b)(2)(A)(iii).

[6] *See* Exchange Act Release No. 74384 (Feb. 26, 2015), 80 FR 11706 (Mar. 4, 2015), File No. SR–MSRB–2014–08.

[7] *See* American Educational Research Association, American Psychological Association, & National Council on Measurement in Education, *The Standards for Educational and Psychological Testing* (2d ed. 2014).

[8] *See* Series 50 examination content outline attached hereto as Exhibit 3a.

[9] A job analysis is an assessment of the essential skills and functions that are required to complete a particular job.

[10] Prior to beginning the examination, candidates will receive a tutorial on how to complete the computerized examination. Candidates will be given 30 minutes to complete the tutorial in addition to the 180 minutes allowed to complete the examination.

[11] Prior to beginning the pilot examination, candidates will receive a tutorial on how to complete the computerized examination. Candidates will be given 30 minutes to complete the tutorial in addition to the 240 minutes allowed to complete the examination.

Series 50 pilot examination will have the municipal advisor representative qualification and will not be required to take the permanent Series 50 examination.[12] The MSRB will notify candidates who take the Series 50 pilot examination of their results approximately three months after taking the examination. The MSRB will announce the dates and the registration process for the Series 50 pilot examination in a notice published on the MSRB's Web site no later than three months from the date of this filing and with at least thirty days advance notice.[13] The MSRB will announce an effective date for the permanent Series 50 examination in a notice published on the MSRB's Web site no later than one year from the date of this filing and with at least 60 days advance notice.[14]

The selection specifications for the Series 50 examination, which the MSRB has submitted under separate cover with a request for confidential treatment to the Commission's Secretary pursuant to Rule 24b-2 under the Act,[15] describe additional confidential information regarding the Series 50 examination.

2. Statutory Basis

Section 15B(b)(2)(A) of the Act authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications for associated persons of municipal advisors as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.[16] Section 15B(b)(2)(A)(i)-(iii) of the Act also provides that the Board may appropriately classify municipal advisors and persons associated with municipal advisors and require persons in any such class to pass tests prescribed by the Board.[17]

The MSRB believes that the Series 50 examination content outline for the Series 50 examination is consistent with the provisions of Section 15B(b)(2)(A) of the Act in that the Series 50 examination content outline is designed to ensure that individuals are sufficiently qualified to perform municipal advisory activities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act[18] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, Section 15B(b)(2)(L)(iv) of the Act provides that MSRB rules may ''not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.''[19]

In considering these standards, the MSRB was guided by the Board's Policy on the Use of Economic Analysis.

The MSRB does not believe that the Series 50 examination content outline will impose any burdens that are not necessary or appropriate in furtherance of the purposes of the Act.

Need for Rule

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') amended Section 15B of the Exchange Act to provide for the regulation by the SEC and the MSRB of municipal advisors and to grant the MSRB certain authority to protect municipal entities and obligated persons.[20] The Dodd-Frank Act's legislative history indicates Congress was concerned that ''[d]uring the [financial] crisis, a number of municipalities suffered losses from complex derivatives products that were marketed by unregulated financial intermediaries.''[21]

Baseline

The economic baseline for the Series 50 examination content outline includes the Dodd-Frank Act which established the federal regulatory framework for municipal advisors, required the MSRB to establish standards of training, experience, competence and other qualifications for municipal advisors and their associated persons, and required associated persons of municipal advisors to pass examinations to demonstrate that they meet the standards the Board finds necessary or appropriate in the public interest or for the protection of investors, and municipal entities or obligated persons.[22] The baseline also includes MSRB Rule G–3(d), which established the municipal advisor representative qualification examination requirement for municipal advisor representative candidates.[23]

Alternatives

The MSRB developed the Series 50 examination content outline in accordance with *The Standards for Educational and Psychological Testing* (''APA Standard''),[24] including the engagement of a psychometrician and a committee of industry subject matter experts, as is consistent with the development of other financial industry qualification examinations. This process resulted in the identification and consideration of a range of alternatives. Decisions about which alternatives to select for the final Series 50 examination content outline were made consistent with the APA Standard.

Economic Impact

Relative to the economic baseline, which includes the requirement that municipal advisors demonstrate by passing an examination that they meet standards deemed necessary or appropriate in the public interest or for the protection of investors, municipal entities and obligated persons, the MSRB believes that the economic impact of the Series 50 examination content outline is *de minimis* and no greater than what is necessary or appropriate in furtherance of the purposes of the Act.[25]

While any examination intended to identify those individuals who meet a particular standard of competence may represent a barrier to entry, the MSRB believes that the standard that successful completion of the examination will demonstrate is necessary to protect investors and

[12] An individual who fails to pass the Series 50 pilot examination will, consistent with MSRB Rule G–3(g), still be allowed three attempts to pass the permanent Series 50 examination before having to wait a period of 6 months to take the permanent Series 50 examination again.

[13] For the most up-to-date information on the Series 50 pilot examination visit the *Municipal Advisor Professional Qualifications page* on the MSRB's Web site.

[14] To provide for an orderly transition to the new examination requirement for municipal advisor representatives and municipal advisor principals, the MSRB will allow municipal advisor professionals one year from the announced effective date of the Series 50 examination to pass the examination. This one-year grace period is intended to provide municipal advisor representatives and municipal advisor principals with sufficient time to study for and take the examination without causing undue business disruption.

[15] 17 CFR 240.24b–2.

[16] 15 U.S.C. 78*o*–4(b)(2)(A).

[17] 15 U.S.C. 78*o*–4(b)(2)(A)(i)–(iii).

[18] 15 U.S.C. 78*o*–4(b)(2)(C).

[19] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

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

[21] S. Rep. No. 111–176, at 38 (2010).

[22] *See* Section 15B(b)(2)(A) of the Act, 15 U.S.C. 78*o*–4(b)(2)(A).

[23] *See supra* note 6.

[24] *See supra* note 7.

[25] As noted above, many of the costs and burdens, including impacts on competition, associated with the Series 50 examination content outline are accounted for in the baseline which is made up, in part, by the Dodd-Frank Act. In 2013, the SEC concluded that the municipal advisory services market was competitive and not highly concentrated under a similar baseline. *See* Registration of Municipal Advisors, Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67608 at n.1723 (Nov. 12, 2013).

municipal entities or obligated persons and will help ensure that those offering municipal advisory service do so on a level playing field. As such, the MSRB believes that the Series 50 examination content outline poses no burden on competition that is not necessary or appropriate in furtherance of the Act and may enhance the competiveness of the market.

Based on the well-established and nationally-accepted process used by the MSRB to develop the Series 50 examination content outline, the MSRB has no reason to believe that the Series 50 examination content outline will pose any greater burden on individuals associated with smaller firms than those associated with larger firms or that the burden could be materially reduced while still achieving the purposes of the Act. While it is possible that small municipal advisors may have access to fewer resources to prepare for this examination, the MSRB does not believe this will affect the competitiveness of the market.

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 on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) [26] of the Act and Rule 19b–4(f)(6) [27] thereunder, the MSRB has designated the proposed rule change as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative until 30 days after the date of filing.[28] However, Rule 19b–4(f)(6)(iii) [29] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[30] The MSRB has requested that the Commission designate the proposed rule change operative upon filing,[31] as specified in Rule 19b–4(f)(6)(iii),[32] which would make the proposed rule change operative on April 22, 2015. The MSRB has stated that an earlier operative date would provide municipal advisor professionals with an earlier opportunity to begin preparation for the qualification requirement.[33]

The Commission hereby grants the MSRB's request and believes that designating the proposed rule change operative upon filing is consistent with the protection of investors and the public interest.[34] According to the MSRB, the Series 50 examination content outline is designed to ensure that individuals are sufficiently qualified to perform municipal advisory activities.[35] The Commission believes that designating the proposed rule change operative upon filing is consistent with the protection of investors and the public interest because it will allow individuals to prepare for the Series 50 examination without delay. In addition, the proposed rule change is not proposing any textual changes to MSRB rules. Therefore, the Commission hereby designates the proposed rule change operative upon filing.

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–MSRB–2015–04 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2015–04. 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 MSRB. 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–MSRB–2015–04 and should be submitted on or before May 28, 2015.

For the Commission, pursuant to delegated authority.[36]

Brent J. Fields,

Secretary.

[FR Doc. 2015–10946 Filed 5–6–15; 8:45 am]

BILLING CODE 8011–01–P

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(6).

[28] *Id.*

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change, along with a brief description and text of such proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The MSRB satisfied this requirement on April 14, 2015.

[31] *See* SR–MSRB–2015–04.

[32] 17 CFR 240.19b–4(f)(6)(iii).

[33] *See supra* note 31.

[34] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[35] *See supra* note 31.

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

A.B. Watley Group, Inc., Cambridge Heart, Inc., iGenii Inc., and RKO Resources, Inc. (a/k/a Shamika 2 Gold, Inc.); Order of Suspension of Trading

May 5, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of A.B. Watley Group, Inc. (CIK No. 1035632), a void Delaware corporation with its principal place of business listed as New York, New York, with stock quoted on OTC Link (previously, ''Pink Sheets'') operated by OTC Markets Group, Inc. (''OTC Link'') under the ticker symbol ABWG, because it has not filed any periodic reports since the period ended March 31, 2005. On November 1, 2013, A.B. Watley Group received a delinquency letter sent by the Division of Corporation Finance requesting compliance with their periodic filing obligations.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cambridge Heart, Inc. (CIK No. 913443), a void Delaware corporation with its principal place of business listed as Foxborough, Massachusetts, with stock quoted on OTC Link under the ticker symbol CAMH, because it has not filed any periodic reports since the period ended September 30, 2012. On December 22, 2014, Cambridge Heart received a delinquency letter sent by the Division of Corporation Finance requesting compliance with their periodic filing obligations.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of iGenii Inc. (CIK No. 1441573), a delinquent Delaware corporation with its principal place of business listed as New York, New York, with stock quoted on OTC Link under the ticker symbol IGNI, because it has not filed any periodic reports since the period ended September 30, 2012. On May 23, 2014, iGenii received a delinquency letter sent by the Division of Corporation Finance requesting compliance with their periodic filing obligations.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of RKO Resources, Inc. (a/k/a Shamika 2 Gold, Inc.) (CIK No. 1330323), a defaulted Nevada corporation with its principal place of business listed as Montreal, Quebec, Canada, with stock quoted on OTC Link under the ticker symbol SHMX, because it has not filed any periodic reports since the period ended September 30, 2012. On November 25, 2013, RKO Resources received a delinquency letter sent by the Division of Corporation Finance requesting compliance with their periodic filing obligations.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 5, 2015, through 11:59 p.m. EDT on May 18, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–11116 Filed 5–5–15; 4:15 pm]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2015–0023]

Request for Information on Early Intervention Strategies for Serving Individuals With Disabilities

AGENCY: Social Security Administration.

ACTION: Request for information.

SUMMARY: The Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235), provided us with money under section 1110 of the Social Security Act to begin the design, development, and implementation of an early intervention demonstration to test innovative strategies aimed at helping people with disabilities remain in the workforce. The President's FY 2016 Budget requested additional funds to support a complete demonstration project. In order to inform the development of that demonstration, this request for information (RFI) seeks recommendations on targeted design features related to improving employment and earnings outcomes for people with disabilities, specifically individuals with mental impairments. The input we receive will inform and complement ongoing interagency deliberations about the best use of funds for an initial demonstration project relevant to future policy discussions for the Social Security Disability Insurance (DI) and Supplemental Security Income (SSI) programs.

DATES: Comments must be received by June 8, 2015.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2015–0023 so that we may associate your comments with the correct docket.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the Search function to find docket number SSA–2015–0023. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comment to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Susan Wilschke, Office of Retirement and Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 966–8906. For information on eligibility or filing for benefits, call our nation 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:

Purpose

The DI program provides benefits for disabled workers and their families. We paid more than $141 billion in DI benefits to almost 11 million people in 2014. The SSI program guarantees a

minimum level of income support to financially needy individuals who are aged, blind, or disabled. In 2014, we paid nearly $54 billion in Federal SSI benefits to more than 8 million people. Given the large number of individuals who rely on the DI and SSI programs to make ends meet and the interest in supporting employment efforts of those with disabilities, it is helpful for policymakers to have an evidentiary base from which to consider potential program improvements and innovations that can strengthen the ability of individuals with disabilities to work.

This request for information offers States, community-based and other non-profit organizations, philanthropic organizations, researchers, and other interested members of the public the opportunity to provide recommendations on effective approaches for improving employment and earnings outcomes for individuals with disabilities, specifically individuals with mental impairments. For the purposes of this RFI, ''early intervention'' means serving an individual with impairment before the individual is determined eligible for benefits in either the DI or SSI programs.

In light of research indicating that health problems often begin in advance of complete disability onset, and data showing that earnings often begin to decline well before benefits are awarded, we believe demonstrations on early intervention are merited and may lead to innovative approaches for assisting people with disabilities to succeed in the workforce. Our past demonstrations have identified certain interventions *after* the point of complete disability onset that can yield positive outcomes for beneficiaries, but earlier interventions, before an individual begins to receive DI or SSI benefits, may be more effective. While several demonstrations for existing DI and SSI beneficiaries have yielded positive results, such as increased earnings, they have not identified interventions that would return beneficiaries to substantial and sustained employment.

Public input responding to this notice will inform ongoing deliberations of a Federal interagency workgroup and a Federal Technical Advisory Panel—including representatives from SSA, the Department of Health and Human Services, the Department of Education, the Department of Labor, and the Office of Management and Budget—about the design and parameters of the demonstration funded by our FY 2015 Appropriation.[1] This demonstration project will help the agencies develop an evidentiary base for future potential DI and SSI program reforms. Responses to the RFI will also inform how SSA and its interagency partners could deploy additional resources for early interventions that were requested in the FY 2016 President's Budget.

Background

SSA and other Federal agencies have begun to outline the basic parameters of an early intervention demonstration project for individuals with mental impairments. This discussion provides background on those broad parameters and potential models under consideration, and the next section requests information on a series of program design issues.

Early interventions may be warranted in light of research indicating that health problems begin in advance of complete disability onset and data showing that earnings begin to decline well before DI benefits are awarded. Some evidence suggests that intervening before an individual fully detaches from the labor market may be more effective than providing services after disability benefit receipt. For example, the Centers for Medicare and Medicaid Services Demonstration to Maintain Independence and Employment (DMIE) found that health and employment supports for working adults with potentially disabling conditions lowered the likelihood of receiving payments from our disability programs. The National Institute of Mental Health's Recovery After an Initial Schizophrenia Episode (RAISE) project is testing whether intervening at the point of first diagnosis and using early and aggressive treatment will reduce the symptoms and prevent the gradual deterioration of functioning that is characteristic of chronic schizophrenia. However, a broader, more extensive research base would help policymakers design programs and policies that improve outcomes for individuals and reduce program costs.

A key challenge for early interventions is to identify individuals at risk of becoming long-term DI beneficiaries or SSI recipients who would also have the potential to benefit from the intervention methods. For an initial demonstration, we are considering targeting intervention services towards prime-working-age people with disabilities to keep them in the labor market. Specifically, we are interested in developing an intervention model for workers with mental impairments between the ages of 18 and 50 which would allow them to remain in the labor force. By providing medical and/or vocational services prior to benefit receipt in a demonstration, we will be able to test whether such services help individuals with these impairments remain and succeed in the workforce.

We are considering a design in which individuals will be identified as early as possible after a first episode of mental illness. Our initial focus for target populations is potentially on two groups: (1) Individuals receiving services from a State Vocational Rehabilitation (VR) agency who are not DI or SSI disability beneficiaries; and (2) individuals who have recently applied for SSI or DI disability benefits and whose claims were denied. Both of these groups include individuals who are on the margin between employment and receiving disability benefits. Prior research estimates that 40 percent of DI claimants denied at the appeals level become DI beneficiaries within 10 years.[2] One goal of the demonstration is to determine whether some of those individuals would be able to remain in the labor market if they are provided appropriate health care and employment supports. People who seek VR services may hold an interest in employment despite a documented impairment. We are considering focusing on applicants whose claims have been denied as well as VR participants because they are a population that can be easily identified, and the intervention, if successful, could be scaled up. The ideal target population has both a likelihood of receiving SSA disability benefits in the future and yet maintains a recent or strong enough connection to the labor market that they are likely to respond to the offer of employment services.

We are considering an approach that includes some of the features of the successfully implemented Mental Health Treatment Study (MHTS). The MHTS demonstration found that employment supports, along with medical support and coordinated care, were successful in improving health, lowering hospitalizations, and increasing employment for DI beneficiaries with schizophrenia and affective disorders. The MHTS followed the evidence-based Individual

[1] FY 2016 President's Budget, Appendix Volume—Supplemental Security Income Program, p. 1206 (see *http://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/ssa.pdf#Page=2.*

[2] French, Eric, and Jae Song. 2014. ''The Effect of Disability Insurance Receipt on Labor Supply.'' American Economic Journal: Economic Policy, 6(2): 291–337. *https://www.aeaweb.org/articles.php?doi=10.1257/pol.6.2.291.*

Placement and Support (IPS) model, a supported employment model designed for rapid placement of individuals into competitive employment. In the new early intervention demonstration being developed, we are considering providing participants with a team of mental health providers and employment specialists who would coordinate and provide services that would optimize that individual's ability to obtain and retain employment.

The demonstration could provide participants with an intensive set of behavioral health and related services beyond what is available through the individual's existing health plan and long-term employment services, to help them remain in or return to the labor market rather than seek SSA disability benefits. For example, IPS services are delivered by supported employment teams that operate within community mental health agencies and other medical providers, with a key differentiator from other interventions being the linkage between employment and medical services.

The MHTS is one of several studies using the IPS model to show increases in employment rates for persons with severe mental impairments.[3] The health-related treatment could include behavioral health and related services, medication, and disease management services.[4] The employment-related services could include job training, job placement, and pre- and post-placement support services. We would likely require service providers to have strong employer contacts and demonstrate the ability to place participants in sustainable, paid, competitive employment. Support services could include: Help with incidentals necessary to secure and maintain employment (for example, work clothes or transportation) and with navigating other available supports, such as systematic medication management and nurse-care coordinator services; and low intensity, long-term services that would focus on employment retention once a job is secured (for example, providing an employment retention coach).

We intend to issue a contract solicitation for demonstration implementation later in FY 2015 with an award in early calendar year 2016. SSA and collaborating agencies are considering a multi-site demonstration, an approach on which we solicit feedback in this RFI. A multi-site demonstration would likely include a 1-year design refinement phase, during which one or two sites would begin enrollment to inform implementation of any additional sites during calendar year 2016. The demonstration would then transition to a five-year implementation phase. Over that period, we would evaluate impacts on outcomes such as employment, earnings, health, and DI and SSI applications and benefit receipt.

Request for Information

Through this RFI, we are soliciting feedback from a broad range of stakeholders on the initial design of an early intervention demonstration focused on improving outcomes related to employment and earnings for individuals with mental impairments, including services that could optimize an individual's ability to obtain and retain employment. Responses to this RFI will inform the work of SSA and its interagency partners in designing a new demonstration project and potentially future projects.

This RFI is for planning purposes only and should not be construed as a solicitation or as an obligation on our part or on the part of participating Federal agencies.

We ask respondents to address the following questions, where possible, in the context of the discussion in this document. You do not need to address every question and should focus on those where you have relevant expertise or perspectives. To the extent possible, please clearly indicate which question(s) you address in your response.

Key Questions

1. What early intervention programs or practices have shown promise at the State or local level to assist workers with mental health impairments to remain in the workforce?

2. In the context of this demonstration project, what programs and practices might be especially applicable to individuals who might qualify for DI or SSI benefits in the absence of interventions?

3. What are the outcomes of interest that an evaluation should capture?

Detailed Questions

I. Population and Sites

1. Should we focus on specific types of mental impairments in establishing the parameters for this demonstration? If so, which ones, and why those?

2. Would individuals with non-mental impairments benefit from similar services? If so, would the intervention look different and how?

3. We are considering focusing on individuals who are ages 18 to 50 for services in this demonstration. How appropriate is this age range?

4. We are considering focusing on individuals who are receiving services from a State VR agency but who are not SSA disability beneficiaries. Is this an appropriate population from which to draw a sample? If so, how can we identify those VR clients who are likely to apply for DI or SSI benefits in the future without inducing an application?

5. We are considering focusing on individuals who have applied for DI or SSI benefits and whose claims were denied. Is this an appropriate population from which to draw a sample?

6. Are there other populations on which we should consider focusing? How can we identify these populations?

7. What types of sites would be the most beneficial for us to consider including?

8. Are there sites we could look to as exemplars based on current practices? What evidence suggests these sites effectively address early intervention services for workers with mental impairments?

9. At how many sites should we consider implementing this demonstration?

10. How might we best consider structuring the demonstration to investigate the potential for screening workers for both their likelihood of receiving disability benefits and their likelihood of responding to employment supports?

II. Mental Health Services

11. What types of mental health services should we consider as an early intervention for workers with mental impairments?

12. What variations in timing should we consider for early interventions?

13. To what extent should certain mental health services be prioritized, whether behavioral health and related services, medication, or disease management services?

14. What are the best ways to involve workers with disabilities in planning and implementation in order to ensure that demonstration services will be effective in meeting their needs?

15. What mental health service program designs and interventions demonstrate promise for improving long-term employment outcomes for workers with disabilities? What evidence supports these interventions?

[3] See MHTS Final Report at *http://socialsecurity.gov/disabilityresearch/documents/MHTS_Final_Report_508.pdf.*

[4] See Nuechterlein, et al. for example of an adaptation of the IPS model at *http://www.ncbi.nlm.nih.gov/pubmed/18407884.* The Demonstration to Maintain Independence and Employment provided enhanced medical care and employment services. See *http://www.sciencedirect.com/science/article/pii/S1936657413001179.*

III. Employment and Job-Related Services

16. What specific employment-related interventions related to skill development, job training, job placement, or pre- and post-placement services should we consider?

17. What employment program designs and interventions demonstrate promise for improving long-term employment outcomes for workers with disabilities? What evidence supports these interventions?

Guidance for Submitting Documents

We ask that each respondent include the name and address of his or her institution or affiliation, and the name, title, mailing and email addresses, and telephone number of a contact person for his or her institution or affiliation, if any.

Rights to Materials Submitted

By submitting material in response to this RFI, you agree to grant us a worldwide, royalty-free, perpetual, irrevocable, nonexclusive license to use the material, and to post it publicly. Further, you agree that you own, have a valid license, or are otherwise authorized to provide the material to us. You should not provide any material you consider confidential or proprietary in response to this RFI. We will not provide any compensation for material submitted in response to this RFI.

Dated: April 29, 2015.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

[FR Doc. 2015–10993 Filed 5–6–15; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2015–26]

Petition for Exemption; Summary of Petition Received; Aviation Fabricators, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 27, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–0782 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Stegeman (816) 329–4140, Small Airplane Directorate, Federal Aviation Administration, 901 Locust Street, Kansas City, MO 64106.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 1, 2015.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–0728

Petitioner: Aviation Fabricators, Inc (AVFAB)

Section of 14 CFR Affected: §§ 23.561(a), (b), and (c)

Description of Relief Sought: The petitioner request relief to allow AVFAB to install P/N 62–0428 stretcher assembly for a horizontal medical passenger without dynamic seat testing on Pilatus Models PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes.

[FR Doc. 2015–10986 Filed 5–6–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2015–25]

Petition for Exemption; Summary of Petition Received; Airlines for America

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 27, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–0971 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can

be reviewed at *http://www.dot.gov/privacy*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4024, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 4, 2015.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–0971.

Petitioner: Airlines for America.

Section(s) of 14 CFR Affected: § 91.227(c).

Description of Relief Sought: Airlines for America seeks limited relief, on behalf of its members, from the Automatic Dependent Surveillance-Broadcast (ADS–B) Out Navigational Accuracy Category for Position (NACp) and Navigational Integrity Category (NIC) performance requirements during periods of Global Positioning System constellation disruption/degradation rendering otherwise compliant ADS–B Out systems non-compliant with the regulation.

[FR Doc. 2015–10959 Filed 5–6–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Second Meeting: RTCA Subcommittee 233 (SC 233)

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

ACTION: Second meeting notice of RTCA Subcommittee 233.

SUMMARY: The FAA is issuing this notice to advise the public of the second meeting of the RTCA Subcommittee 233.

DATES: The meeting will be held May 19th from 8:15 a.m.–5:00 p.m.; May 20th from 8:00 a.m.–5:30 p.m.; and May 21st from 8:00 a.m.–2:00 p.m.

ADDRESSES: The meetings will be held at Gulfstream Aerospace, 500 Gulfstream Road, Building Z, Savannah, GA 31408, Tel: (202) 330–0662.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Jennifer Iverson, Program Director, RTCA, Inc., *jiversen@rtca.org,* 202–697–0586.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the RTCA Subcommittee 233. The agenda will include the following:

Tuesday, May 19, 2015

1. Introduction, Upcoming PMC Dates, Minutes from Last Meeting
2. Review TOR
3. Ed Kolano—Seattle ACO, Flight Test Pilot Evaluations
4. Rotorcraft Directorate Test Pilot Evaluations
5. Bruce Mahone—SAE Related Documentation
6. Alan Jacobsen—SAE ARP 5056
7. Outline Discussion
8. Subcommittee Formation
9. Scope Discussion
10. Subcommittee Initial Breakout Session
11. Planning for Next Meeting

Wednesday, May 20, 2015

1. Subcommittee Breakout Sessions
2. Subcommittee Breakout Sessions
3. Subcommittee Outbrief
4. Factory Tour

Thursday, May 21, 2015

1. Leadership Team Wrap-up/Discussion on Outline Content
2. Subcommittee Assignments
3. Meeting Recap, Action Items, Key Dates

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 29, 2015.

Latasha Robinson,

Management & Program Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2015–11042 Filed 5–6–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Fatigue Tolerance Evaluation of Metallic Structures

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 22, 2014. To obtain type certification of a rotorcraft, an applicant must show that the rotorcraft complies with specific certification requirements. To show compliance, the applicant must submit substantiating data.

DATES: Written comments should be submitted by June 8, 2015.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson at (202) 267–1416, or by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0752.

Title: Fatigue Tolerance Evaluation of Metallic Structures.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Extension without change of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 22, 2014 (79 FR 76438). To obtain type certification of a rotorcraft, 14 CFR part 29 requires an applicant to submit substantiating data to show that the rotorcraft complies with specific certification requirements. FAA engineers or designated engineer representatives from industry will review the required data submittals to determine if the rotorcraft complies with the applicable minimum safety requirements for fatigue critical rotorcraft metallic structures and that the rotorcraft has no unsafe features in the metallic structures.

Respondents: 17 total applicants for type certification of rotorcraft over a 27 year period.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 320 hours.

Estimated Total Annual Burden: 269 hours.

Issued in Washington, DC, on May 4, 2015.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2015–11044 Filed 5–6–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Financial Responsibility for Licensed Launch Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 22, 2014. Information is used to determine if licensees have complied with financial responsibility requirements (including maximum probable loss determination) as set forth in FAA regulations.

DATES: Written comments should be submitted by June 8, 2015.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson at (202) 267–1416, or by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0601.

Title: Financial Responsibility for Licensed Launch Activities.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Extension without change of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 22, 2014 (79 FR 76436). This collection is applicable upon concurrence of requests for conducting commercial launch operations as prescribed in 14 CFR parts 401, et al, Commercial Space Transportation Licensing Regulation. A commercial space launch services provider must complete the Launch Operators License, Launch-Specific License or Experimental Permit in order to gain authorization for conducting commercial launch operations.

Respondents: 6 commercial space launch services providers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 100 hours.

Estimated Total Annual Burden: 600 hours.

Issued in Washington, DC, on May 4, 2015.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2015–11043 Filed 5–6–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighth Meeting: RTCA Subcommittee 228 (SC 228)

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

ACTION: Eighth Meeting Notice of RTCA Subcommittee 228.

SUMMARY: The FAA is issuing this notice to advise the public of the eighth meeting of the RTCA Subcommittee 228.

DATES: The meeting will be held May 22nd from 9:00 a.m.–1:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036, Tel: (202) 330–0654.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Harold Moses, Program Director, RTCA, Inc., *hmoses@rtca.org,* 202–330–0654.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the RTCA Subcommittee 228. The agenda will include the following: Friday, May 22, 2015.

1. Welcome/Introductions/Administrative Remarks/SC–228 Participation Guidelines
   a. Reading of the Public Announcement by the DFO
   b. Reading of the RTCA Proprietary References Policy
2. Agenda Overview
3. Review/Approval of Minutes from Plenary #7 (RTCA Paper No. 256–14/SC228–019) held Friday, November 21st, 2014 at RTCA
4. Review of RTCA SC–228 Steering Committee Activity
5. Report from EUROCAE WG–73 on their progress

6. Report from WG–1 for Detect and Avoid progress on the DAA MOPS
7. Report from WG–2 for Command and Control progress on the CNPC MOPS
8. Action Item Review
9. Other Business
10. Date, Place and Time of Next Meeting(s)
a. Proposed—Plenary #9—Fall 2015 @ NASA Ames
b. Proposed—Plenary #10—
11. Adjourn Plenary

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 4, 2015.

Latasha Robinson,

Management & Program Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2015–11041 Filed 5–6–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–8398; FMCSA–2002–12294; FMCSA–2004–17984; FMCSA–2005–20027;FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2007–27333; FMCSA–2007–27897; FMCSA–2009–0054; FMCSA–2011–0010; FMCSA–2011–0057]

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 17 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 May 31, 2015. Comments must be received on or before June 8, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2000–8398; FMCSA–2002–12294; FMCSA–2004–17984; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2007–27333; FMCSA–2007–27897; FMCSA–2009–0054; FMCSA–2011–0010; FMCSA–2011–0057], 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: Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, 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 17 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 17 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Robert A. Casson (KY)
Jeffrey W. Cotner (OR)
Gerald S. Dennis (IA)
John K. Fank (IL)
Bobby G. Fletcher (TX)
Robert E. Hendrick (IL)
Gene A. Lesher, Jr. (WV)
Anthony R. Miles (NV)
Eric E. Myers (MD)
Kenneth L. Nau (MD)
Elvis E. Rogers, Jr. (TX)
Manuel H. Sanchez (TX)
George D. Schell (IL)
Robert D. Smith (OH)
David M. Stout (OR)
Kenneth E. Suter, Jr. (OH)
Richard A. Westfall (OH)

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 17 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 78256; 66 FR 16311; 67 FR 46016; 67 FR 57267; 68 FR 13360; 69 FR 33997; 69 FR 61292; 69 FR 62741; 70 FR 2701; 70 FR 12265; 70 FR 16887; 70 FR 17504; 70 FR 30997; 71 FR 32183; 71 FR 41310; 71 FR 62147; 72 FR 12665; 72 FR 12666; 72 FR 25831; 72 FR 27624; 72 FR 39879; 72 FR 52419; 73 FR 61925; 74 FR 9329; 74 FR 11988; 74 FR 15586; 74 FR 19270; 74 FR 21427; 75 FR 66423; 76 FR 9856; 76 FR 17483; 76 FR 18824; 76 FR 20076; 76 FR 25762; 76 FR 29024; 78 FR 14410; 78 FR 16762; 78 FR 24300; 79 FR 24298). Each of these 17 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–2000–8398; FMCSA–2002–12294; FMCSA–2004–17984; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2007–27333; FMCSA–2007–27897; FMCSA–2009–0054; FMCSA–2011–0010; FMCSA–2011–0057), 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–2000–8398; FMCSA–2002–12294; FMCSA–2004–17984; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2007–27333; FMCSA–2007–27897; FMCSA–2009–0054; FMCSA–2011–0010; FMCSA–2011–0057'' 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–2000–8398; FMCSA–2002–12294; FMCSA–2004–17984; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2007–27333; FMCSA–2007–27897; FMCSA–2009–0054; FMCSA–2011–0010; FMCSA–2011–0057'' 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: April 30, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–10965 Filed 5–6–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2014–0132]

Deepwater Port License Application Process for Offshore Export Facilities

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final policy.

SUMMARY: This notice serves to inform interested parties and the public of the Maritime Administration's (MARAD) final policy to accept, evaluate and process license applications for the construction and operation of offshore deepwater port facilities for the export of oil and natural gas from the United States to foreign markets abroad and to use the existing Deepwater Port regulations for such purposes. On October 16, 2014, MARAD published a notice in the **Federal Register** seeking public comment on a draft policy under which such export applications would be accepted and processed. In response, the agency received 337 comments to which it provides its responses below.

DATES: This policy is effective May 7, 2015.

ADDRESSES: The complete file for this policy is available for inspection with the Docket Clerk, Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. You may also view the comments submitted to the docket via the Federal eRulemaking Portal at *http://www.regulations.gov* by following search instructions using DOT Docket Number MARAD–2014–0132.

FOR FURTHER INFORMATION CONTACT: You may contact Yvette M. Fields, Director, Office of Deepwater Ports and Offshore Activities, Maritime Administration, at (202) 366–0926. You may send mail to

Ms. Fields at Maritime Administration, 1200 New Jersey Avenue SE., MAR 530, W21–309, Washington, DC 20590–0001. You may send electronic mail to *Yvette.Fields@dot.gov.* If you have questions on viewing the Docket, call Docket Operations, telephone: (202) 366–9826.

SUPPLEMENTARY INFORMATION: Pursuant to this notice, MARAD announces its final policy to accept and process applications for licenses for the ownership, construction and operation of deepwater port oil and natural gas export facilities. MARAD previously published a Notice of Proposed Policy (79 FR 62242, Oct. 16, 2014).

Comments on the Proposed Policy

In response to the **Federal Register** notice seeking public comment on its proposed policy for deepwater ports license application process for offshore export facilities, MARAD received a total of 337 comment submissions from the following entities: 328 individual comments from private citizens expressing support for the proposed application process; a letter of support from Senator Lisa Murkowski of Alaska; a letter of support from Delfin LNG, LLC, a private energy company; a letter from the New York Department of State (NYDOS) Office of Planning and Development, Deputy Secretary of State generally supportive of the proposed policy, but requesting additional considerations; a letter containing five comments from Clean Ocean Action (COA), an environmental interest group; one comment from a private citizen, who stated that MARAD should link the approval of deepwater port export projects to the use of U.S. flag vessels and U.S. crews; and four comments erroneously submitted to the docket by private individuals expressing opposition to a specific deepwater port application, which is not the subject of this notice or the proposed application process. As the bulk of the comments were in favor of the proposed policy without qualification, the agency has elected to respond below to specific comments provided by NYDOS, COA and the private citizen that expressed support of the use of U.S. flag vessels and U.S. crews in conjunction with deepwater port exports.

In its letter, NYDOS provided four substantive comments on the proposed policy. NYDOS' first comment requested that MARAD include the approval from the Governor(s) of adjacent coastal State(s) as a fourth licensing requirement for the conversion of licensed import facilities to export facilities. Receiving approval or presumptive approval of the Governor of the adjacent coastal State(s) is a mandatory requirement of the Deepwater Port Act, as amended, (DWPA) (33 U.S.C. 1503(c)(8)), and as such will continue to be a condition for issuance of a deepwater port export facility license.

NYDOS' second comment requested that MARAD's proposed policy language require compliance with the nine factors specified in 33 U.S.C. 1503(c), not simply ''consideration'' of those factors as currently stated in the policy. MARAD has clarified the final policy to make it clear that an applicant must meet all nine conditions set forth in 33 U.S.C. 1503(c) before the Maritime Administrator may issue a license for an export facility. The Maritime Administrator's Deepwater Port Licensing record of decision (ROD) will address whether the (import or export) deepwater port license application satisfies each of the nine criteria and the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, and other applicable requirements. The ROD will serve as the decision document (and, if appropriate, may contain a Finding of No Significant Impact) for purposes of complying with NEPA.

NYDOS' third comment requested that, at a minimum, NEPA analysis for an export facility should address: The offshore port; the processing and liquefaction/regasification facilities; new pipelines; and other infrastructure necessary to support the production and conveyance of oil and/or natural gas to and from the export facility. The NEPA process requires a thorough analysis of the direct, indirect and cumulative environmental impacts of the proposed action. This analysis includes all aspects of the siting, construction, operation and decommissioning of the deepwater port. The commenter's concern regarding the components and operational aspects of the deepwater port are currently and will continue to be addressed in the statutorily-required NEPA analysis, which is performed as part of all deepwater port license applications. The specific components of a deepwater port terminal, including those the commenter listed, are and will continue to be included in the preparation of the NEPA document. Finally, NYDOS requested that to ensure the NEPA review process adequately identifies and analyzes all potential impacts, MARAD's final policy clearly describe the relevant shore-based and offshore infrastructure that will be considered within the scope of an export facility. The U.S. Coast Guard (Coast Guard) and MARAD's environmental review of the proposed action includes all direct, indirect and cumulative impacts. This review must cover all offshore and onshore components and support activities associated with the deepwater port. However, it is important to note that every deepwater port application is considered on a case-by-case basis. While the DWPA provides a comprehensive definition of what constitutes a deepwater port, it would be inappropriate to try and set forth a specific list of shore-based and offshore components that should be considered as part of an application and made part of the NEPA analysis.

COA provided five comments on the proposed policy. COA's first comment stated that it is critical that MARAD's proposed policy have broad application and require a full review process that, among other requirements, engages the public in a meaningful way. In compliance with the DWPA, NEPA and other applicable laws and regulations, MARAD will ensure that a full and comprehensive public engagement and application review process is applied to the processing of all deepwater port license applications for both imports and exports.

COA's second comment stated that it agrees with MARAD's proposal to encompass both established and proposed facilities in any export licensing policy it might adopt. The comment goes on to state that COA finds the proposed policy is sufficiently broad in this regard.

In addition, COA discussed the scope of review contained in MARAD's proposed policy and expressed support for the concept of treating all requests for export authorization as new license applications and indicated support for the scope of review to occur under the proposed policy. MARAD will treat any proposal for deepwater port exports as a new license application, and MARAD will apply a full and comprehensive application review and public engagement process to the processing of export applications.

COA's fourth comment requested that in instances where MARAD prepares an Environmental Assessment and intends to issue a Finding of No Significant Impact, it should provide a public review and comment period of not less than 90 days. According to COA, such a requirement would help maintain the integrity of the export application review process, ensure public involvement therein, and further enhance MARAD's environmental review.

As part of the existing application review process, MARAD ensures that an

adequate and comprehensive environmental review is applied to the evaluation of all deepwater port license applications. MARAD will continue its comprehensive environmental review process and provide for the public review and comment periods required by current regulations for all applications.

The final comment provided by COA relates to the environmental review of indirect and cumulative impacts. COA stated that there are a number of indirect and cumulative impacts that MARAD should consider with respect to any export license application. They include the impacts of a facility (operating with the functionality the proponent seeks) upon (1) the natural aquatic environment, including from increased vessel traffic and shipping lane congestion, (2) air quality, both on and offshore, (3) the environment onshore and proximate to the distribution infrastructure, (4) the environment in and around the extraction areas, and (5) the upstream (*e.g.,* increased shale production and fracking activities), downstream (*e.g.,* carbon emissions), and climate change impacts. Further, COA states that MARAD should consider the proposed activity's impacts in conjunction with impacts from other reasonably foreseeable projects, such as wind farms and other pipelines within the designated application area. As noted above, the Coast Guard and MARAD's environmental review of the proposed action includes all direct, indirect and cumulative impacts. This review must cover all offshore and onshore components and support activities associated with the deepwater port. It is important to note, however, that every deepwater port application is considered on a case-by-case basis. While the DWPA provides a comprehensive definition of what constitutes a deepwater port, it would be inappropriate to try and set forth a specific list of shore-based and offshore components that may be considered as part of an application and made part of the NEPA analysis.

The final commenter, a private citizen, supported the proposed policy and requested that MARAD follow the precedent established by former MARAD Administrator Sean Connaughton and link application approval to the use of U.S. vessels and U.S. crews to export liquefied natural gas (LNG). Under this policy, MARAD will continue its efforts to support the use of U.S. flag vessels and U.S. crews in the operation of all deepwater port licensed facilities.

Final Policy

On December 20, 2012, the Coast Guard and Maritime Transportation Act of 2012 (Pub. L. 112–213, Sec. 312 (Dec. 20, 2012)) (CG&MT Act) amended Section 3(9)(A) (33 U.S.C. 1502(9)(A)) of the Deepwater Port Act (DWPA) and brought offshore export facilities within the DWPA's definition of a deepwater port. Previously, the definition of a deepwater port was limited to facilities transporting oil or natural gas to any State. The Secretary of Transportation must license the ownership, construction and operation of a deepwater port, now including export facilities, pursuant to 33 U.S.C. 1503(a) and (b). This amendment will be implemented in accordance with existing statutory and regulatory requirements applicable to the DWPA. The CG&MT Act provided no other amendments to the DWPA.

Pursuant to 33 U.S.C. 1501–1524,[1] the Maritime Administration (MARAD) and U.S. Coast Guard (Coast Guard) jointly process deepwater port license applications under delegations from the Secretary of Transportation (49 CFR 1.93(h)) and the Secretary of Homeland Security (Department of Homeland Security Delegation 0170.1(75)), respectively. In general, the Coast Guard and MARAD are co-lead agencies for compliance with NEPA, 42 U.S.C. 4321 through 4347. The Coast Guard also is responsible for matters related to navigation safety, engineering and safety standards, and facility operations and inspections. MARAD is responsible for determining citizenship and financial capability of the potential licensees, preparing the Record of Decision (ROD), and issuing or denying the license. The Coast Guard and MARAD share various other responsibilities under the DWPA, including the duty to consult with other Federal or State agencies. Such agencies include the U.S. Department of Energy (DOE), which is responsible for authorizing the transaction of importing or exporting liquefied natural gas (LNG) to or from the United States; the Federal Energy Regulatory Commission (FERC), responsible for authorizing onshore LNG import or export facilities, including the construction and operation of onshore natural gas pipelines that interconnect with deepwater ports; and the Pipeline and Hazardous Materials Safety Administration (PHMSA), which is responsible for ensuring the safe construction, operation and maintenance of natural gas pipelines located on Federal lands, including offshore deepwater port pipelines.

Additionally, the Coast Guard has previously developed comprehensive regulatory requirements for deepwater port license applications. Regulations detailing the requirements of the deepwater port license application process; design, construction, and equipment; and port operations can be found in 33 CFR parts 148, 149 and 150. Additionally, it is noted that on April 9, 2015, the Coast Guard published in the **Federal Register** a Notice of Proposed Rulemaking (80 FR 19118) updating 33 CFR parts 148, 149 and 150. These regulations pertain to the application review process, planning, environmental review, design, construction and operation of deepwater port facilities without specific regard to whether the facility imports or exports oil and/or natural gas products. With the addition of oil and natural gas exportation under the amendment to the DWPA, MARAD does not foresee any reason to alter the deepwater port licensing application process.

Accordingly, MARAD, with the concurrence of the Coast Guard, intends to use the existing Deepwater Port regulations for the review, evaluation and processing of any deepwater port license application involving the export of oil or natural gas from domestic sources within the United States as provided for in 33 CFR parts 148, 149 and 150.

A deepwater port license issued by MARAD does, not, by itself, convey an authorization to export crude oil or natural gas. Pursuant to 15 CFR 754.2, a license granted by the U.S. Department of Commerce (DOC) would generally be required for exports of crude oil. Exports of natural gas, including LNG, will generally require authorization from DOE pursuant to Section 3 of the Natural Gas Act of 1938. Exports of refined petroleum products do not generally require an export license. MARAD licenses the deepwater port facility, while DOC and DOE approve the transactions that utilize the facility.

Any deepwater port applicant who proposes to export oil or natural gas from domestic sources within the United States must submit an export-specific comprehensive license application conforming to all established and applicable deepwater port licensing requirements and regulations. Note that 33 CFR 148.5 defines ''oil'' as ''petroleum, crude oil and any substance refined from petroleum or crude oil.'' Thus, this

[1] When the Coast Guard moved from the Department of Transportation to the Department of Homeland Security, its responsibilities for deepwater ports transferred with it. See 6 U.S.C. 468(b).

requirement would also cover a deepwater port intended for the export of refined products.

The considerable technical, operational and environmental differences between import and export operations for oil or natural gas projects are such that any licensed deepwater port facility operator or any proponent of a deepwater port that has an application in process who proposes to convert from import to export operations must submit a new license application (including application fee) and conform to all licensing requirements and regulations in effect at such time of application. For licensed deepwater ports, an application to convert from import operations to export operations requires, at a minimum: (1) Approval from DOE or other approval authority to export oil or natural gas to free trade and/or non-free trade agreement countries; (2) a new or supplemental environmental impact statement or environmental assessment pursuant to NEPA that assesses the environmental impacts of the proposed change in operations; and (3) a revised operations manual that fully describes the proposed change in port operations. Only after all required application processes are completed, and MARAD issues a ROD or Finding Of No Significant Impact (FONSI) that explicitly addresses the nine mandatory criteria specified in the DWPA (33 U.S.C. 1503(c)), may the Maritime Administrator approve, approve with conditions, or disapprove an application to export oil or natural gas through a deepwater port.

For deepwater ports that already have a license to import oil or natural gas, if the Maritime Administrator approves an application to convert to export operations, the licensee must surrender the existing license, and the Maritime Administrator will issue a new license, as outlined above, with conditions appropriate to all intended activities, including, if applicable, authority to engage in bidirectional oil or natural gas import and export operations. For applications to site, construct and operate a new deepwater port, the Maritime Administrator will issue a new license with conditions appropriate to the applied-for activity.

Policy Analysis and Notices

MARAD is publishing this policy in the **Federal Register** to indicate how it plans to exercise the discretionary authority provided by the DWPA, as amended by the CG&MT Act. This policy establishes an administrative process for the review of deepwater port applications that propose to export oil or natural gas. It is consistent with the existing process previously established for the review of import applications. This policy acknowledges that these existing statutory and regulatory procedures are sufficient and appropriate for the processing of export applications.

Authority: The Coast Guard and Maritime Transportation Act of 2012; The Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501–1524; 49 CFR 1.93.

Dated: May 1, 2015.

By Order of the Maritime Administrator.

Thomas M. Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2015–10619 Filed 5–6–15; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2014–0051]

Pipeline Safety: Liquefied Natural Gas Facility User Fee Rate Increase

ACTION: Notice of agency action.

AGENCY: Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

SUMMARY: On July 3, 2014, (79 FR 38124) the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice in this docket to advise all liquefied natural gas facility (LNG) operators subject to PHMSA user fee billing of a change in the LNG user fee rates to align these rates with the actual allocation of PHMSA resources to LNG program costs. PHMSA is publishing this notice to explain changes PHMSA has made to the rate plan described in the July notice in response to the comments received and to communicate PHMSA's final LNG user fee plan.

FOR FURTHER INFORMATION CONTACT: Blaine Keener by telephone at 202–366–0970, by email at *blaine.keener@dot.gov,* or by mail at U.S. Department of Transportation, PHMSA, PHP–30, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Background

The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986 (Pub. L. 99–272, Sec. 7005) codified at Section 60301 of Title 49, United States Code, authorizes the assessment and collection of user fees to fund the pipeline safety activities conducted under Chapter 601 of Title 49. PHMSA assesses each operator of interstate and intrastate gas transmission pipelines (as defined in 49 CFR part 192) and hazardous liquid pipelines carrying crude oil, refined petroleum products, highly volatile liquids, biofuel, and carbon dioxide (as defined in 49 CFR part 195) a share of the total Federal pipeline safety program costs in proportion to the number of miles of pipeline for each operator. In accordance with COBRA, PHMSA also assesses user fees on LNG facilities (as defined in 49 CFR part 193).

On July 16, 1986, the agency published in the **Federal Register** a notice for pipeline safety user fees to describe the agency's implementation of the requirements set forth in the COBRA Act (51 FR 25782) (the user fee notice). With respect to pipelines, the user fee notice adopted pipeline mileage as the fee basis. With respect to the LNG facility portion of the gas program costs, a fee basis other than mileage was needed. For these facilities, the agency decided that storage capacity was the most readily measurable indicator of usage as well as allocation of agency resources. In order to ensure that user fees assessed for each type of pipeline facility have a reasonable relationship to the allocation of departmental resources, the user fee notice established five percent of total gas program costs as the appropriate level and established billing tiers based on the storage capacity of LNG facilities.

In 2014, PHMSA determined that certain changes to the calculation table were necessary because the LNG rates had not been adjusted to reflect the increase in gas program costs since 1986. On July 3, 2014, (79 FR 38124) PHMSA issued a **Federal Register** notice describing PHMSA's planned approach to updating the LNG user fee assessments. The notice described PHMSA's intention to update the rate for each of the five storage capacity tiers in the table to arrive at five percent of total gas program costs when the tiers are added together. PHMSA stated that it plans to implement the increase in the LNG facility obligation in three equal increments starting in 2015 and invited comments. Based on the comments received, PHMSA has revised its approach and is now establishing 1.6 percent of total gas program costs as the appropriate level and has determined that at this lower level there is no longer a need to implement the increase over 3 years.

SUPPLEMENTARY INFORMATION:

Summary of Comments on the July 3, 2014 Notice

During the 2-month response period, PHMSA received comments on the

proposed LNG user fee billing methodology from six commenters: The American Gas Association (AGA), the American Public Gas Association (APGA), Metropolitan Utilities District (MUD), Baltimore Gas and Electric Company (BGE), the Greenville Utilities Commission (GUC), and one individual commenter, David Wilson.

This notice responds to the comments, which may be found at *http://www.regulations.gov,* at docket number PHMSA–2014–0051. The comments are summarized below and followed by PHMSA's response.

Comment: AGA commented that PHMSA should provide companies with more time to adjust to this increase by modifying the timeline by which the LNG user fees are raised to 5 percent of the overall User Fee Obligation by phasing the increase in over 5 years instead of the proposed 3-year period so that ''operators can modify their short, midterm and long term budgeting to accommodate this impactful increase.''

Response: In response to comments, PHMSA revisited the actual annual LNG program costs and determined that a rate of 1.6 percent of gas costs would cover actual annual LNG program costs. Accordingly, PHMSA expects that the resulting user fee increase to 1.6 percent of gas costs (68 percent lower than initially proposed) will not pose an undue burden for any LNG facility operator. PHMSA will implement the increase to 1.6 percent of gas costs in a single year (FY 2015 user fee billing) rather than over a 3-year period as was proposed for an increase to 5% of gas costs.

Comment: APGA, AGA, and BGE suggested that PHMSA should pursue cost recovery for the design reviews of new LNG facilities as granted in section 13 of the *Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011.* ''AGA believes once this regulation has been codified, PHMSA will have the ability to accurately allocate fees to those operators that are utilizing a large portion of PHMSA personnel and resources, thus reducing the overall User Fee Obligation.''

Response: PHMSA appreciates the comments of the AGA, APGA, and BGE and does not disagree. After the design review envisioned in the law is implemented, PHMSA will reevaluate the user fee approach for LNG plants, gas transmission pipelines, and hazardous liquid pipelines and consider making appropriate modifications.

Comment: AGA, APGA, GUC, and MUD commented that PHMSA's proposal to increase LNG user fee collection to 5 percent or $3,774,405 in 3 years will be a significant burden especially to many small LNG operators.

Response: In addition to reducing the proposed 5 percent level to 1.6 percent, PHMSA has modified the plan to shift more of the user fee obligation to larger operators by implementing a new 10 tier billing by total capacity by OPID. Specifically, PHMSA added five new billing tiers to reduce the burden on small operators. These new tiers include an ultra-low storage capacity tier to reduce the burden on operators with storage capacity less than 2,000 barrels. Another tier was added for operators with less than 50,000 barrels of storage. The previous tier structure generated the same fee for all plants over 500,000 barrels of storage, but the highest storage volume in FY 2014 billing was 5 million barrels. We adjusted the boundaries of the top two tiers and added three new tiers for operators with very high storage capacity. Finally, it should be noted that PHMSA exempts mobile and temporary LNG facilities from user fee billing.

Comment: APGA commented ''PHMSA's proposal does, however, unfairly burdens small LNG peakshaving facilities with a disproportionate share of the costs'' and it places a disproportionate burden on the operators of small LNG peakshaving facilities. For example, Greenville Utility Commission in North Carolina would pay approximately $10,000 per year, or just over $2 per bbl, for its LNG peak shaving plant with a storage capacity of 4,762 bbls. In contrast, Sabine Pass LNG Terminal with over 5 million barrels storage would pay just $60,000, or about 1 penny per bbl.

Response: LNG plants typically include facilities other than storage. Barrels of storage alone do not necessarily reflect the effort associated with regulatory oversight of the plant.

Comment: APGA noted that the disparity in costs to small peak shaving facilities vs. larger import/export facilities is ''particularly troubling because it results in U.S. gas consumers paying as much as 200 times what consumers in countries that import US LNG would pay. The ultimate consumers of natural gas exported through these large LNG marine terminals reside in LNG importing countries such as Japan. The ultimate consumers of natural gas coming from Greenville's LNG peakshaving plant reside in Greenville, NC. To charge the citizens of Greenville, NC, pipeline safety user fees that are 200 times higher than those charged to the citizens of Japan makes no sense. Fairness would dictate that the larger LNG export facilities pay at least the same rate per barrel as smaller, domestic LNG peakshaving facilities.'' GUC, BGE, and MUD agreed with the comments about the disparity seen in billing of small peak shaving vs. larger import/export facilities.

BGE proposed to increase the billing tiers for facilities with >500,000 barrels to add appropriate larger tiers as appropriate for import/export facilities to more fairly apportion costs across LNG facility types. BGE noted that ''These large import and, in the future, export terminals are commercially oriented and operated and are not limited like smaller storage capacity facilities generally associated with satellite and peak shaving facilities operated typically by LDC's under limited Rate of Returns (ROR's) authorized by their state public utility commissions (PUCs).'' BGE further noted that under 49 U.S.C. 60301(a), ''The fees shall be based on usage (in reasonable relationship to volume-miles, miles, revenue, or a combination of volume-miles and revenues) of the pipelines. If the larger base load facilities that are import terminals and those terminals that become authorized to export and their facilities are constructed, thereby causing PHMSA increased regulatory costs, these facilities should carry a larger burden of the total LNG program costs moving forward.''

Response: PHMSA is planning to increase the number of tiers used for LNG user fee billing to ensure that smaller plants are not disproportionately burdened. We are implementing new tiers with a higher user fee rate for plants with very high storage volumes, such as export plants. PHMSA also determined that a rate of 1.6 percent of gas costs covers actual annual LNG program expenses, a rate 68 percent lower than the 5 percent of gas costs initially proposed. The increase proposed is 68 percent lower than the initially proposed increase, and that lower amount presents a much lower overall burden to all LNG operators, regardless of size. PHMSA believes that with the additional tiers which more equitably spread costs across operators by total per operator capacity, small and large LNG operators are billed at rates more equitably than the originally proposed billing structure, with the smallest half of the operators paying 24 percent of total costs while the largest half of operators pay about 76 percent of costs.

Additionally, after the design review envisioned in the law for new large export terminals is implemented, PHMSA will reevaluate the user fee approach for LNG plants, gas transmission pipelines, and hazardous

liquid pipelines and consider making appropriate modifications.

Comment: APGA ''estimates that a fee of approximately 6 cents per bbl, would collect approximately $3,774,405, or 5 percent of PHMSA's current gas budget. This formula would more equitably distribute the LNG portion of PHMSA's pipeline safety program among LNG facility owners. It should be phased in at approximately 2 cents/bbl in 2015, 4 cents/bbl in 2016 and 6 cents/bbl in 2017. These would obviously have to be adjusted for any changes in PHMSA's budget. The user fee for natural gas transmission mileage should also be adjusted to take into account that LNG operators are now paying more, so transmission operators would pay less.'' MUD endorses APGA's recommendation.

Response: PHMSA plans to add tiers shifting more of the financial burden to larger plants. A new 10-tier system based on per OPID total barrel capacity with new tiers implemented for smaller capacity LNG operators and new tiers for large LNG operators provides a simple method for distributing costs more proportionately by size of operator. And, by reducing the rate increase to 1.6 percent of gas costs, we more equitably distribute the LNG portion among facility owners with a 68 percent reduction in total costs compared to the initial proposed increase. Under the pure cost per barrel approach suggested by APGA, PHMSA believes that too much of the financial burden associated with a given level regulatory oversight of a plant would be shifted from small operators.

Comment: BGE does not consider PHMSA's proposed 5% increase in the LNG facility user fee to be ''reasonable and justifiable'' arguing that there are minimal increases in LNG regulatory requirements since 1994 opposed to increased regulatory requirements for gas pipeline operators over the same time, while gas transmission operator user fee cost increases over that time were not on the same scale as what we are proposing for LNG cost increases. BGE also noted that the 1986 citation that LNG facilities was to account for 5% of the total regulatory program costs is no longer an appropriate ratio to utilize arguing again that between 1986 and now there are little regulatory changes as opposed to changes for the gas transmission industry at large, so PHMSA accordingly should only marginally increase LNG costs.

Response: PHMSA evaluated actual annual LNG programmatic costs and determined that 1.6 percent of gas costs cover actual expenses. Accordingly, we agree with BGE that the 5 percent level of total regulatory program costs established in the 1986 notice is no longer an appropriate ratio.

Comment: BGE requests PHMSA also consider the following approaches:

''If a ratio of LNG user fee to overall program costs is necessary and justifiable, consider a user fee that matches PHMSA's actual LNG regulatory expenditures and that excludes the dramatic increase for design reviews by PHMSA (likely much closer to 1% for example); retain current LNG user fee assessment values for LNG facilities which are satellite and/or peak shaving (with or without liquefaction) due to their limited operating activity, limited ability to generate revenue, and regulatory effort by PHMSA which has not increased dramatically to justify an approximately 800% user fee increase; and consider a combination assessment fee approach by applying the expanded stepped storage capacity based fee schedule with a facility type based multiplier to recognize the larger base load import/export facilities not limited to a ROR set by state public utility commissions.''

Response: In response to comments, PHMSA evaluated annual costs for LNG oversight and determined that 1.6 percent of gas costs cover PHMSA actual LNG regulatory expenditures. PHMSA will implement additional tiers that better apportion the costs to larger plants.

Comment: Metropolitan Utilities District makes the same comments that APGA made about the impact to small LNG facilities, that the increase to 5% of gas program costs is not related to actual increases in LNG regulatory enforcement, and that the proposed costs for LNG peak shaving facilities, in a five-tier per barrel structure, is disproportional to LNG export facility proposed costs, supporting the APGA recommendation for a cost per barrel structure. Metropolitan Utilities District also supports the cost recovery for design review for LNG facility construction concept.

Response: PHMSA evaluated annual costs for LNG oversight and determined that 1.6 percent of gas costs cover PHMSA's LNG regulatory expenditures. PHMSA will implement additional tiers that better apportion the costs to larger plants.

Comment: David Wilson commented ''I object to the fact that PHMSA is seeking a User Fee increase for LNG facility operators based upon an estimated 1986 percentage of 5% and trying to suggest that the program costs should remain at that same percentage without ANY analysis of actual costs today. It requires an enormous amount of capital, economic risk and time to construct LNG storage facilities and I know that several projects are currently being planned, permitted and/or constructed based upon certain fee structure assumptions. To increase the fees for these operators over 800% over the course of three years can change the entire economic viability plan for some projects and will result in increased costs for consumers. I would ask PHMSA to review the allocation of resources for the LNG facilities and resubmit a proposal based upon those current needs.''

Response: The basis for billing LNG facilities at 5 percent of gas program costs was established in the original user fee notice. Based on the comments received, PHMSA has revisited the appropriate level and determined that 1.6 percent of gas program costs cover actual LNG expenditures and accordingly, we are not pursuing 5 percent of gas program costs.

Comment: David Wilson also commented ''I would encourage PHMSA to review their program costs to reduce unnecessary programs and waste to the extent that the program costs would remain flat or be reduced over the course of the next three years as the user fee increases are nothing more than an additional tax burden for consumers disguised as a 'user fee' ''.

Response: Congress authorized and required use fee collection for LNG facilities and operators as stated above. PHMSA did review program costs relevant to LNG expenditures, adopting an increase to 1.6 percent of gas costs, rather than the previously proposed 5 percent of gas costs.

Revised LNG User Fee Plan

Based on the comments received, PHMSA has made several changes to the historical LNG user fee billing methodology. First, we have implemented an increase to 1.6 percent of gas program costs, based on current annual LNG expenditures. Secondly, the historical 5 billing tiers are expanded to 10 tiers. Instead of billing per plant, user fee bills are based on the sum of storage capacity for all plants reported by an operator. We considered implementing the cents per barrel method suggested by APGA, but determined that this methodology shifted too much burden from small operators.

PHMSA has placed a document in the docket that compares the historical per plant 5 tier fee, the new per operator 10 tier fee, and the APGA proposal for a per barrel fee.

PHMSA decided to bill per operator rather than per plant to reduce the burden on small operators with multiple

plants. In actual FY 2014 billing, the highest LNG user fee was paid by Atlanta Gas Light. By paying a fee for each of its four plants, the total Atlanta Gas Light LNG user fee bill exceeded the bill for any LNG import plant. Thirteen other operators with multiple plants each paid a higher LNG user fee bill than any import plant. Billing on the sum of storage capacity for an operator better apportions the costs to larger operators.

PHMSA added five new billing tiers to reduce the burden on small operators. These new tiers include an ultra-low storage capacity tier to reduce the burden on operators with storage capacity less than 2,000 barrels. Another tier was added for operators with less than 50,000 barrels of storage. The previous tier structure generated the same fee for all plants over 500,000 barrels of storage, but the highest storage volume in FY 2014 billing was 5 million barrels. We adjusted the boundaries of the top two tiers and added three new tiers for operators with very high storage capacity.

For example, in FY 2014, an operator with three small plants was billed a total of $3,750 for its three small plants. If PHMSA had implemented 10-tier billing per operator for FY 2014, Energy North Natural Gas Inc., would have paid 62 percent less. Under the cost per barrel approach suggested by APGA, the decrease would have been 11,670 percent. The APGA approach shifts too much of the financial burden from small operators.

In FY 2014, each of the eight operators of an import plant was billed $7,500. If PHMSA had implemented 10-tier billing by operator for FY 2014, each of these eight large operators would have paid 79 percent more. Under the cost per barrel approach suggested by APGA, the percent increase would have ranged from 57 to 83 percent. The percent increase for these large plants using the new PHMSA structure is comparable to the percent increase using the APGA proposal.

For FY 2015, PHMSA has implemented the 10-tier billing structure below to collect 1.6 percent of gas costs with full collection in FY 2015 billing, not over 3 years as previously proposed:

Barrel range	# Operators	Rate
less than 2,000	5	$2,394
2,001–10,000	10	4,787
10,001–50,000	5	7,181
50,001–100,000	7	9,575
100,001–250,000 ..	6	11,487
250,001–300,000 ..	11	16,467
300,001–500,000 ..	11	19,150
500,001–700,000 ..	8	28,721
700,001–2 million	12	34,468
over 2 million	7	40,212

PHMSA continues to exempt mobile and temporary LNG plants from user fee billing.

PHMSA believes that an increase to 1.6 percent of gas costs accurately reflects the allocation of PHMSA resources to LNG operators. By implementing the 10-tier approach and billing by operator instead of by plant, PHMSA has established a rate plan that is fair and equitable to both small and large operators. Since PHMSA has determined that 1.6 percent of gas costs accurately reflect LNG regulatory costs, the increase has been implemented in FY 2015 user fee billing. PHMSA has placed a document in the docket that compares the actual FY 2014 bill and the actual FY 2015 bill for each operator. The largest LNG operator is being billed $40,212.00 and the smallest is being billed $2,394.00. In the future, PHMSA will ensure that LNG user fee rates continue to remain in proper alignment with program costs.

Authority: 49 U.S.C. Chapter 60301 and 601.

Issued in Washington, DC, on May 1, 2015, under authority delegated in 49 CFR 1.97.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2015–10614 Filed 5–6–15; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request; Office of the Procurement Executive

AGENCY: Department of Treasury, Departmental Offices.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury invites the general public and other Federal agencies to comment on an extension of an existing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department of the Treasury, Office of the Procurement Executive, is soliciting comments concerning the Solicitation of Proposal Information for Award of Public Contracts, which is scheduled to expire August 31, 2015.

DATES: Written comments must be received on or before July 6, 2015 to be assured of consideration.

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

Email: Thomas.olinn@treasury.gov. The subject line should contain the OMB number and title for which you are commenting.

Mail: Thomas O'Linn, Office of the Procurement Executive, Department of the Treasury, 1500 Pennsylvania Ave. NW., Metropolitan Square, Suite 6B113, Washington DC 20220.

All responses to this notice will be included in the request for OMB's approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection can be directed to the addresses provided above.

SUPPLEMENTARY INFORMATION:

OMB Number: 1505–0081.

Type of Review: Extension without change of a currently approved collection.

Title: Solicitation of Proposal Information for Award of Public Contracts.

Abstract: Information being requested is used by the Government's contracting officer and other acquisition personnel, including technical and legal staffs, to evaluate offers and quotations submitted in response to a solicitation. Evaluation may include determining the adequacy of the offeror's proposed technical and management approach, experience, responsibility, responsiveness, expertise of the firms submitting offers. Each acquisition is a stand-alone action that is based upon unique project requirements.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Number of Respondents: 22,577.

Estimated Number of Responses per Respondent: 1.

Estimated Hours per Response: 9.

Estimated Total Annual Burden Hours: 203,193.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; (d) ways to minimize the burden of the 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.

Dated: May 4, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–10984 Filed 5–6–15; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 80 Thursday,

No. 88 May 7, 2015

Part II

Securities and Exchange Commission

17 CFR Parts 229 and 240

Pay Versus Performance; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 240

[Release No. 34–74835; File No. S7–07–15]

RIN 3235–AL00

Pay Versus Performance

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to Item 402 of Regulation S–K to implement Section 14(i) of the Securities Exchange Act of 1934 (the ''Exchange Act''), as added by Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''). Section 14(i) directs the Commission to adopt rules requiring registrants to disclose in a clear manner the relationship between executive compensation actually paid and the financial performance of the registrant. The proposed disclosure would be required in proxy or information statements in which executive compensation disclosure pursuant to Item 402 of Regulation S–K is required. The proposed disclosure requirements would not apply to emerging growth companies or foreign private issuers.

DATES: Comments should be received on or before July 6, 2015.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an Email to *rule-comments@sec.gov.* Please include File Number S7–07–15 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–07–15. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's Web site. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Eduardo A. Aleman, Special Counsel, in the Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing to add new paragraph (v) to Item 402 of Regulation S–K.[1]

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I. Introduction

We are proposing amendments today as required by Section 953(a) of the Dodd-Frank Act.[2] Section 953(a) added Section 14(i)[3] to the Exchange Act,[4] which directs the Commission to adopt rules requiring registrants[5] to disclose in any proxy or consent solicitation material for an annual meeting of shareholders a clear description of any compensation required to be disclosed by the issuer under Item 402 of Regulation S–K[6] (or any successor thereto), including information that shows the relationship between executive compensation actually paid and the financial performance of the registrant, taking into account any change in the value of the shares of stock and dividends of the registrant and any distributions. A report by the Senate Committee on Banking, Housing and Urban Affairs indicated that the rules mandated by Section 953(a) of the Dodd-Frank Act were not intended to be overly-prescriptive and that Congress recognized that there could be many ways to disclose the relationship between executive compensation and financial performance of the registrant.[7]

Section 953(a) was enacted contemporaneously with other executive compensation-related provisions in the Dodd-Frank Act that are ''designed to address shareholder rights and executive compensation practices.''[8] Section 951 of the Dodd-Frank Act enacted new Exchange Act Section 14A[9] which requires that not less than every three years a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to a non-binding shareholder vote to approve the

[1] 17 CFR 229.402.

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

[3] 15 U.S.C. 78n(i).

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

[5] Section 102(a)(2) of the Jumpstart Our Business Startups Act (''JOBS Act'') amended Exchange Act Section 14(i) to exclude registrants that are ''emerging growth companies'' from the pay-versus-performance disclosure requirements. Public Law 112–106, 126 Stat. 306 (2012). Section 3(a) of the Exchange Act [15 U.S.C. 78c(a)] defines an ''emerging growth company'' as an issuer with total annual gross revenues of less than $1 billion during its most recently completed fiscal year.

[6] 17 CFR 229.402.

[7] *See* Report of the Senate Committee on Banking, Housing and Urban Affairs to accompany S. 3217, S. Rep. No. 111–176, at 135 (2010) (the ''Senate Report'') which stated with respect to Section 953(a): ''This disclosure about the relationship between executive compensation and the financial performance of the issuer may include a clear graphic comparison of the amount of executive compensation and the financial performance of the issuer or return to investors and may take many forms.''

[8] Dodd-Frank Act, H.R. Rep. 111–517, at 872 (2010).

[9] 15 U.S.C. 78n–1.

compensation of executives. Pursuant to the mandate in Section 14A, we adopted rules requiring a shareholder advisory vote to approve the compensation of the named executive officers (''NEOs''), as disclosed pursuant to Item 402 of Regulation S–K, at an annual or other meeting of shareholders at which directors will be elected and for which such executive compensation disclosure is required.[10]

We believe that the pay-versus-performance disclosure mandated by Section 953(a), and the disclosure of the ratio of the median annual total compensation of employees to the annual total compensation of the chief executive officer mandated by Section 953(b),[11] are intended to provide shareholders with information that will help them assess a registrant's executive compensation when they are exercising their rights to cast advisory votes on executive compensation under Exchange Act Section 14A. The Senate Report accompanying the statute references shareholder interest in the relationship between executive pay and performance as well as the general benefits of transparency of executive pay practices.[12]

In that regard, the disclosure mandated by Section 14(i) of the Exchange Act will give shareholders a new metric for assessing a registrant's executive compensation relative to its financial performance. Currently, Item 402 of Regulation S–K specifies the information that must be included when the applicable form or schedule requires executive compensation disclosure. Information on financial performance is required by other items throughout Regulation S–K, including in Item 201(e),[13] Item 301,[14] Item 302 [15] and Item 303.[16] There is currently no requirement to disclose specific information showing the relationship between executive compensation actually paid and the financial performance of the registrant. Instead, Item 402 of Regulation S–K contains detailed requirements for the disclosure of executive compensation and more principles-based disclosure requirements regarding the relationship between pay and performance. The Compensation Discussion and Analysis (''CD&A'') required by Item 402(b) of Regulation S–K requires registrants to provide an explanation of ''all material elements of the registrant's compensation of the named executive officers.'' [17] With respect to performance, Item 402(b)(2) includes non-exclusive examples of information that may be material, including (i) specific items of corporate performance taken into account in setting compensation policies and making compensation decisions; (ii) how specific forms of compensation are structured and implemented to reflect these items of the registrant's performance; and (iii) how specific forms of compensation are structured and implemented to reflect the NEO's individual performance and/or individual contribution to these items of the registrant's performance.[18]

The disclosure required by Exchange Act Section 14(i) can supplement the discussion in the CD&A as part of the shareholder's evaluation of the registrant's executive compensation practices and policies, including for purposes of the shareholder advisory vote on executive compensation. The proposed amendment provides a factual description of how the executive compensation actually paid related to the financial performance of the registrant.[19] This disclosure may provide a useful point of comparison for the analysis provided in the CD&A about a compensation committee's approach to linking pay and performance. We also believe that the proposed disclosure may provide relevant information to shareholders when voting in an election of directors. By helping to inform a shareholder's assessment of a registrant's executive compensation, the new disclosure may help shareholders evaluate the directors' oversight of this important area.

As with other Dodd-Frank Act rulemakings, we have sought comment from the public prior to the issuance of a proposing release.[20] We have considered the pre-proposal comment letters received to date. Commenters were divided on whether we should provide specific rules on how the proposed disclosure must be prepared or whether we should allow registrants flexibility in determining how to disclose the relationship between pay and performance. Some commenters believed that we should propose specific requirements to encourage consistency and comparability across registrants.[21] Other commenters were supportive of an approach to pay-versus-performance disclosure in which our rules would not provide specific requirements, but would allow registrants to determine the substance of such disclosure and how such disclosure should be presented.[22]

As discussed in more detail below, our proposed amendments would require registrants to provide disclosure that can be compared across registrants, while also continuing to allow registrants to supplement their disclosure about pay-versus-performance to reflect the specific situation of the registrant and its industry. Throughout the release we seek comment on this approach, and whether alternative approaches should be considered to accomplish the objectives of Section 14(i) of the Exchange Act.

II. Proposed Amendment

A. Introduction

We are proposing new Item 402(v) of Regulation S–K that would require a registrant to provide a clear description of (1) the relationship between executive compensation actually paid to the registrant's NEOs and the cumulative total shareholder return (TSR) of the registrant, and (2) the relationship between the registrant's TSR and the TSR of a peer group chosen by the registrant, over each of the

[10] *See Shareholder Approval of Executive Compensation and Golden Parachute Compensation,* Release No. 33–9178 (Jan. 25, 2011) [76 FR 6010] (Feb. 2, 2011).

[11] We proposed rules to implement Section 953(b), *see Pay Ratio Disclosure,* Release No. 33–9452 (Sept. 18, 2013) [78 FR 60560] (Oct. 1, 2013).

[12] The Senate Report includes the following with respect to Section 953 of the Dodd-Frank Act: ''It has become apparent that a significant concern of shareholders is the relationship between executive pay and the company's financial performance . . . The Committee believes that these disclosures will add to corporate responsibility as firms will have to more clearly disclose and explain executive pay.'' *See* Senate Report, *supra* note 7.

[13] 17 CFR 229.201(e), Performance Graph.

[14] 17 CFR 229.301, Selected Financial Data.

[15] 17 CFR 229.302, Supplementary Financial Information.

[16] 17 CFR 229.303, Management's Discussion and Analysis of Financial Condition and Results of Operations.

[17] 17 CFR 229.402(b)(1).

[18] 17 CFR 229.402(b)(2)(v)–(vii).

[19] We recognize that financial performance of the registrant is a broad term and can mean different things to different registrants. Throughout this release, we use the term ''financial performance'' to refer to the financial performance of the registrant as required to be disclosed by new Section 14(i) of the Exchange Act, which we propose to measure by cumulative total shareholder return as defined in Item 201(e) of Regulation S–K. *See* Section II.E below.

[20] Comments related to the executive compensation provisions of the Dodd-Frank Act are available at *http://www.sec.gov/comments/df-title-ix/executive-compensation/executive-compensation.shtml.*

[21] *See* letters from Pay Governance LLC (''Pay Governance''), Farient Advisors (''Farient''), Compensia, Inc. (''Compensia''), Meridian Compensation Partners (''Meridian''), MDU Resources, Inc. (''MDU'') and Shareholder Value Advisors, Inc. (October 4, 2010) (''SVA I'').

[22] *See* letters from the Center on Executive Compensation (September 1, 2010) (''CEC I''), American Bar Association (''ABA''), Protective Life Corporation (''Protective Life''), ClearBridge Compensation Group (''ClearBridge'') and Davis Polk & Wardwell LLP (''Davis Polk'').

registrant's five most recently completed fiscal years.

The proposed amendments would:

- Require that the executive compensation used in calculating the executive compensation actually paid be total compensation as disclosed in the Summary Compensation Table,[23] modified to exclude changes in actuarial present value of benefits under defined benefit and actuarial pension plans that are not attributable to the applicable year of service, and to include the value of equity awards at vesting rather than when granted, which adjustments are intended to capture the Section 953(a) required measure of ''executive compensation actually paid''; [24]
- Require registrants to measure financial performance using TSR, as defined in Item 201(e) of Regulation S–K, and TSR of a registrant peer group;
- Require registrants to provide the executive compensation actually paid, total compensation as disclosed in the Summary Compensation Table, TSR, and peer group TSR in a prescribed table;
- Require the executive compensation disclosure to be presented separately for the principal executive officer, and as an average for the remaining NEOs identified in the Summary Compensation Table;
- Require the disclosure of the relationship between (1) executive compensation actually paid and registrant TSR (for the same executives identified in the registrant's Summary Compensation Table), and (2) registrant TSR and peer group TSR, in each case over the registrant's five most recently completed fiscal years;
- For smaller reporting companies, require the disclosure of the relationship between executive compensation actually paid and TSR over the registrant's three most recently completed fiscal years, without requiring these companies to provide disclosure of peer group TSR;
- Require that the disclosure be provided in tagged data format using eXtensible Business Reporting Language (XBRL); and
- Provide a phase-in of the requirement.

We discuss each of these aspects of our proposal in detail below.

Foreign private issuers, as defined in Exchange Act Rule 3b–4 [17 CFR 240.3b–4], would not be subject to the proposed amendment. Because securities registered by a foreign private issuer are not subject to the proxy statement requirements of Exchange Act Section 14,[25] foreign private issuers would not be required to provide Item 402(v) disclosure. As proposed, registered investment companies would not be required to provide Item 402(v) disclosure. We believe that the management structure of, and the regulatory regime governing, registered investment companies differentiate them from issuers that are operating companies. Registered investment companies, unlike other issuers, are generally externally managed and often have few, if any, employees that are compensated by the registered investment company. Rather, such employees are generally compensated by the registered investment company's investment adviser. Furthermore, registered investment companies do not have named executive officers within the meaning of Item 402, and, therefore, are not required to conduct the shareholder advisory votes required by Exchange Act Section 14A.[26] Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53–64]. As proposed, business development companies would be treated in the same manner as issuers other than registered investment companies and, therefore, would be subject to the disclosure requirement of Item 402(v).

B. New Item 402(v) of Regulation S–K

1. Application and Operation of Proposed Item 402(v)

Section 14(i) of the Exchange Act requires disclosure of the relationship of executive compensation actually paid and the financial performance of the registrant. Section 14(i) explicitly refers to Item 402 of Regulation S–K as the reference point for the executive compensation to be addressed by the new disclosure relating compensation to performance. Because the disclosure mandated by Section 14(i) relates specifically to executive compensation, we are proposing to require this new disclosure in a new Item 402(v) of Regulation S–K.

We are also proposing that the disclosure called for under new Item 402(v) of Regulation S–K be included in any proxy or information statement for which disclosure under Item 402 of Regulation S–K is required. Currently, Item 8 of Schedule 14A [27] and Item 1 of Schedule 14C [28] require registrants to furnish Item 402 information if action is to be taken with regard to: The election of directors; any bonus, profit sharing or other contract or arrangement in which any director, nominee or executive officer of the registrant will participate; any pension or retirement plan in which they will participate; or the granting or extension to them of options, warrants or rights to purchase securities on a pro rata basis.[29] By including the requirement in Item 402 and requiring this disclosure in proxy statements on Schedule 14A and in information statements on Schedule 14C,[30] shareholders would have available the pay-versus-performance disclosure,

[23] Item 402(c) of Regulation S–K [17 CFR 229.402(c)].

[24] The terms ''stock,'' ''option,'' ''stock appreciation right,'' ''equity,'' ''plan'' and ''incentive plan'' used in this release are generally as defined in Item 402(a)(6) of Regulation S–K [17 CFR 229.402(a)(6)]. Similarly, while we do not define the term ''defined benefit and actuarial pension plans,'' the term has the same meaning as in Item 402 of Regulation S–K.

[25] Exchange Act Rule 3a12–3(b) [17 CFR 240.3a12–3(b)] specifically exempts securities registered by a foreign private issuer from Exchange Act Sections 14(a) and 14(c).

[26] As noted earlier, we believe that the pay-versus-performance disclosure mandated by Section 953(a), together with the disclosure of the ratio of the median annual total compensation of employees to the annual total compensation of the chief executive officer mandated by Section 953(b), are intended to provide shareholders with information that will help them assess a registrant's executive compensation when they are exercising their rights to cast advisory votes on executive compensation under Exchange Act Section 14A. Further, as noted earlier, the Senate Report indicated that ''a significant concern of shareholders is the relationship between executive pay and a company's financial performance,'' and that the pay-versus-performance disclosure would ''add to corporate responsibility as firms will have to more clearly disclose and explain executive pay.'' *See* Senate Report, *supra* note 7.

[27] 17 CFR 240.14a–101.

[28] Schedule 14C [17 CFR 240.14c–101] works in conjunction with Schedule 14A to generally require the disclosure of information called for by Schedule 14A to the extent that the item would be applicable to any matter to be acted on at a meeting if proxies were to be solicited. Schedule 14C implements Exchange Act Section 14(c) [15 U.S.C. 78n(c)] which created disclosure obligations for registrants that choose not to, or otherwise do not, solicit proxies, consents, or other authorizations from some or all of their security holders entitled to vote.

[29] The executive compensation disclosure called for under Item 402 of Regulation S–K is also required in certain registration statements under the Securities Act and the Exchange Act, as well as in annual reports on Form 10–K. Most registrants satisfy the Form 10–K disclosure requirement by incorporating by reference the information contained in their annual proxy or information statement.

[30] Even though Section 14(i) does not expressly include information statements provided for under Section 14(c), we believe that the purpose of information statements under Section 14(c), which established disclosure obligations for registrants that do not solicit proxies, does not support excluding the disclosure from information statements. Although Section 14(c) and Schedule 14C concern the provision of certain information when no solicitation is involved, Section 14(c) provides an obligation relating to information statements to transmit to holders ''such security information substantially equivalent to the information which would be required to be transmitted if a solicitation were made . . . .'' 15 U.S.C. 78n(c).

along with all other executive compensation disclosures called for by Item 402, in circumstances in which shareholder action is to be taken with regard to an election of directors or executive compensation. Because the proposed pay-versus-performance disclosure would be provided pursuant to Item 402 of Regulation S–K, it would be subject to the say-on-pay advisory vote under Exchange Act Rule 14a–21(a).[31]

We note that the language of Section 14(i) requires that the pay-versus-performance disclosure be provided ''in any proxy or consent solicitation material for an annual meeting of the shareholders.'' Shareholder annual meetings are typically the venue in which directors are elected.[32] This statutory language, if construed narrowly, would require the pay-versus-performance disclosure in different instances than our rules currently require for other executive compensation disclosure.[33] In particular, under our current rules if a registrant solicits proxies[34] with respect to the election of directors or executive compensation matters, its proxy statement must include specified information required by Item 402 of Regulation S–K, whether the election takes place at an annual or special meeting.[35] We believe Item 402 disclosure, including the disclosure that would be required under proposed Item 402(v), is equally useful to shareholders without regard to the venue of the corporate action.

Consistent with our approach to other Item 402 disclosures, we are proposing to require pay-versus-performance disclosure in these instances because we believe that the proposed disclosure would be most useful to shareholders when they are deciding whether to approve the compensation of the NEOs through the say-on-pay advisory vote, as well as when making voting decisions on a compensation plan in which NEOs participate, and making decisions pertaining to the election of directors. The Senate Report accompanying the statute references shareholder interest in the relationship between executive pay and performance as well as the general benefits of transparency of executive pay practices.[36] Several commenters also noted that the mandate may help inform shareholders.[37] For example, one commenter stated a belief that the requirements of Section 953(a), if implemented appropriately, ''will help investors better understand the executive pay decisions of the company, and make more informed 'Say-on-Pay' votes.''[38]

By proposing to require the disclosure as a new Item 402 requirement, however, the pay-versus-performance disclosure, unless otherwise limited, also would be required in a registrant's Form 10–K and in Securities Act registration statements that require Item 402 disclosure. The language of Section 14(i) calling for the disclosure to be provided in solicitation material for an annual meeting of the shareholders suggests that the disclosure was intended to be provided in conjunction with a shareholder vote, and we believe that the disclosure would be most useful in this context. Therefore, we are proposing that Item 402(v) specify that the disclosure would only be required in a registrant's proxy or information statement. In addition, as proposed, the information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.[39]

2. Format and Location of Proposed Disclosure

Section 14(i) of the Exchange Act requires us to adopt rules requiring disclosure of ''information'' that shows the relationship between executive compensation actually paid and registrant financial performance, but it does not specify the format or location of that disclosure.

We are not proposing a specific location within the proxy statement or information statement for this new disclosure. We note that the proposed disclosure item is related to the CD&A because it would show the historical relationship between executive pay and registrant financial performance, and may provide a useful point of comparison for the analysis provided in the CD&A. However, including this disclosure as part of CD&A might suggest that the registrant considered the pay-versus-performance relationship, as disclosed, in its compensation decisions, which may not be the case. Consequently, we believe it is appropriate to provide flexibility for registrants in determining where in the proxy or information statement to provide the disclosure required by proposed Item 402(v), although we

[31] 17 CFR 240.14a–21.

[32] The Commission has previously recognized that directors ordinarily are elected at annual meetings. *See, e.g.,* Exchange Act Rule 14a–6(a) [17 CFR 240.14a–6(a)] (acknowledging that registrants soliciting proxies in the context of an election of directors at an annual meeting may be eligible to rely on the exclusion from the requirement to file a proxy statement in preliminary form). *See also,* Exchange Act Rule 14a–3(b) [17 CFR 240.14a–3(b)] (requiring proxy statements used in connection with the election of directors at an annual meeting to be preceded or accompanied by an annual report containing audited financial statements). The requirement for registrants to hold an annual meeting at which directors are to be elected, however, is imposed by a source of legal authority other than the federal securities laws. In Delaware, for example, where more than 50% of the publicly traded issuers are incorporated, according to the State of Delaware's official Web site, Delaware General Corporation Law (DGCL), Section 211(b) is viewed as requiring an annual meeting for the election of directors. *See* R. Franklin Balotti & Jesse A. Finkelstein, Delaware Law of Corporations & Business Organizations, § 7.1 (3d ed.), Edward P. Welch, Andrew J. Turezyn, & Robert S. Saunders, Folk on the Delaware General Corporate Law § 211.2 (2013), and the text of DGCL Section 211(b), which reads in relevant part, ''unless directors are elected by written consent in lieu of an annual meeting as permitted by this subsection, an annual meeting of stockholders shall be held for the election of directors on a date and at a time designated by or in the manner provided in the bylaws.'' *See also* Charles R.T. O'Kelley & Robert B. Thompson, Corporations and Other Business Associations 167 (7th ed.) (explaining that the ''paramount shareholder function is the election of directors'' and that ''[m]ost corporation codes protect this right by specifying immutably that directors shall be elected at an annually held meeting of shareholders.''), California Corporations Code, Section 600(b), and 1969 Model Business Corporation Act (as amended through 1981), Section 7.01(a) (each requiring an annual meeting of shareholders for the election of directors).

[33] The language of Section 14(i) calls for the disclosure to be provided in connection with annual meetings, the meeting at which registrants generally provide for the election of directors. Depending on the circumstances, this construction could be narrower or broader than the scope of Item 8 of Schedule 14A, which requires executive compensation disclosure in circumstances where action is to be taken with regard to an election of directors or executive compensation. For example, a registrant could solicit proxies to approve a management contract or arrangement or other compensation plan at a special meeting instead of an annual meeting and, in this instance, Item 8 would require Item 402 executive compensation disclosure. By contrast, although an annual meeting ordinarily involves an election of directors, in the unlikely event that an annual meeting did not include an election of directors or other executive compensation actions, the proposed amendment would not require any Item 402 executive compensation disclosure.

[34] Rule 14a–1(f) [17 CFR 240.14a–1(f)] defines the term ''proxy'' to include every proxy, consent or authorization within the meaning of Section 14(a) of the Exchange Act. A solicitation of consents therefore constitutes a solicitation of proxies subject to Section 14(a) and Regulation 14A.

[35] *See* Item 8 of Schedule 14A.

[36] The Senate Report includes the following with respect to Section 953(a) of the Dodd-Frank Act: ''It has become apparent that a significant concern of shareholders is the relationship between executive pay and the company's financial performance . . . The Committee believes that these disclosures will add to corporate responsibility as firms will have to more clearly disclose and explain executive pay.'' *See* Senate Report *supra* note 7.

[37] *See* letters from American Federation of Labor and Congress of Industrial Organizations (Aug. 8, 2014) (''AFL–CIO''), PublicCitizen, ClearBridge and Pay Governance.

[38] *See* letter from Pay Governance.

[39] *See* Instruction 6 to proposed Item 402(v) of Regulation S–K. As proposed, the information would therefore not be subject to forward incorporation by reference under Item 12(b) of Form S–3 [17 CFR 239.13].

generally expect registrants would disclose it with the Item 402 executive compensation disclosure.

As proposed, Item 402(v) would require registrants to provide a table containing the values of the prescribed measures of executive compensation actually paid, TSR for the registrant and TSR for the selected peer group (see table below). For each amount disclosed as executive compensation actually paid in columns (c) and (e) of the prescribed table, proposed Item 402(v) would require footnote disclosure for both principal executive officer compensation and average NEO compensation of each amount deducted from, and added to the total compensation amount as provided in the Summary Compensation Table. As proposed, Item 402(v) also would require registrants to include in the table the total PEO compensation reported in the Summary Compensation Table (column (b), and, for NEOs, the average total compensation reported in the Summary Compensation Table (column (d)). Requiring disclosure of the Summary Compensation Table measure of total compensation together with our proposed measure of executive compensation actually paid would provide shareholders with disclosure of two measures in one single table and, we believe, would facilitate comparisons of the two measures of a registrant's executive compensation to the registrant's performance. To the extent that some shareholders may be interested in considering the relationship of performance with a measure of pay that excludes changes in the value of equity awards, they would be able to refer to the Summary Compensation Table measure of total compensation required alongside executive compensation actually paid in the tabular disclosure. Among other things, the Summary Compensation Table measure of total compensation reflects the grant date values of equity awards.

We are proposing that the disclosure provided in each column of the proposed table, including any footnote disclosure, be provided in interactive data format using XBRL.[40] The proposal would require registrants to tag separately the values disclosed in the required table, and to separately block-text tag the disclosure of the relationship among the measures, the footnote disclosure of deductions and additions used to determine executive compensation actually paid, and the footnote disclosure regarding vesting date valuation assumptions. The interactive data would have to be provided as an exhibit to the definitive proxy or information statement filed with the Commission, in addition to appearing with and in the same format as the rest of the disclosure provided pursuant to proposed Item 402(v) of Regulation S–K (*e.g.,* in ASCII or HTML). Registrants would be required to prepare their interactive data using the list of tags the Commission specifies and submit them with any supporting files the EDGAR Filer Manual prescribes.[41] We believe requiring the data to be tagged would lower the cost to investors of collecting this information, would permit data to be analyzed more quickly by investors and other end-users than if the data was provided in a non-machine readable format, and would facilitate comparisons among public companies. In addition, requiring the data to be tagged would facilitate analysis of how information related to a single issuer changes over time.

PAY VERSUS PERFORMANCE

Year	Summary compensation table total for PEO	Compensation actually paid to PEO	Average summary compensation table total for non-PEO named executive officers	Average compensation actually paid to non-PEO named executive officers	Total shareholder return	Peer group total shareholder return
(a)	(b)	(c)	(d)	(e)	(f)	(g)

Because the statute requires disclosure of the *relationship* between executive compensation and registrant performance, we do not believe that simply disclosing the amount of executive compensation actually paid and the financial performance measure would satisfy this statutory requirement. Thus, using the values presented in the table, proposed Item 402(v) would require the registrant to describe (1) the relationship between the executive compensation actually paid and registrant TSR, and (2) the relationship between registrant TSR and peer group TSR. We believe disclosure about the relationship between registrant TSR and peer group TSR would provide information that investors can use to compare a registrant's performance with that of its peers, and may provide a useful point of comparison to assess the relationship between the registrant's executive compensation actually paid and its financial performance compared to the performance of its peers during the same time period.

The disclosure about the relationship would follow the table and could be described as a narrative, graphically, or a combination of the two, and, as proposed, would be required to be provided in interactive data format using XBRL. Disclosure of the relationship could include, for example, a graph providing executive compensation actually paid and change in TSR on parallel axes and plotting compensation and TSR over the required time period. Alternatively, disclosure of the relationship could include showing the percentage change over each year of the required time period in both executive compensation actually paid and TSR together with a brief discussion of that relationship. Under our proposed amendments, while the presentation format used by different registrants to demonstrate the relationship between executive compensation actually paid and TSR may vary, the table required by Item 402(v) together with existing disclosures would provide shareholders with clear information from which to determine the relationship between executive compensation actually paid and registrant performance so that shareholders could, if desired, compare the disclosure across registrants.

Exchange Act Section 14(i) provides that the disclosure about the relationship may include a graphic

[40] Data becomes interactive when it is labeled or ''tagged'' using a computer markup language such as XBRL that software can process for analysis.

[41] The EDGAR Filer Manual is available at: *http://www.sec.gov/info/edgar/edmanuals.htm.*>

representation of the information. Commenters provided varying views on whether to require a graphic presentation. Some commenters indicated that a graphic representation would help provide meaningful disclosure,[42] while other commenters supported a principles-based approach that would not include a specific requirement for a graphic representation.[43] Consistent with the language of Exchange Act Section 14(i), we are proposing to permit, rather than require, a registrant to comply with the new requirement to disclose the relationship between executive compensation actually paid and registrant performance by including a graphic presentation of the pay-versus-performance disclosure, in addition to the required table presenting the values of prescribed measures of executive compensation and TSR.

Request for Comment

1. Exchange Act Section 14(i) specifies that the pay-versus-performance disclosure must be provided in any proxy or consent solicitation materials that relate to annual shareholder meetings. For the reasons discussed above, we are proposing to require the disclosure in a registrant's proxy or information statement where Item 402 disclosure is required. Should we instead, or in addition, require the disclosure in any proxy or information statements relating to an annual shareholder meeting (or special meeting or written consent in lieu of a meeting)? Why or why not?

2. To retain consistency in the executive compensation disclosure provided in proxy statements and information statements, we propose that the Item 402(v) disclosure be included in information statements on Schedule 14C as well as proxy statements on Schedule 14A for which Item 402 disclosure is required. Is there any reason that the proposed disclosure mandated by Section 14(i) should be limited to registrants that are soliciting proxies or consents on Schedule 14A?

3. Should we also require the proposed disclosure in all other forms and schedules in which executive compensation disclosure is required? Would it be useful to shareholders to include the proposed disclosure in registration statements or annual reports as well? Why or why not?

4. Should the disclosure required by Exchange Act Section 14(i) be a separate requirement under Item 402 of Regulation S–K, as proposed? Alternatively, should we require the disclosure as part of the CD&A? If so, please explain why.

5. Should we require registrants to provide, as proposed, a table that includes the Summary Compensation Table total compensation, in addition to the values of the prescribed measures of executive compensation actually paid and registrant financial performance used for the pay-versus-performance disclosure? Why or why not?

6. Should we further prescribe the format of the proposed disclosure to promote comparability across registrants? For example, should we require that registrants present the percentage change in executive compensation actually paid and registrant/peer group financial performance over each year of the required time period graphically or in writing? Are there other format requirements we should consider? Should we provide further guidance on how to present the information in a way that promotes comparability? Are there ways our proposed table can be improved?

7. If we were to require a graphic presentation of the disclosure, should we specify requirements for this presentation so that each registrant provides comparable disclosure? Or should we allow registrants to determine the appropriate graphic presentation, if any? How should such a graph describe the relationship between executive compensation actually paid and registrant performance?

8. Should we provide sample charts or other examples of graphic presentations that would comply with proposed Item 402(v)? If so, please provide examples.

9. Would requiring disclosure of the values of the prescribed measures of executive compensation actually paid and registrant financial performance, without additional information about the ''relationship'' of those data points, satisfy Section 14(i) of the Exchange Act?

10. Would the stock performance graph required by Item 201(e) of Regulation S–K modified to add a line representing executive compensation actually paid provide meaningful disclosure about the relationship between executive pay and registrant performance? Why or why not? If so, should we require the stock performance graph, as so modified to be included in the proxy or information statement as well as, or instead of, in the annual report to security holders required by Exchange Act Rules 14a–3 and 14c–3[44]? Would such disclosure satisfy Exchange Act Section 14(i)?

11. Under our current rules, unless specifically incorporated by reference, the disclosure required by Item 201(e) of Regulation S–K is not deemed to be ''soliciting material'' or to be ''filed'' with the Commission or subject to the liabilities of Exchange Act Section 18.[45] That same treatment is not afforded to the CD&A disclosure. Under the proposal, the pay-versus-performance disclosure, which would require disclosure of TSR as defined in Item 201(e) for the registrant and for a peer group used by the registrant for purposes of the CD&A or Item 201(e), would be filed in certain proxy or information statements. Should the disclosure about TSR be deemed to be filed, as proposed? Why or why not? Alternatively, should the TSR disclosure be deemed to be ''furnished''? If the disclosure was treated as ''furnished'', should such treatment only apply to peer group TSR? Why or why not?

12. Would the proposed tabular disclosure of the values of the executive compensation and registrant financial performance enhance comparability across registrants? Are there other formats that would be more useful in that regard?

13. Should we require that the data be tagged in XBRL format, as proposed? Should we require a different format, such as, for example, eXtensible Markup Language (XML)?[46] Should the proposed tabular disclosure be changed in any way to facilitate accurate and consistent tagging? If so, how? Should we require that, as proposed, disclosure about the relationship between executive compensation and registrant performance be tagged? Why or why not? Would tagging the relationship of executive compensation to financial performance enhance comparability among different registrants? Alternatively, instead of requiring that the disclosure about the relationship be tagged, should tagging this disclosure be optional? If a registrant chooses to add more information to the prescribed

[42] *See* letters from Farient, Meridian and Shareholder Value Advisors, Inc. (Apr. 27, 2012) (''SVA II'').

[43] *See* letters from ABA, CEC I, and Davis Polk.

[44] 17 CFR 240.14a–3 and 17 CFR 240.14c–3.

[45] 15 U.S.C. 78r; *see* Instruction 8 to Item 201(e) of Regulation S–K.

[46] Another possible alternative for providing the information in interactive data format would be Inline XBRL, which would allow registrants to file the required information and data tags in one document rather than requiring a separate exhibit for the interactive data. Commission rules and the EDGAR system do not currently allow for the use of Inline XBRL. To the extent that a determination is made in the future to accept Inline XBRL submissions, we expect to revisit the format in which this disclosure requirement is provided.

table, should we require this additional information to be tagged as well, even if registrant-specific extensions are necessary?

14. Should we require that the data be tagged in preliminary proxy statements and information statements, as well as in definitive proxy statements and information statements? Why or why not?

15. Should we exempt smaller reporting companies from the XBRL requirement, rather than require them to provide such data? Why or why not? Would the costs be different for smaller reporting companies to comply with the proposed requirement to provide the data in XBRL format as compared to other companies? What would be the impact of not requiring tagging for smaller reporting companies? Should we, as proposed, provide a phase-in for smaller reporting companies to tag the disclosure? Why or why not? Should the period be longer or shorter than three years?

16. Instruction 1 to Item 402(c)(2)(iii) and (iv) of Regulation S–K permits a registrant to omit disclosure in the Summary Compensation Table of the salary or bonus of an NEO if it is not calculable as of the latest practicable date.[47] Item 5.02(f) of Form 8–K [48] sets forth the requirements for the filing of information that was omitted from Item 402 disclosure in accordance with Instruction 1 to Item 402(c)(2)(iii) and (iv), including the requirement to include a new total compensation figure for the NEO. Should we consider permitting registrants to omit pay-versus-performance disclosure until those elements of the NEO's total compensation are determined and to provide the pay-versus-performance disclosure in the same filing under Item 5.02(f) of Form 8–K in which the salary or bonus is disclosed? Is such relief necessary given that, as proposed, registrants will not be required to incorporate the disclosure into the Form 10–K? If we were to provide the relief, should we require any additional or supplemental disclosure in connection with an amendment to Item 5.02(f)? If so, what would that disclosure entail?

C. Executives Covered

Exchange Act Section 14(i) does not specify which executives must be included in the disclosure of ''executive compensation actually paid.'' For registrants other than smaller reporting companies, we are proposing that the executives covered by the proposed Item 402(v) disclosure be the ''named executive officers'' as defined in Item 402(a)(3) of Regulation S–K.[49] For smaller reporting companies, we are proposing that the executives covered by the proposed Item 402(v) disclosure be the same as the ''named executive officers'' required to be disclosed under Item 402(m).[50] These are the executive officers for whom, under our current rules, compensation disclosure is required in the Summary Compensation Table and the other executive compensation disclosure requirements. In addition, we are proposing that, for each year, the compensation information be presented separately for the principal executive officer [51] and as an average for the remaining NEOs identified in the Summary Compensation Table.

We note that Section 14(i) specifically refers to compensation required to be disclosed under Item 402 of Regulation S–K. Because Item 402 of Regulation S–K requires disclosure of NEO compensation, we believe that Congress intended for the rules to provide disclosure about that group. We also believe that covering only the NEOs should help to mitigate some of the costs associated with the proposed disclosure because registrants are already required to make the determination of who is an NEO and to track information about their compensation. Commenters that addressed this issue were generally supportive of requiring that the pay-versus-performance disclosure cover the NEOs.[52]

We are proposing to require that the disclosure be provided separately for the PEO and as an average for the remaining NEOs identified in the Summary Compensation Table. Several commenters noted that shareholders have a particular interest in the compensation of the PEO.[53] We are further proposing that if more than one person served as the PEO of the registrant, then the disclosure for the persons who served as PEO of the registrant shall be aggregated for the years in which more than one person served as the PEO because this reflects the total amount that was paid by the registrant for the services of a PEO.

Finally, we are proposing to require disclosure of the average compensation actually paid for the remaining NEOs. We believe disclosure of the relationship of performance to average NEO compensation would be more meaningful to shareholders than individual or aggregate NEO compensation. There can be significant variability in the identity of the registrant's other NEOs over a five-year period. Moreover, the number of NEOs for whom Item 402 disclosure is required may fluctuate from year-to-year, which would make an aggregate total not comparable year over year.[54] We believe requiring disclosure of the average compensation would help make the information about these NEOs more comparable from year to year in spite of the variability in the composition and number of NEOs who are not the PEO

[47] For smaller reporting companies, Instruction 1 to Item 402(n)(2)(iii) and (iv) is the corresponding instruction.

[48] 17 CFR 249.308.

[49] Item 402(a)(3) [17 CFR 229.402(a)(3)] defines the NEOs for whom Item 402 executive compensation is required as 1) all individuals serving as the registrant's principal executive officer or acting in a similar capacity during the last completed fiscal year (''PEO''), regardless of compensation level, 2) all individuals serving as the registrant's principal financial officer or acting in a similar capacity during the last completed fiscal year (''PFO''), regardless of compensation level, 3) the registrant's three most highly compensated executive officers other than the PEO and PFO who were serving as executive officers at the end of the last completed fiscal year, and 4) up to two additional individuals for whom Item 402 disclosure would have been provided but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year. Because the pay-versus-performance disclosure is being proposed as new paragraph (v) to Item 402, the disclosure also would be required for the NEOs.

[50] For smaller reporting companies, Item 402(m)(2) [17 CFR 229.402(m)(2)] defines the NEOs for whom Item 402 executive compensation is required as 1) all individuals serving as the smaller reporting company's principal executive officer or acting in a similar capacity during the last completed fiscal year (PEO), regardless of compensation level, 2) the smaller reporting company's two most highly compensated executive officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year, and 3) up to two additional individuals for whom disclosure would have been provided but for the fact that the individual was not serving as an executive officer of the smaller reporting company at the end of the last completed fiscal year.

[51] The term ''principal executive officer'' used in this release has the same meaning as in Items 402(a)(3) and 402(m)(2) of Regulation S–K and would include an individual acting in a similar capacity.

[52] *See* letters from ABA, Baker, Donelson, Bearman, Caldwell & Berkowitz (''Baker Donelson''), ClearBridge, Compensia, Brian Foley & Company (''Foley'') and MDU.

[53] *See* letters from Farient, Johnson & Johnson (''J&J''), Meridian and Pay Governance. One such commenter recommended that we limit the disclosure solely to the PEO. *See* letter from Meridian. As discussed above, however, because Section 14(i) specifically refers to compensation required to be disclosed under Item 402, and Item 402 applies to a broader group of NEOs than the PEO, we believe the disclosure should be required about that group.

[54] For example, in any year, up to two additional individuals who were not serving as executive officers at the end of the year must be included if they otherwise would have been among the most highly compensated. Additionally, for registrants other than smaller reporting companies, if more than one person serves as principal financial officer during the year, each of them must be included in the Summary Compensation Table.

over the years for which disclosure is required.

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17. Should we require that the proposed disclosure cover the NEOs as defined in Item 402(a)(3) of Regulation S–K, or Item 402(m) for smaller reporting companies, as proposed? Alternatively, should we require disclosure for a different group of executives than the NEOs and, if so, how should such a group be defined? For example, would the appropriate group be all executive officers as defined in Rule 3b–7 under the Exchange Act? [55] What additional costs would registrants incur if they were required to provide information for executives not currently defined as NEOs?

18. Should we require registrants to provide the pay-versus-performance disclosure for NEOs other than the PEO as an average, as proposed, or should we specify that the disclosure must be made either in the aggregate (*i.e.,* the sum of all other NEOs' compensation) or on an individual basis for each NEO? How would these approaches affect, either positively or negatively, the comparability across registrants? Alternatively, should registrants provide tabular disclosure of the executive compensation actually paid on an individual basis for each NEO but only be required to demonstrate the relationship to financial performance for the PEO's individual compensation and the average compensation of the other NEOs? Are there ways other than using an average for the other NEOs to appropriately account for the possibility that the size and identity of the group of other NEOs could change each year? What impact would changes to the group of other NEOs have on the comparability and usefulness of pay-versus-performance disclosure?

19. Should we require separate disclosure for the PEO, as proposed? Should we require, in instances where a registrant had more than one PEO in a given year, that the amounts for each PEO be added together, as proposed? Under our executive compensation disclosure rules, if an individual served in the capacity of PEO during *any* part of a fiscal year for which executive compensation disclosure is required, information about the individual's compensation for the full fiscal year is required to be disclosed. Should the compensation amount for the pay-versus-performance disclosure include only compensation received as the PEO? Should we require separate disclosure for each individual who served as a PEO during the required time period of disclosure? Are there alternative approaches we should consider? For example, where a registrant had more than one PEO in a given year, should we permit registrants the flexibility to choose instead to annualize the compensation of the PEO serving at the end of the fiscal year?

20. Should we require disclosure for only the PEO? Would information about the non-PEO NEOs be meaningful or useful for investors? Would information about the PEO's compensation provide adequate information to investors about the pay-versus-performance alignment of other NEOs? Would limiting the scope of disclosure to the PEO result in meaningful cost savings to registrants, for example by limiting the extent to which they must perform recalculations of compensation actually paid (see Section II.D below) or average calculations? Would limiting the disclosure to the PEO affect the usefulness of the information for investors?

D. Determination of ''Executive Compensation Actually Paid''

Exchange Act Section 14(i) does not define the phrase ''executive compensation actually paid,'' but it does require a ''clear description of any compensation required to be disclosed by the registrant'' under Item 402 of Regulation S–K.[56] We are proposing that ''executive compensation actually paid'' under proposed Item 402(v) of Regulation S–K would be total compensation as reported in the Summary Compensation Table,[57] modified to adjust the amounts included for pension benefits and equity awards. We believe using as a starting point the total compensation that registrants already are required to report in the Summary Compensation Table and making adjustments to those figures reduces burdens to registrants and also may enhance comparability of the proposed disclosure across registrants.[58]

Although Exchange Act Section 14(i) refers to compensation required to be disclosed under Item 402 of Regulation S–K, it also uses the phrase ''actually paid,'' which differs from disclosure required under Item 402 of ''compensation awarded to, earned by or paid to'' the NEOs.[59] We believe that Congress intended executive compensation ''actually paid'' to be an amount distinct from the total compensation as reported under Item 402 because it used a term not otherwise referenced in Item 402. As such, we believe that adjustments to some of the elements in the Summary Compensation Table are appropriate to reflect executive compensation that is ''actually paid'' within the meaning of Section 14(i). Total compensation as reported in the Summary Compensation Table is the appropriate starting point and, as proposed, would be included in the table as discussed above, but registrants would need to adjust some elements of compensation determined according to the Summary Compensation Table reporting requirements to reflect amounts ''actually paid'' to the NEOs.

Some commenters were of the view that we should not prescribe the specific compensation elements to be covered [60] or the method of determination of when equity awards are ''actually paid.'' [61] Instead, these commenters suggested that registrants be permitted flexibility to determine which compensation elements should be included in pay-versus-performance disclosure.[62] While such an approach could benefit registrants by permitting them to determine the disclosure they believe best reflects the relationship between executive pay and the registrant's performance, we believe that such flexibility would limit comparability across registrants, making the disclosure less useful to shareholders.[63]

Other commenters recommended that we limit the compensation required to be disclosed for purposes of the pay-versus-performance disclosure to the amounts that are based on the financial performance of the company.[64] Some commenters supported particular

[55] 17 CFR 240.3b–7.

[56] 15 U.S.C. 78n(i).

[57] Item 402(c) of Regulation S–K. Smaller reporting companies provide the scaled Summary Compensation Table disclosure specified in Item 402(n) of Regulation S–K.

[58] We note that the pay ratio disclosure required by Section 953(b) of the Dodd-Frank Act is required to be based on total compensation as provided in the Summary Compensation Table. In light of the different language in Section 953(a), which references compensation that is ''actually paid,'' we believe it is appropriate to adjust the treatment of certain components of total compensation for the disclosure required by Section 953(a) of the Dodd-Frank Act.

[59] *See* 17 CFR 229.402(a)(2).

[60] *See* letters from ABA, CEC I, ClearBridge and Davis Polk.

[61] *See* letters from ABA, CEC I, Davis Polk, Protective Life and Society of Corporate Secretaries and Governance Professionals (''SCSGP'').

[62] *See* letters from ABA, CEC I and Davis Polk. One commenter stated that ''[a]n issuer should be able to determine which compensation elements are based on performance and explain the rationale for why it included those elements in this analysis, and excluded others.'' *See* letter from Davis Polk.

[63] *See, e.g.,* letters from AFL–CIO and Council of Institutional Investors (''CII'').

[64] *See* letters from Compensia and Center for Executive Compensation (Oct. 17, 2014) (''CEC II'').

definitions of ''actually paid'' covering specific compensation elements,[65] such as a measure including only the grant date fair value for all equity awards that are subject to performance-based vesting conditions and cash amounts awarded based on the financial performance of the registrant.[66] Some commenters suggested that change in pension value should be excluded from the Summary Compensation Table calculation in computing the new measure.[67] Other commenters, by contrast, recommended that the Commission define ''executive compensation actually paid'' as broadly as possible, regardless of whether a particular component of compensation is awarded based on performance.[68]

We are aware that a number of registrants have used the concepts of ''realizable pay'' and ''realized pay'' in their proxy statements as a means of comparing pay and performance.[69] While there continues to be work among various compensation constituencies to agree upon a consistent methodology for calculating ''realizable pay'' or ''realized pay,'' we are not aware that there has yet been broad agreement upon any particular formula. Registrants may choose to supplement the disclosure required by proposed Item 402(v) by providing pay-versus-performance disclosure based on a measure of ''realized pay,'' ''realizable pay,'' or another appropriate measure if they believe it provides useful information about the relationship between compensation and registrant performance, provided that the supplemental disclosure is not misleading and not presented more prominently than the required disclosure.

Because the statute does not define ''executive compensation actually paid,'' we are using our discretion to define that term for the purpose of proposed Item 402(v) disclosure.[70] As indicated above, while we believe the Summary Compensation Table is the appropriate starting point, we believe some adjustments are appropriate to give effect to the statutory language and reflect executive compensation that is ''actually paid.'' Specifically, as discussed below, we propose to modify the amounts included for pension benefits and equity awards.[71] Moreover, we believe that the phrase ''executive compensation actually paid'' should include all compensation actually paid, regardless of whether the compensation is awarded based on the registrant's financial performance. In considering the relationship between executive compensation actually paid and the registrant's financial performance, we believe shareholders should be able to take into account components of compensation regardless of whether or not they are awarded based on the registrant's performance.

1. Changes in Actuarial Pension Value

We propose to deduct the change in the actuarial present value of all defined benefit and pension plans from the Summary Compensation Table total for purposes of proposed Item 402(v).[72] This Summary Compensation Table measure includes the change in actuarial present value of pension benefits previously accrued based on changes in interest rates, executive age, and other actuarial inputs and assumptions, which may introduce significant volatility into this measure, as well as the actuarial present value of accrued pension benefits earned by the executive based on an additional year of service.[73] Item 402(v) would require, however, that the actuarially determined service cost for services rendered by the executive during the applicable year be added back.[74] Thus, the portion of the total change in actuarial pension value that results solely from changes in interest rates, executive's age and other actuarial inputs and assumptions regarding benefits accrued in previous years would be excluded.

We believe that including only the service cost for services rendered by the executive during the applicable year is a more appropriate measure for purposes of determining compensation ''actually paid'' during the applicable year because it is limited to pension costs for benefits earned during that year. The amount we proposed to include may be viewed to approximate the value that would be set aside currently by the registrant to fund the pension benefits payable upon retirement for the service provided during the applicable year. We recognize that registrants may differ as to whether they use defined benefit or defined contribution retirement plans, and this proposed change to the amount disclosed in the Summary Compensation Table is intended to provide a more meaningful comparison across registrants of the amounts ''actually paid'' under both types of plan. For defined contribution plans, the Summary Compensation Table requires disclosure of registrant contributions or other allocations to vested and unvested defined contribution plans for the applicable fiscal year,[75] which will also be included in computing compensation actually paid for purposes of the new disclosure.

We do not expect that the proposed adjustments will require the collection of significant new data by registrants, or reveal significant new information to shareholders relative to the compensation disclosure that is currently required. The pension's annual service cost is not required to be reported separately, but can be calculated based on information reported in, and in footnotes to, the Pension Benefits Table. We believe that, for purposes of proposed Item 402(v), using the actuarially determined service

[65] *See* letters from ClearBridge and Pay Governance. ClearBridge and Pay Governance recommended using particular definitions of realizable pay.

[66] *See* letter from Compensia.

[67] *See* letters from Baker Donelson, Frederic W. Cook & Co., Inc. (''Cook''), and Meridian.

[68] *See* letter from CII. *See also* letter AFL–CIO (recommending that the Commission require disclosure of all forms of compensation as disclosed in the Summary Compensation Table).

[69] The concepts of ''realized pay'' and ''realizable pay'' are designed to provide different measures of alignment between a named executive officer's pay and performance, though there are no standard definitions of either term. Registrants can tailor the concepts resulting in amounts which generally differ from the amounts disclosed in the Summary Compensation Table because they exclude various types of compensation such as the value of unvested or unexercised equity awards. We note that some proxy advisory services have also begun to take into account some version of ''realizable pay'' or ''realized pay'' when making say-on-pay voting recommendations. *See, e.g.,* Institutional Shareholder Services, Inc., U.S. Corporate Governance Policy 2014 updates (Nov. 21, 2013).

[70] Proposed Item 402(v)(2).

[71] These terms have the same definitions as in Item 402 of Regulation S–K.

[72] The change in actuarial present value, generally, reflects the difference between the actuarial present value of accumulated benefits at the end of the fiscal year and at the end of the prior fiscal year. This amount would be deducted only if the value is positive, and therefore included in the sum reported in column (h) of the Summary Compensation Table. Where such amount is negative, and therefore reported only in a footnote to column (h), it should not be reflected for purposes of proposed Item 402(v). *See* Instruction 3 to Item 402(c)(2)(viii). Smaller reporting companies would not need to deduct this amount because the Summary Compensation Table requirements for smaller reporting companies do not require disclosure of the change in actuarial present value.

[73] While commenters were divided on which elements of compensation should be included, some commenters supported calculating compensation by excluding changes in pension value and above-market earnings on deferred compensation from the compensation in the Summary Compensation Table. *See* letters from Meridian, Baker Donelson, and Cook.

[74] Service cost is defined in FASB ASC Topic 715 as the actuarial present value of benefits attributed by the pension plan's benefit formula to services rendered by the employee during the period. The measurement of service cost reflects certain assumptions, including future compensation levels to the extent provided by the pension plan's benefit formula.

[75] Item 402(c)(2)(ix)(E).

cost rather than the Summary Compensation Table pension measure may increase comparability of compensation provided through defined benefit and defined contribution plans because of the variability of the actuarial inputs and assumptions among different registrants.

2. Earnings on Non-Qualified Deferred Compensation

Consistent with the current disclosure requirements of the Summary Compensation Table, the compensation calculation under proposed Item 402(v) would include above-market or preferential earnings on deferred compensation that is not tax-qualified because these amounts represent compensation accrued during the relevant year.[76] Above-market or preferential earnings on deferred compensation represent amounts accrued during the year based on the registrant's compensatory decision to pay an above-market return. Excluding this element from disclosure of compensation ''actually paid'' until its eventual payout would make disclosure contingent on an NEO's decision to withdraw or take a distribution from his or her account, rather than the registrant's compensatory decision to pay the above-market return. Such an approach would be inconsistent with the Summary Compensation Table disclosure of the underlying deferred amounts when earned,[77] which we would carry forward to proposed Item 402(v), and could result in the relationship of this amount to company performance never being disclosed.

3. Equity Awards

We are proposing that equity awards be considered actually paid on the date of vesting and valued at fair value on that date, rather than fair value on the date of grant as required in the Summary Compensation Table.[78] Before vesting, an executive does not have an unconditional right to an equity award. For example, the terms of both options and restricted stock awards typically provide for forfeiture of the award if the executive leaves the registrant's employment before the vesting date or if specified performance criteria are not met. Accordingly, we do not believe that an option or other equity award should be considered ''actually paid'' for purposes of this disclosure before the applicable vesting conditions are satisfied. Satisfaction of these conditions, which are determined by the registrant, can be viewed as representing payment by the registrant. Moreover, using vesting-date valuations will result in a compensation measure that includes, upon the vesting date, the grant-date value of equity awards plus or minus any change in the value of equity awards between the grant and vesting date. Such changes in the value of equity grants after the grant date represent a direct channel, and one of the primary means, through which pay is linked to registrant performance.

We do not believe that an award requiring exercise should be considered actually paid only upon its exercise, because once the award is vested the executive can control how and when the award is monetized, and thus could influence pay-versus-performance disclosure by controlling the fiscal year in which the executive receives the compensation. Changes in the fair value of the award after vesting generally reflect investment decisions made by the executive rather than compensation decisions made by the registrant.

The value of stock awards upon vesting is disclosed in the Option Exercises and Stock Vested Table.[79] Registrants are not currently required to report the value of option awards upon vesting if they are not exercised. However, registrants can apply existing models and methodologies to compute these values. Also, it is possible for shareholders to make reasonable estimates of these vesting-date fair values of options based on current disclosures.

In particular, the terms of unexercised option awards in a given year, including their exercise prices and expiration dates, are required to be disclosed (together with information about other outstanding awards) in the Outstanding Equity Awards at Fiscal Year-End Table.[80] Information about the valuation assumptions used by the registrant to calculate the grant-date value of option awards can be found in footnotes to the Summary Compensation Table (which may refer to disclosures made on Form 10–K) for the year corresponding to the grant date.[81] Disclosures about the vesting conditions that applied to the awards can be used to determine which of the option awards are newly vested.[82] The translation of the reported terms of these options into their fair values at vesting requires the choice of a valuation methodology and the use of public data and reasonable assumptions (potentially with reference to the registrant's disclosed grant-date valuation assumptions) to obtain the additional inputs required for option valuation at vesting date. Estimates thus computed by shareholders could differ from estimates computed by the registrant and, as mentioned above, current disclosure rules do not require registrants to compute and disclose their own estimates of these values.

Accordingly, for purposes of proposed Item 402(v), the amounts reported pursuant to Items 402(c)(2)(v) and (vi) would be subtracted from total compensation reported in the Summary

[76] These earnings are reported pursuant to Item 402(c)(2)(vii), or, for smaller reporting companies, Item 402(n)(2)(viii). These earnings, like the aggregate change in defined benefit plan actuarial present value also reported pursuant to Item 402(c)(2)(viii), or Item 402(n)(2)(viii), are excluded for purposes of a registrant's NEO determination pursuant to Instruction 1 to Item 402(a)(3), or, for smaller reporting companies, Instruction 1 to Item 402(n)(2)(viii). In adopting this Instruction, the Commission stated it was appropriate to exclude these items because their amounts generally are not determined by the Compensation Committee. Rather, they are ''compensation elements that principally reflect executives' decisions to defer compensation and wealth accumulation in pension plans, or are unduly influenced by age or years of service.'' *See Executive Compensation and Related Person Disclosure,* Release 33–8732A (Aug. 29, 2006) [71 FR 53158 (Sept. 8, 2006)], at Section II.C.6 (''Executive Compensation Release''). These reasons, however, do not seem relevant to a determination of whether such compensation is ''actually paid'' for purposes of the disclosure mandated by Section 14(i).

[77] Instruction 4 to Item 402(c), or, for small reporting companies, Instruction 4 to Item 402(n).

[78] Grant date fair value disclosure reflects compensation committee decisions during the relevant fiscal year relating to equity awards. *See Proxy Disclosure Enhancements,* Release No. 33–9089 (Dec. 16, 2009) at Section II.A.2 [74 FR 68334] (Dec. 23, 2009).

[79] *See* Item 402(g)(2)(v). Smaller reporting companies are not required to provide this table.

[80] *See* Item 402(f)(2)(v) and (vi). For smaller reporting companies, see Item 402(p)(2)(v) and (vi). Some options may be exercised in the same year as vesting. Whether an option award that was exercised had vested in the same year can be determined by comparing the Outstanding Equity Awards at Fiscal Year-End Table per Item 402(f) or, for smaller reporting companies, Item 402(p), to the same table for the prior year, and identifying as exercised options those that are no longer reported as outstanding. In such cases, the terms of these awards can be determined from the Outstanding Equity Awards at Fiscal Year-End Table and related footnotes for the prior year or, for options granted in the same year as exercise (which will not appear in disclosures for the prior year) in footnotes to the Summary Compensation Table for the same year.

[81] *See* Instruction 1 to Item 402(c)(2)(v) and (vi). For smaller reporting companies, *see* Instruction 1 to Item 402(n)(2)(v) and (vi).

[82] Registrants are required to describe the material conditions of awards, including a general description of the formula or criteria to be applied in determining the amounts payable, and the vesting schedule, in the narrative disclosure to the Summary Compensation Table and Grants of Plan-Based Awards table per Item 402(e) in the year in which an option award is granted. Smaller reporting companies are required to describe the material conditions of awards in the narrative disclosure to the Summary Compensation Table per Item 402(o) in the year in which an option award is granted. The vesting date of options held at fiscal-year end must be disclosed by footnote to the Outstanding Equity Awards at Fiscal-Year End table required by Item 402(f), or, for smaller reporting companies, Item 402(p), of Regulation S–K.

Compensation Table, and the following would be added in their place:[83]

- For awards of stock, that vested in the applicable year, the fair value at vesting date, computed in accordance with the fair value guidance in FASB ASC Topic 718; and
- For awards of options with or without tandem stock appreciation rights (''SARs'') that vested in the applicable year, the fair value at vesting date, computed in accordance with the fair value guidance in FASB ASC Topic 718. As proposed, a registrant would be required to disclose vesting date valuation assumptions if they are materially different from those disclosed in its financial statements as of the grant date.

We believe shareholders may be interested in vesting date valuation assumptions to the extent they believe that changes in the value of equity grants after the grant date are a primary channel through which pay is linked to performance. We believe that requiring disclosure of vesting date valuation assumptions would make these computations readily accessible to shareholders, which may be useful to shareholders to the extent they are interested in computing slightly different measures or using parts of the computations for other purposes. Further, if during the last completed fiscal year the registrant adjusted or amended the exercise price of previously vested options or SARs held by an NEO, whether through amendment, cancellation or replacement grants, or any other means, or otherwise has materially modified such awards, proposed Item 402(v) would require the registrant to include the incremental fair value, computed as the excess fair value of the modified award over the fair value of the original award upon vesting of the modified award. If the modified award is subject to multiple vesting dates, the pro rata incremental fair value would be determined and included in compensation actually paid at each vesting date.

For example, a registrant grants an option (''original award'') for 1,000 shares of common stock with an exercise price of $20 per share. By its terms, the original award vests upon completion of a two-year service period. Upon vesting, the then fair value of the original award is included in compensation actually paid. After the original award vests, assume the registrant modifies its terms to reduce the exercise price to $15 per share with 50% vesting immediately and 50% vesting upon completion of another two-year service period (''modified award''). The incremental fair value that is included in compensation actually paid will be computed at each of the modified award's two vesting dates based on the then excess fair value of the ratable 500 shares using the modified award terms compared with the original award terms. In this example, compensation actually paid would be determined three times, as the full fair value of the original award at its vesting and the pro rata incremental fair value amounts at each of the two vesting dates of the modified award.[84]

Request for Comment

21. Does our proposed definition appropriately capture the concept of ''executive compensation actually paid?'' Why or why not? Are there elements of compensation excluded by our proposed definition that should not be? Alternatively, does the proposed definition include any items that should be excluded? If so, which ones and why?

22. Our proposal is designed, in part, to enhance comparability across registrants. Is comparability across registrants relevant or necessary in determining which compensation elements should be covered by the pay-versus-performance disclosure? Why or why not?

23. Under our proposed approach, the disclosure may not necessarily align a particular executive's compensation with the time period during which the registrant's performance may be attributed to the executive. For example, this may be the case where a turn-around specialist is hired and provided a substantial incentive payment up front in order to assume the task of improving the company's performance. Should our approach account for this? If so, should we require this to be addressed in supplemental disclosure? Are there other approaches we should consider?

24. Instead of our proposal, should we permit a principles-based approach that would allow registrants to determine which elements of compensation to include, so long as they clearly disclosed how the amount was calculated? Why or why not? How should such a provision be structured? What requirements should we include?

25. Are there alternative methods of determining which compensation is relevant to pay-versus-performance disclosure that we should consider?

26. Instead of our proposal, should we require only the use of the total compensation reported in the Summary Compensation Table and permit registrants to supplement this disclosure as they determine best reflects how their compensation relates to company performance? How would this approach affect the usefulness, comparability and cost of the pay-versus-performance disclosure?

27. Does our proposal to require only the actuarial present value of benefits attributable to services rendered during the applicable fiscal year, rather than the change in actuarial present value of pension benefits that is required by the Summary Compensation Table, appropriately reflect compensation ''actually paid'' to NEOs during that year for purposes of the pay-versus-performance disclosure mandated by Section 14(i)?

28. Is our proposal to include in the Item 402(v) calculation only above-market or preferential earnings on deferred compensation that is not tax-qualified appropriate? Should the calculation instead include all earnings on deferred compensation that are not tax-qualified rather than just the above-market portion? Should the calculation only include the above-market portion once any vesting conditions applicable to those earnings have been satisfied?

29. Should we value equity awards at vesting date fair value as proposed? Should we instead value equity awards at grant date fair value as currently required by Item 402(c)(2)(v) and (vi) or fair value at some other point in time? If so, why? Should we require disclosure of vesting date valuation assumptions if they are materially different from those disclosed in a registrant's financial statements as of the grant date, as proposed? Would the disclosure of these assumptions provide meaningful information to shareholders?

30. What concerns, if any, are presented if we require equity awards to be valued at vesting date fair value as opposed to grant date fair value? Would any concerns be mitigated by the inclusion in the table of the total compensation amount as provided in the Summary Compensation Table?

[83] Proposed Item 402(v)(3) would require registrants to disclose in a footnote to the table required under paragraph (v)(1), the total compensation amount reported in the Summary Compensation Table for the covered fiscal year for each NEO as provided in paragraph (c)(2)(x), or, for smaller reporting companies, paragraph (n)(2)(x), and the individual amounts deducted from, and modifications to, the amounts reported in the Summary Compensation Table in generating the amounts disclosed pursuant to Item 402(v) for the PEO(s). For NEOs other than the PEO, proposed Item 402(v)(3) would require disclosure of these amounts as averages.

[84] *See* proposed Instruction 1 to Item 402(v). Note that if the original award had been modified before it vested, the compensation actually paid would be determined only twice, as the pro rata fair value of the modified award at each of its two vesting dates.

31. Should any other components of compensation, such as registrant contributions to defined contribution plans, also be included only after any applicable vesting conditions have been satisfied?

32. For equity awards that require exercise, is our proposal to consider them ''actually paid'' when vested the appropriate point in time for purposes of Item 402(v) disclosure? If not, please explain. Should we instead require that for an award that requires exercise to be considered ''actually paid,'' it must also be exercisable, making the valuation date the date on which the award is both vested and exercisable? Is there an alternative approach we should consider?

33. Are there other specific elements of compensation in the Summary Compensation Table that we should exclude or modify for purposes of the pay-versus-performance disclosure called for under proposed Item 402(v)?

E. Measure of Performance

We are proposing to require that registrants use TSR (as defined in Item 201(e) of Regulation S–K) as the measure of financial performance of the registrant for purposes of pay-versus-performance disclosure.[85] Exchange Act Section 14(i) does not specify how registrant financial performance is to be measured, although the language in the statute requires financial performance to take into account any change in the value of the shares of stock and dividends of the registrant and any distributions of the registrant. We believe using TSR as the measure of financial performance is consistent with this requirement and we received several comments that supported this approach.[86]

Several commenters in the pre-proposal stage indicated that absolute company performance may not be a sufficient basis for comparison and advocated disclosure of registrant performance relative to that of a peer group.[87] Consistent with these suggestions, we also are proposing to require registrants, other than smaller reporting companies, to disclose peer group total shareholder return, using either the same peer group used for purposes of Item 201(e) of Regulation S–K,[88] or, a peer group used in the CD&A for purposes of disclosing registrants' compensation benchmarking practices.[89] If the peer group is not a published industry or line-of-business index, the registrant would be required to disclose the identity of the issuers. A registrant that has previously disclosed the composition of issuers in its peer group in prior filings with the Commission would be permitted to comply with the proposed requirement by incorporation by reference to those filings. We believe this would avoid the potential for duplicative disclosure.

Requiring registrants to use a consistently calculated measure, such as TSR, should increase the comparability of pay-versus-performance disclosure across registrants. Using TSR also would provide a measure of financial performance that is objectively determinable from the share price of the registrant and not open to subjective determinations of performance. In addition, using a measure that registrants are already required to determine and disclose, and with which shareholders already are familiar, would reduce the burden of providing and analyzing pay-versus-performance disclosure as compared to requiring registrants to calculate and shareholders to review a new measure of financial performance.

Some commenters suggested permitting registrants to choose the performance measure best-suited for their company.[90] One commenter suggested that registrants should be required to present additional performance measures.[91] We note that, as with other mandated disclosures, registrants would be permitted to provide supplemental measures of financial performance so long as any additional disclosure is clearly identified, not misleading and not presented with greater prominence than the required disclosure.

Request for Comment

34. Should we require registrants to use TSR as the performance measure? Would the comparability across registrants resulting from this proposal benefit shareholders? Would prescribing the use of TSR hinder registrants from providing meaningful disclosure about the relationship between executive pay and financial performance? Would requiring the use of TSR result in shareholders or management focusing too much on this single measure of performance or emphasizing short-term stock price improvement over the creation of long-term shareholder value? If so, are there ways we could mitigate that risk?

35. Should we allow registrants flexibility in choosing the relevant measure of performance they are required to disclose? Besides TSR, what other measures of financial performance take into account any change in the value of the shares of stock and dividends and distributions of the registrant, as required by the statute? Are there metrics other than TSR that measure a company's performance and meet the requirements of the statute? If so, would they result in disclosures that are more or less meaningful than TSR? How is corporate performance measured today? How is this information incorporated into investment decisions?

36. If companies do not currently use TSR as a factor in determining executive compensation, could requiring disclosure of this relationship cause companies to change their compensation strategy to focus on this factor? If so, what would be the effect?

37. Does TSR, standing alone, provide sufficient information about a registrant's performance such that a registrant would provide only the information that would be mandated by this rule? Will registrants opt to provide additional information based on their own calculations or metrics to provide additional context for investors to consider the alignment of pay versus performance?

38. Should we permit voluntary use of other measures of performance in addition to TSR, as proposed? Should we instead include specific requirements relating to the use of alternative performance measures in the proposed rules?

39. Should we require disclosure of TSR on an absolute basis, as well as disclosure of peer group TSR, as proposed? Why or why not? Are there other parameters we should consider

[85] Item 201(e) of Regulation S–K, which prescribes disclosure for the stock performance graph included in the annual report to security holders required by Rules 14a–3 and 14c–3, provides that cumulative total shareholder return is calculated by ''dividing the (i) sum of (A) the cumulative amount of dividends for the measurement period, assuming dividend reinvestment, and (B) the difference between the registrant's share price at the end and the beginning of the measurement period; by (ii) the share price at the beginning of the measurement period.'' 17 CFR 229.201(e).

[86] *See* letters from ClearBridge, Compensia, Farient, Meridian and MDU.

[87] *See* letters from Farient, J&J, MDU, Pay Governance, Shareholder Value Advisors.

[88] 17 CFR 229.201(e)(1)(ii).

[89] *See* Item 402(b)(xiv) of Regulation S–K (17 CFR 229.402(b)(xiv)). We note that smaller reporting companies are not subject to Item 201(e) and that requiring disclosure of peer group total shareholder return would require smaller reporting companies to collect and disclose information that they are not currently required to disclose.

[90] *See* letters from ABA, CEC I, Davis Polk, Protective Life and SCSGP.

[91] *See* letter from Public Citizen (recommending that registrants be required to present the relationship of compensation with four performance measures: Total shareholder return, return on assets, return on equity, and the growth in earnings per share).

requiring registrants to implement for the selection of peer groups?

40. Should we require disclosure about the registrant's selection of the peer group? For example, if a registrant using a peer group changes its peer group from one used in the previous fiscal year, should we require a brief narrative explaining the reasons for the change? [92]

41. Our proposal requires a registrant to use the same peer group used for purposes of Item 201(e) or the CD&A. Should a registrant be permitted to choose between these two options, or should we prescribe which peer group should be used? Why or why not? Should a registrant be permitted to choose a peer group different from that used for purposes of Item 201(e) or its CD&A? Please explain. Should there be any restrictions on how registrants select their peer groups?

F. Time Period Covered

Section 14(i) does not specify the time period that the pay-versus-performance disclosure must cover. Several commenters expressed concern that meaningful pay-versus-performance disclosure would need to address the time periods over which pay and performance are evaluated.[93] Commenters recommended a variety of solutions to provide meaningful disclosure, recommending varying types of disclosure over varying time periods.[94]

For registrants other than smaller reporting companies, we are proposing to require registrants to provide the pay-versus-performance disclosure for the five most recently completed fiscal years.[95] As noted above, several commenters supported a disclosure period of five years.[96] While the Summary Compensation Table required by Item 402(c) of Regulation S–K requires compensation disclosure for each of the last three completed fiscal years, we note that the stock performance graph required by Item 201(e) of Regulation S–K requires disclosure for the previous five fiscal years, although it does not include any compensation information. We believe that requiring disclosure of the relationship between executive compensation and registrant performance over the five most recently completed fiscal years is appropriate because it provides a meaningful period over which a relationship between annual measures of pay and performance over time can be evaluated.[97]

Smaller reporting companies would be required to provide the disclosure for the three most recently completed fiscal years.[98] Our executive compensation rules require smaller reporting companies to provide disclosure for only the last two completed fiscal years,[99] but we believe that requiring pay-versus-performance disclosure for three fiscal years, instead of two, provides more useful information from which investors can evaluate the relationship between a registrant's executive compensation actually paid and its financial performance, and provides a longer time horizon over which to observe any potential trends. We also are proposing to provide a transition period for registrants to provide the disclosure. Existing smaller reporting companies would be required to provide the disclosure for only the last two fiscal years in the first applicable filing after the rules become effective. In subsequent years such companies would be required to provide disclosure for the last three fiscal years.[100] Any other registrants would be required to provide the proposed Item 402(v) disclosure for three fiscal years, instead of five, in the first applicable filing after the rules become effective, and provide disclosure for an additional year in each of the two subsequent annual proxy filings where disclosure is required.

We are also proposing that a registrant provide pay-versus-performance disclosure only for years that it was a reporting company pursuant to Section 13(a) or Section 15(d) of the Exchange Act. Thus, a newly-reporting registrant would be required to provide pay-versus-performance disclosure for only the most recently ended fiscal year in any proxy statement or information statement in which executive compensation disclosure pursuant to Item 402 of Regulation S–K is required in its first year as a reporting company, and in the two most recently completed fiscal years in any proxy statement or information statement in which executive compensation disclosure pursuant to Item 402 of Regulation S–K is required in its second year as a reporting company. This treatment is consistent with the phase-in period for new reporting companies in their Summary Compensation Table disclosure.[101]

Request for Comment

42. Does a five-year disclosure period (for registrants other than smaller reporting companies) and a three-year disclosure period (for smaller reporting companies), as proposed, provide meaningful pay-versus-performance disclosure? Should the timeframes be shorter or longer? For example, should we require only three years of disclosure for all registrants consistent with the time period required by the Summary Compensation Table for registrants other than smaller reporting companies? What impact would a different time period have on the disclosure and its usefulness to shareholders?

43. Should we provide the proposed transition period for existing registrants? Why or why not? Should the transition period be shorter or longer? Does it depend on the type of registrant?

44. Should we permit registrants voluntarily to include fiscal years beyond the five-year period, as proposed? Please explain why or why not. Is there a risk that some registrants may choose the time period which is most favorable for performance? How could we mitigate this risk?

45. Is the proposed phase-in for new reporting companies appropriate? Is sufficient information readily available for these companies to provide adequate pay-versus-performance disclosure in any proxy statements or information statements requiring Item 402 disclosure in their first two years as a reporting company? If not, what are the costs of

[92] *See, e.g.,* Item 201(e)(4) of Regulation S–K, which provides that if a registrant chooses a different index for the stock performance graph than the one used in the previous fiscal year, then the registrant is required to explain the reason for the change and is also required to compare total return with both the old and the new index.

[93] *See, e.g.,* letters from ClearBridge, Pay Governance and SCSGP.

[94] *See* letters from Brian Foley & Company, ClearBridge and Pay Governance (supporting a one-year and a three-year aggregate disclosure to capture annual and long-term compensation); J&J (including a copy of their proxy materials in which they disclosed their PEO's annual compensation over five years in relation to total shareholder return and provided a separate table showing aggregate compensation over a three-year period relative to a peer group); and from Baker Donelson, Cook, Meridian, and MDU (supporting a five-year time period).

[95] *See* proposed Item 402(v)(2) of Regulation S–K.

[96] *See* letters from Baker Donelson, Frederic Cook, MDU (noting that a five-year measurement period moderates annual volatility and leads to more balanced comparisons), and Meridian.

[97] We are proposing to require smaller reporting companies to provide the disclosure over three years because they are not subject to Item 201(e) and provide Summary Compensation Table disclosure for two completed fiscal years. See Item 402(n) of Regulation S–K.

[98] *See* proposed Instruction 8 to Item 402(v)(2) of Regulation S–K.

[99] *See* Item 402(n) of Regulation S–K.

[100] *See* proposed Instruction 1 to Item 402(v).

[101] *See* Instruction 1 to Item 402(c) of Regulation S–K. Similarly, Item 201(e)(2) provides that if the registrant has been registered under Section 12 for a shorter period of time than the prescribed measurement period, the period covered by the performance graph may correspond to that time period.

developing this information? Would pay-versus-performance disclosure for only the most recently completed fiscal year in the first proxy statement filed by a newly-reporting company, as proposed, provide sufficient and meaningful information for shareholders to evaluate the executive compensation actually paid as compared to the registrant's financial performance, given the limited time period covered? Does the importance of the information to shareholders justify the costs of preparing the disclosure without a phase-in period?

46. Should the pay-versus-performance disclosure be required to use annual data from the five most recently completed fiscal years, as proposed, or aggregated data for the five most recently completed fiscal years? If the years are aggregated, should the relationship between pay and performance be demonstrated across peers because it can no longer be demonstrated over time? Alternatively, should the pay-versus-performance comparison be presented for both the last completed fiscal year and in aggregate for the five most recently completed fiscal years? If so, please explain why a different period and different level of aggregation than proposed would be more informative to shareholders or otherwise more appropriate.

47. Are there other transition issues or accommodations that we should consider? For example, should emerging growth companies[102] that are statutorily excluded from the requirements of Section 14(i) be provided the same phase-in period of pay-versus-performance disclosure applicable to other registrants when they first become subject to the proposed requirement to provide five fiscal years of pay-versus-performance disclosure?

G. Clear Description

Exchange Act Section 14(i) requires a ''clear description'' of the compensation disclosure required by Item 402 of Regulation S–K. We believe the requirement in Item 402(a)(2) of Regulation S–K [103] for ''clear, concise and understandable disclosure'' and the Plain English principles in Exchange Act Rules 13a–20 [104] and 15d–20 [105] give effect to the requirement in new Section 14(i) of the Exchange Act for clear compensation disclosure. When the current compensation disclosure requirements were adopted, we also amended Exchange Act Rules 13a–20 and 15d–20 so that the Plain English principles would apply to the amended compensation disclosure.[106] In adopting the Plain English requirement for compensation disclosure, we stated, ''clearer, more concise presentation of executive and director compensation . . . can facilitate more informed investing and voting decisions in the face of complex information about these important areas.'' [107] We think this statement applies equally to pay-versus-performance disclosure. In addition, we noted that the Plain English principles applicable to compensation disclosure would permit registrants to ''include tables or other design elements, so long as the design is not misleading and the required information is clear, understandable, consistent with applicable disclosure requirements, consistent with any other included information, and not misleading.'' [108] As a result, registrants are permitted to provide additional information beyond what is specifically required by our rules so long as the information is not misleading and does not obscure the required information.

Request for Comment

48. Are there changes to our rules that are necessary or appropriate in order to give effect to the requirement in Section 14(i) of the Exchange Act for a clear description of the Item 402(v) compensation disclosure?

49. Is it appropriate to apply the Plain English principles to the pay-versus-performance disclosure? If not, please explain why.

H. Smaller Reporting Companies

As proposed, smaller reporting companies as defined in Item 10(f)(1) of Regulation S–K [109] would be required to provide Item 402(v) disclosure. In an effort to minimize the reporting costs for these registrants, consistent with the Commission's treatment of smaller reporting companies in other areas (*e.g.,* executive compensation), these companies would be permitted to provide scaled disclosure, as follows:

- First, smaller reporting companies would be required to present Item 402(v) disclosure for the three most recently completed fiscal years, as opposed to the five most recently completed fiscal years required for other registrants. This is consistent with our general approach to scaling the requirements for executive compensation disclosure provided by smaller reporting companies.
- Second, smaller reporting companies would not be required to disclose amounts related to pensions for purposes of disclosing executive compensation actually paid because they are subject to scaled compensation disclosure that does not include pension plans.
- Finally, smaller reporting companies would not be required to present a peer group TSR. Smaller reporting companies are not subject to Item 201(e) and therefore are not otherwise required to present the TSR of a peer group, and they are not required to present a CD&A.

In addition, as proposed, the rule includes a transition period that would permit an existing smaller reporting company to provide two years of data, instead of three, in the first applicable filing after the rules become effective, and three years of data in subsequent proxy filings.

Smaller reporting companies are only required to provide Summary Compensation Table disclosure for the two most recently completed fiscal years. While the time period applicable for the proposed disclosure is longer than what smaller reporting companies currently are required to disclose in the Summary Compensation Table, we note that the information required to make the pay-versus-performance calculations for these additional years would be available in disclosures from prior years.

As proposed, smaller reporting companies would be required to provide the disclosure in the prescribed table in XBRL format, but we are proposing a phase-in under which smaller reporting companies would be required to provide the data in XBRL beginning with the third filing in which it provides pay-versus-performance disclosure.[110] This phase-in is intended to permit smaller reporting companies to plan and implement their data tagging with the benefit of the experience of other registrants that do not have a phase-in.

[102] Section 102(a)(2) of the JOBS Act excludes ''emerging growth companies'' from the requirements of Section 14(i). In accordance with this provision, we are not proposing to require an emerging growth company to provide pay-versus-performance disclosure.

[103] 17 CFR 229.402(a)(2).

[104] 17 CFR 240.13a–20.

[105] 17 CFR 240.15d–20.

[106] *See Executive Compensation Release, supra* note 76.

[107] *Id.*

[108] *Id.*

[109] 17 CFR 229.10(f)(1).

[110] Providing a phase-in for smaller reporting companies is consistent with how we have previously implemented certain new disclosure requirements applicable to these companies. *See, e.g., Interactive Data to Improve Financial Reporting,* Release No. 33–9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)]; *Shareholder Approval of Executive Compensation and Golden Parachute Compensation,* Release No. 33–9178 (Jan. 25, 2011) [76 FR 6010 (Feb. 2, 2011)].

It also will give them a longer period of time over which to spread first-year data tagging costs. While we recognize that requiring this disclosure to be provided in interactive data format would impose additional costs and burdens on these companies, beyond what they currently incur in producing interactive data for other purposes in other filings, we anticipate that these expenses would be relatively lower than what they currently incur in producing interactive data for other purposes given the limited disclosures that would be required to be tagged.

We do not expect the compliance burden associated with providing this disclosure to be substantial given that much of the information required by the proposed rule is derived from information currently required under existing Regulation S–K. We also note that smaller reporting companies are subject to the say-on-pay advisory votes required under Exchange Act Rule 14a–21,[111] which the pay-versus-performance disclosure required under proposed Item 402(v) is intended to facilitate. We believe that shareholders of smaller reporting companies may benefit from having the proposed pay-versus-performance disclosure when casting their say-on-pay advisory votes and that such disclosure can be provided without imposing undue costs on smaller registrants.

Request for Comment

50. Would the proposed scaled disclosure requirements for smaller reporting companies provide meaningful disclosure to investors without imposing undue costs and burdens on these companies? Are there ways we could modify the proposed disclosure requirements to reduce the costs and still provide useful information for shareholders? For example, should we require only a two-year disclosure period for smaller reporting companies (similar to the timeframe for which they are required to provide disclosure in the Summary Compensation Table)?

51. Should we exempt smaller reporting companies from the proposed pay-versus-performance disclosure requirements? Why or why not? What impact, if any, would the absence of the proposed disclosure have on the ability of shareholders of smaller reporting companies to effectively exercise of their say-on-pay voting rights? Would shareholders be able to assess the relationship between the company's financial performance and the compensation paid absent the disclosure required under proposed Item 402(v)? Would the proposed disclosure be more or less meaningful to shareholders in the absence of CD&A and Item 201(e) performance graph disclosure? What are the burdens on smaller reporting companies of requiring pay-versus-performance disclosure and would the benefits of requiring this disclosure for smaller reporting companies justify the burdens? If not, please explain why not. Should registrants that exit smaller reporting company status be provided the same phase-in period applicable to other registrants when they first become subject to the proposed requirement to provide five fiscal years of pay-versus-performance disclosure?

III. General Request for Comments

We request and encourage any interested person to submit comments on any aspect of our proposals, other matters that might have an impact on the amendments, and any suggestions for additional changes. With respect to any comments, we note that they are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to our proposals where appropriate.

In addition, we request data to quantify the costs and the value of the benefits described in this release. We seek estimates of these costs and benefits, as well as any costs and benefits not already defined, that may result from the adoption of these proposed amendments. We also request qualitative feedback on the nature of the benefits and costs we have identified and any benefits and costs we may have overlooked.

To assist in our consideration of these costs and benefits, we specifically request comment on the following:

52. Would there be any significant transition costs imposed on registrants as a result of the proposal, if adopted? Please be detailed and provide quantitative data or support, as practicable.

53. Have we struck the appropriate balance between prescribing rules to satisfy the requirements of Exchange Act Section 14(i) and allowing registrants to disclose pay-versus-performance information most relevant to shareholders?

54. Are there alternatives to the proposals we should consider that would satisfy the requirements of Section 14(i) of the Exchange Act?

IV. Economic Analysis

A. Background

As discussed above, Section 953(a) of the Dodd-Frank Act added Section 14(i) to the Exchange Act, directing the Commission to require registrants to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders the relationship between executive compensation actually paid and the financial performance of the registrant. Section 14(i) of the Exchange Act does not define key terms, such as ''executive compensation actually paid'' or issuer ''financial performance,'' or prescribe a specific format for this disclosure. As a result, we apply discretion in our proposed implementation of the provision.

New Item 402(v) proposed by the Commission to satisfy the mandate of Section 14(i) requires the disclosure of information that is largely already required to be reported under current disclosure rules, but that is currently not computed or presented in the way the proposal would require. The proposal requires registrants to present the values of prescribed measures of executive compensation and performance for each of their five most recently completed fiscal years (three years for smaller reporting companies) in a standardized table. Registrants would be required to provide a clear description of the relationship between these measures, but would be allowed to choose the format used to present the relationship, such as a graph or narrative description. The proposal would also allow registrants to supplement the required elements of the disclosure with additional measures or additional years of data. The disclosure would be required to be provided in tagged data format using XBRL.

The proposed amendments would require that the compensation covered by the disclosure be ''executive compensation actually paid.'' Registrants would also be required to include the Summary Compensation Table measure of total compensation in the tabular disclosure for purposes of comparison. The proposal defines executive compensation actually paid as total compensation, as currently disclosed in the Summary Compensation Table, with modifications to the amounts disclosed

[111] *See* Release No. 33–9178, *supra* note 10 (''We do not believe that smaller reporting companies should be permanently exempt from the say-on-pay vote, frequency of say-on-pay votes and golden parachute and vote because we believe investors have the same interest in voting on the compensation of smaller reporting companies and in clear and simple disclosure of golden parachute compensation in connection with mergers and similar transactions as they have for other issuers.'').

for pension benefits (under all defined benefit and actuarial pension plans) and equity awards in order to better reflect amounts ''actually paid.''

Specifically, we propose that, instead of the total change in actuarial pension value, executive compensation actually paid include only the actuarial present value of benefits attributable to services rendered during the applicable fiscal year. That is, the measure would exclude that part of the change in actuarial pension value that results from any change in the actuarial value of benefits accrued in previous years, and should thus increase the comparability between compensation provided through defined benefit and defined contribution plans. This adjustment is also expected to reduce the volatility in measured pension compensation caused by changes in interest rates and other actuarial assumptions, and should thus make it easier to evaluate the relationship of pay-versus-performance. Because the scaled compensation disclosure that applies to smaller reporting companies does not include pension plans, this adjustment would not be required of smaller reporting companies. We also propose that executive compensation actually paid include the values of equity awards at the time of vesting rather than the date they are granted. Using vesting-date valuations would result in a compensation measure that includes, upon the vesting date, the grant date value of equity awards plus or minus any change in the value of equity awards between the grant and vesting date. As discussed below, such changes in the value of equity awards after the grant date represent a direct channel, and one of the primary means, though which pay is linked to registrant performance. We therefore believe that it is important that such changes in the value of equity awards be reflected in the pay-versus-performance disclosure.[112]

All of the individual components needed to calculate executive compensation actually paid must already be reported under current disclosure rules, with the exception of the values to be included with respect to pension benefits and option awards. The actuarial present value of pension benefits of an individual NEO attributable to services rendered during the applicable fiscal year is not currently required to be reported but can be estimated by shareholders based on existing disclosures with respect to pension benefits and pension valuation assumptions. The vesting-date values of option awards can similarly be estimated by shareholders using existing disclosures regarding the terms of option awards, their grant-date values and grant-date valuation assumptions, but arriving at such estimates could require shareholders to make vesting-date valuation assumptions that could differ from the grant-date valuation assumptions. The disclosure of executive compensation actually paid may therefore provide shareholders with marginal new information about the particular assumptions made by registrants in estimating vesting-date valuations.

The proposed amendments would require TSR to be the measure of financial performance used for the pay-versus-performance disclosure. Registrants other than smaller reporting companies would be required to include the TSR for a peer group as well as the registrants' own TSR in the required table. Registrants would also be required to provide a description of the relationship of their own TSR with executive compensation actually paid and, for registrants other than smaller reporting companies, of their own TSR with the reported peer group TSR. For this purpose, registrants may use the peer group used for their Item 201(e) performance graph in their annual report or the peer group used in their CD&A, if any.

The proposed amendments would permit registrants to present supplemental measures of both performance and compensation. Also, the proposed amendments would not prescribe the format in which the relationship between executive compensation actually paid and TSR is presented, though the amendment would require that the disclosure present this relationship over the five prior fiscal years (three years for smaller reporting companies). The proposal would also require footnote disclosure of the adjustments made to compute executive compensation actually paid and disclosure of the vesting date valuation assumptions, if materially different from the grant date assumptions.

We are proposing these amendments to satisfy the statutory mandate of Section 14(i) of the Exchange Act. The Senate Report that accompanied the statute references shareholder interest in the relationship between executive pay and performance as well as the general benefits of transparency of executive pay practices.[113] As discussed above, we believe that the statute is intended to provide further disclosures for shareholders to consider when making say-on-pay voting decisions, as well as when making other voting decisions on the compensation plans in which NEOs participate, and making decisions pertaining to the election of directors.

Exchange Act Section 3(f) requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of shareholders, whether the action will promote efficiency, competition and capital formation. Exchange Act Section 23(a)(2) requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition and not to adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The discussion below addresses the economic effects of the proposed amendments, including its anticipated costs and benefits, as well as the likely effects of the proposed amendment on efficiency, competition, and capital formation. The proposed amendments reflect the statutory mandate in Section 14(i) as well as the discretion we exercise in implementing that mandate. For purposes of this economic analysis, we address the costs and benefits resulting from the statutory mandate and from our exercise of discretion together, recognizing that it is difficult to separate the costs and benefits arising from these two sources. We also analyze the potential costs and benefits of significant alternatives to what is proposed. We request comment throughout this release on alternative means of meeting the statutory mandate of Section 14(i) of the Exchange Act and on all aspects of the costs and benefits of the proposed approach and of possible alternatives. We also request comment on any effect the proposed disclosure requirements may have on efficiency, competition and capital formation.

[112] To the extent that some shareholders may be interested in considering the relationship of performance with a measure of pay that excludes such changes in the value of equity awards, they would be able to refer to the Summary Compensation Table measure of total compensation required alongside executive compensation actually paid in the tabular disclosure. The Summary Compensation Table measure of total compensation reflects the grant date values of equity awards.

[113] The Senate Report includes the following with respect to Section 953(a) of the Dodd-Frank Act: ''It has become apparent that a significant concern of shareholders is the relationship between executive pay and the company's financial performance of the issuers . . . The Committee believes that these disclosures will add to corporate responsibility as firms will have to more clearly disclose and explain executive pay.'' *See* the Senate Report *supra* note 7.

B. Baseline

To assess the economic impact of the proposed amendments, we are using as our baseline the current state of the market without a requirement for registrants to disclose the relationship between executive compensation actually paid and the financial performance of the registrant. We consider the impact of the proposed amendment on shareholders, registrants, and their NEOs. The proposed amendments would apply to all companies that are registered under Section 12 of the Exchange Act and are therefore subject to the federal proxy rules, except emerging growth companies. The proposed amendments would also not apply to foreign private issuers or companies with reporting obligations only under Section 15(d) of the Exchange Act, which are not subject to the proxy rules. In addition, for some Section 12(g) registrants, such as limited partnerships, the disclosure requirement might not apply in some or all years because these registrants might not file either proxy or information statements every year.[114]

We estimate that approximately 6,075 registrants would be subject to the proposed amendments, including approximately 2,430 smaller reporting companies.[115] Among all registrants subject to the federal proxy rules, we estimate that there are approximately 360 emerging growth companies, of which approximately 230 are also smaller reporting companies, all of which would not be subject to the proposed amendments.[116]

The economic effects of pay-versus-performance disclosure will depend, in part, on whether new information that could not be derived from existing disclosures would be made available to shareholders. The proposed amendments are not expected to result in the provision of significant new information to shareholders, or to require registrants to collect significant new data, relative to disclosure requirements under the baseline. The registrants that would be subject to the proposed amendments must currently comply with Item 402 of Regulation S–K and, except in the case of smaller reporting companies, with Item 201(e). The underlying information required to provide the proposed pay-versus-performance disclosure is, with the exception of vesting-date valuation assumptions for options, already encompassed by these existing disclosure requirements and, for smaller reporting companies and for registrants that use a peer group from their CD&A, in the public availability of stock return data.

Specifically, Item 201(e) requires the disclosure of the TSR for the registrant as well as a peer group (a published industry or line-of-business index, peer issuers selected by the registrant, or issuers with similar market capitalizations), for the past five years, in annual reports.[117] The proposed amendments mandate that TSR of the registrant and a peer group be the primary measures of performance used in the pay-versus-performance disclosure. While registrants may instead choose to use the peer group disclosed in their CD&A, if they use a peer group in benchmarking their compensation, the components of such a peer group would be disclosed in the CD&A and the shareholder returns of these companies would be publicly available from many sources, if not already reported in the CD&A. Similarly, while smaller reporting companies are not required to comply with Item 201(e) or CD&A disclosure requirements and yet would still have to report their own TSR under the proposed rules, data about their returns is publicly available. The proposal does not require smaller reporting companies to present the performance of a peer group.

Further, Item 402 currently requires the affected registrants to disclose extensive information about the compensation of NEOs. For example, registrants subject to Item 402 are required to report the value of total compensation and each of its components,[118] including, for the affected registrants other than smaller reporting companies, the total change (if positive) in actuarial present value of pension benefits and, for all of the affected registrants, the grant-date value of equity awards, for all NEOs in the Summary Compensation Table. Item 402 requires further disclosure in additional related tables, footnotes, and/or the accompanying textual narrative. Based on this information, it would be possible in the absence of the proposed disclosure for shareholders to estimate the proposed measure of executive compensation actually paid by deducting the current values reported with respect to pension and equity awards from total compensation and then estimating and adding to this value the proposed revised values with respect to these two components where applicable.

Specifically, the proposed definition of executive compensation actually paid for a fiscal year is total compensation as reported in the Summary Compensation Table for that year (i) less the change in the actuarial present value of pension benefits,[119] (ii) less the grant-date value of any stock and option awards granted during that year that are subject to vesting, (iii) plus the actuarial present value of benefits attributable to services rendered during the applicable year,

[114] Registrants subject to the proposed amendments would be required to make pay-versus-performance disclosure under proposed Item 402(v) when they file proxy statements or information statements in which executive compensation disclosure pursuant to Item 402 of Regulation S–K is required. Proxy statement disclosure obligations only arise under Section 14(a) when a registrant with a class of securities registered under Section 12 chooses to solicit proxies. Whether or not a registrant has to solicit proxies is dependent upon any requirement under its charter and/or bylaws, or otherwise imposed by law in the state of incorporation and/or stock-exchange (if listed), not the federal securities laws. For example, NYSE, NYSE Market, and NASDAQ require the solicitation of proxies for annual meetings of shareholders. A Section 12(b) registrant is listed on a national securities exchange, and therefore likely would solicit proxies and be compelled to provide the disclosure identified in proposed Item 402(v) annually. Registrants with reporting obligations under Section 12(g), but not Section 12(b), would not be subject to any obligation to solicit proxies under the listing standards of an exchange, but may nevertheless solicit proxies as a result of an obligation under their charters, bylaws, or law of the jurisdiction in which they are incorporated. When Section 12 registrants that do not solicit proxies from any or all security holders are nevertheless authorized by security holders to take a corporate action at or in connection with an annual meeting or by written consent in lieu of such meeting, disclosure obligations also would arise under proposed Item 402(v) due to the requirement to file and disseminate an information statement under Section 14(c).

[115] These estimates are based on a review of calendar year 2013 EDGAR filings.

[116] *Id.*

[117] Item 201(e) disclosure is only required in an annual report that precedes or accompanies a registrant's proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). As discussed above, an annual meeting could theoretically not include an election of directors, such that Item 201(e) disclosure would not be required, although pay-versus-performance disclosure would still be required in such years if action is to be taken with regard to executive compensation.

[118] For registrants that are not smaller reporting companies, total compensation consists of the dollar value of the executive's base salary and bonus, plus the fair market value at the grant date of any new stock and option awards, the value of any non-equity incentive plan awards, the change (if positive) in actuarial value of the accumulated benefit under all defined benefit and pension plans, any above-market interest or preferential earnings on deferred compensation and all other compensation. The all other compensation component includes, among other things, the value of perquisites and other personal benefits (unless less than $10,000 in aggregate) and registrant contributions to defined contribution plans.

[119] If the change in actuarial value of pension plans is not positive, it is not currently included in total compensation and therefore need not be deducted for the purpose of this adjustment.

and (iv) plus the value at vesting of stock and option awards that vested during that year. Adjustments (i) and (iii) with respect to pension plans would not apply to smaller reporting companies as they are not otherwise required to disclose executive compensation related to pension plans. As discussed above, the amounts to be subtracted in this computation, as well as the value of stock awards at vesting (which must be added back), must be reported under existing Item 402 requirements. The other amounts that must be added back in this computation are not required to be directly reported under existing disclosure requirements but can be estimated based on existing disclosures. While the time period applicable for Item 402 disclosures (two years for smaller reporting companies and three years for other affected registrants) is shorter than would be required for the pay-versus-performance disclosure (three years for smaller reporting companies and five years for other affected registrants), the information required to make these computations for the additional years would be available in disclosures from previous years.

Thus, under the baseline, shareholders already have the required data to compute a reasonable estimate of the proposed measure of executive compensation actually paid, even though registrants are not required to compute or disclose this measure. In particular, as discussed above, the actuarial present value of benefits attributable to services rendered during the applicable fiscal year can be computed using the detailed existing disclosures of pension plan terms and valuation assumptions. It is also possible for shareholders to make reasonable estimates of the vesting-date fair values of options based on existing compensation disclosures and public data. However, as discussed above, estimates of vesting-date valuations computed by shareholders could differ from estimates computed by the registrant. Under the baseline, because registrants are not currently required to disclose vesting-date valuation assumptions (which may differ from grant-date assumptions), shareholders may not know how the registrant would apply its discretion in choosing from a range of reasonable assumptions to compute vesting-date valuations.

For the affected registrants other than smaller reporting companies, Item 402 also requires a description in the CD&A of how the registrant's compensation policy relates pay to performance, if material to the registrant's compensation policies and decisions. However, registrants are not currently required to report the actual historical relationship between any measures of compensation and financial performance. Some registrants voluntarily provide such disclosures, which are generally limited to analyses of the compensation of the PEO and which vary with regard to the compensation and performance measures used.[120] The comparability of these voluntary disclosures is therefore limited, and observers have raised concerns that registrants have selected measures that make the alignment of pay and performance appear more favorable.[121]

Certain shareholders also may have access to analyses of historical pay-versus-performance data produced by third parties, such as proxy advisory firms and compensation consultants. These analyses are based on compensation and performance information disclosed by registrants, and they may apply more consistent methodologies across registrants, but the computations and analytical approaches used vary across the third-party information providers.[122] Some other shareholders may generate their own pay-versus-performance analyses, but we do not have access to information about the computations or approaches that they find to be useful.

An important factor to consider when analyzing the effects of the proposed pay-versus-performance disclosure requirements is the variation in compensation structures that is likely to exist among the affected registrants. In particular, because the proposed amendments require that equity awards and compensation related to pension plans be valued differently, and (in the case of equity awards) in different years than as valued in the Summary Compensation Table, the variation in usage and design of these items in executive compensation packages may affect the comparability of the disclosures and the burden involved in making the required calculations to provide the disclosures.

The proposed amendments require that executive compensation actually paid include the vesting-date values of stock grants, which are provided in the Option Exercises and Stock Vested Table but likely differ from the grant date values included in total compensation in the Summary Compensation Table. The use of stock grants, and the frequency of such grants to the CEO, by some of the potentially affected registrants is reported in the table below.[123]

TABLE 1—USE OF EXECUTIVE STOCK GRANTS BY REGISTRANTS COVERED BY EXECUCOMP

	All firms in database	Firms in S&P 500	Firms in S&P MidCap 400	Firms in S&P SmallCap 600
Firms in Sample	1,812	496	396	598
Stock Grants to 2012 CEO:				
% of CEOs Granted Stock in 2012	80.2	88.9	87.4	76.8

[120] A compensation consulting firm found that, of 250 large public companies examined, 27% provided tabular or graphical information on the relationship between pay and performance in the CD&A of their 2013 proxy statements, and the majority of these provided such information only with respect to the PEO's compensation. *See 2013 Corporate Governance & Incentive Design Survey,* Meridian Compensation Partners, Fall 2013, *available at http://www.meridiancp.com/images/uploads/Meridian_2013_Governance_and_Design_Survey.pdf.* In a study of the 300 largest companies filing proxy statements in the year ended April 2013, another consulting firm found over half a dozen different approaches to realizable pay-versus-performance disclosures. *See Executive Compensation 2013,* Hay Group, Feb. 2014, *available at http://www.haygroup.com/downloads/us/exec_comp_2013.pdf.*

[121] *See, e.g.,* Dave Michaels, *Misleading CEO Pay-for-Performance Numbers Target of SEC,* Bloomberg, Dec. 17, 2013, *available at http://www.bloomberg.com/news/2013-12-17/misleading-ceo-pay-for-performance-numbers-target-of-sec.html.*

[122] *See, e.g., http://www.issgovernance.com/file/publications/evaluatingpayforperformance.pdf,* and *http://www.glasslewis.com/issuer/pay-for-performance* for detail on quantitative analyses of pay for performance used by Institutional Shareholder Services Inc. and Glass Lewis & Co., LLC, respectively.

[123] These statistics are based on staff analyses of compensation data from the Standard & Poor's Execucomp database, which in turn is sourced from company proxy statements. Execucomp covers firms in the S&P Composite 1500 Index (which includes the S&P 500, S&P MidCap 400, and S&P SmallCap 600) as well as some firms that were previously removed from the index but are still trading and some client requests. Years mentioned refer to fiscal years, under the convention that companies with fiscal closings after May 31 in a given year are assigned to that fiscal year while companies with fiscal closings on or before May 31 in a given year are assigned to the previous fiscal year. Use of the term ''CEO'' is based on the use of this term in the Execucomp database, and is believed to be equivalent to the term ''principal executive officer'' used in this release.

TABLE 1—USE OF EXECUTIVE STOCK GRANTS BY REGISTRANTS COVERED BY EXECUCOMP—Continued

	All firms in database	Firms in S&P 500	Firms in S&P MidCap 400	Firms in S&P SmallCap 600
Among firms for which 2012 CEO was also CEO in 2011 and 2010:				
% of CEOs Granted Stock 1 out of Past 3 Years (2010–2012) [124]	7.8	3.6	6.0	10.6
% of CEOs Granted Stock 2 out of Past 3 Years (2010–2012) [125]	10.3	7.0	7.9	11.6
% of CEOs Granted Stock 3 out of Past 3 Years (2010–2012) [126]	70.1	81.1	79.6	62.2
Stock Grants to Other 2012 NEOs:				
% of Firms that Granted Stock to Any NEO other than CEO in 2012	86.9	94.4	93.9	83.4
Among Firms that Made Such Grants, Average Number of Other NEOs Granted Stock in 2012	4.1	4.3	4.2	3.9

The proposed amendments require that executive compensation actually paid include the vesting-date values of option grants, values that are not currently reported and likely differ from the grant date values included in total compensation in the Summary Compensation Table. The use of option grants, and the frequency of such grants to the CEO, by some of the potentially affected registrants is reported in the table below.[127]

TABLE 2—USE OF EXECUTIVE STOCK OPTION GRANTS BY REGISTRANTS COVERED BY EXECUCOMP

	All firms in database	Firms in S&P 500	Firms in S&P MidCap 400	Firms in S&P SmallCap 600
Firms in Sample	1,812	496	396	598
Option Grants to 2012 CEO:				
% of CEOs Granted Options in 2012	50.3	64.1	49.0	43.1
Among firms for which 2012 CEO was also CEO in 2011 and 2010:				
% of CEOs Granted Options 1 out of Past 3 Years (2010–2012) [128]	10.6	6.5	11.0	12.2
% of CEOs Granted Options 2 out of Past 3 Years (2010–2012) [129]	12.3	9.8	11.6	12.2
% of CEOs Granted Options 3 out of Past 3 Years (2010–2012) [130]	42.4	59.8	40.9	34.3
Option Grants to Other 2012 NEOs:				
% of Firms that Granted Options to Any NEO other than CEO in 2012	57.8	68.5	55.8	51.3
Among Firms that Made Such Grants, Average Number of Other NEOs Granted Options in 2012	3.9	4.2	4.0	3.6

In addition, because the proposed amendments require the valuation of equity awards as of their vesting dates, it is also important to consider the variation in time-based vesting schedules. In particular, the proposed measure of executive compensation actually paid includes the vesting-date value of equity awards that vested during the applicable year. The measure as of vesting reflects the grant-date valuation as well as changes in value of the award between the grant and vesting date, such as those related to gains and losses of the underlying stock since the award was granted. The proposed measure of executive compensation actually paid may thus increase sharply in any year during which significant equity awards vest. The degree of volatility in the executive compensation actually paid measure that may result is likely to be higher when grants vest all at once or when vesting dates are less frequent.

A compensation research and services firm estimates that 34% of stock grants and 6.8% of option grants awarded by S&P 1500 firms in 2012 are scheduled to vest in full at the end of their vesting period (''cliff vesting'') while the remaining are scheduled to vest in increments over the period of vesting (''graded vesting'').[131] Considering grants awarded over a longer horizon, an academic study that explored the vesting of option grants of some of the potentially affected registrants from 1997 to 2008 found that 32% of the grants studied cliff vested, 55% vested in equal installments over the period of vesting, and 13% had an alternative, irregular vesting pattern.[132] Some equity

[124] This percentage is only taken among those firms for which the CEO for the 2012 fiscal year was also the CEO in 2011 and 2010, and represents the percentage of such firms that issued this individual stock in only one fiscal year from 2010 through 2012.

[125] This percentage is only taken among those firms for which the CEO for the 2012 fiscal year was also the CEO in 2011 and 2010, and represents the percentage of such firms that issued this individual stock in two fiscal years from 2010 through 2012.

[126] This percentage is only taken among those firms for which the CEO for the 2012 fiscal year was also the CEO in 2011 and 2010, and represents the percentage of such firms that issued this individual stock every fiscal year from 2010 through 2012.

[127] *See supra* note 123.

[128] This percentage is only taken among those firms for which the CEO for the 2012 fiscal year was also the CEO in 2011 and 2010, and represents the percentage of such firms that issued these individual options in only one fiscal year from 2010 through 2012.

[129] This percentage is only taken among those firms for which the CEO for the 2012 fiscal year was also the CEO in 2011 and 2010, and represents the percentage of such firms that issued these individual options in two fiscal years from 2010 through 2012.

[130] This percentage is only taken among those firms for which the CEO for the 2012 fiscal year was also the CEO in 2011 and 2010, and represents the percentage of such firms that issued these individual options every fiscal year from 2010 through 2012.

[131] *See* Equity Vesting Schedules for S&P 1500 CEOs, a 2013 report by Equilar, *available at http://www.equilar.com/corporate-governance/2013-reports/equity-vesting-schedules-for-s-p-1500-ceos.*

[132] *See* B. Cadman, T. Rusticus, and J. Sunder, *Stock option grant vesting terms: Economic and financial reporting determinants,* Review of

awards may also be subject to performance-based vesting conditions, where the performance conditions may be based on the registrants' stock prices, their accounting performance, one or more nonfinancial measures, or some combination of these. A preliminary academic study finds that performance-based vesting conditions have become more prevalent in recent years, such that in 2012 just under 70% of large U.S. firms utilized such a provision in a grant to one or more executives, compared to approximately 20% of such firms in the year 2000.[133]

Another component of compensation that is measured differently in the proposed definition of executive compensation actually paid as compared to total compensation in the Summary Compensation Table is, for the affected registrants other than smaller reporting companies, compensation related to pension plans. The use of pension plans and the years of credited service at some of the potentially affected registrants are reported in the table below.[134]

TABLE 3—USE OF PENSION PLANS BY REGISTRANTS COVERED BY EXECUCOMP

	All firms in database	Firms in S&P 500	Firms in S&P MidCap 400	Firms in S&P SmallCap 600
Firms in Sample	1,812	496	396	598
2012 Pension Plans				
% of CEOs with Pension Plans	33.7	54.0	37.6	21.9
Among Firms with CEO Plans, Median Years of Credited Service in Pension Plan	20	23	19	19
% Firms with Pension Plans for any NEO other than CEO	38.9	59.9	41.2	26.4
Among Firms with Other NEO Plans, Average Number of Other NEOs with Pension Plans	3.3	3.6	3.2	3.0

For the affected registrants other than smaller reporting companies, the proposed amendments require that executive compensation actually paid include only the actuarial present value of benefits attributable to services rendered during the applicable fiscal year, a value which is not currently required to be reported and will usually differ from the total change in actuarial value of pension benefits included, if positive, in total compensation reported in the Summary Compensation Table. In particular, the value currently included in total compensation reflects the change in actuarial pension value related to changes in the value of benefits accrued in prior years as well as the value of benefits attributable to services rendered during the applicable fiscal year. As such, the value currently included with respect to pensions in total compensation reported in the Summary Compensation Table will generally be more volatile (because of changes in interest rates and other actuarial assumptions) than the value to be included with respect to pensions in the proposed executive compensation actually paid measure. The degree of difference between these two computations will generally increase with an executive's total number of years of credited service (and thus the extent of benefits already accumulated) under the pension plan.

C. Discussion of Economic Effects

Compensating executive officers with pay that varies with registrant performance is widely considered to be a tool that can be used to encourage executive officers, through the financial incentives provided by such compensation plans, to exert effort and make decisions that create value. However, there are also downsides of such compensation plans. For example, some such plans may cause executives to focus overly on short-term performance to the detriment of long-term performance, or may make some executives less likely to take on risky but (from a typical shareholder's perspective) valuable investments if they are unwilling to take the chance that the investment could fail and result in lower compensation than would result from less risky projects.

An optimal compensation policy is generally considered to be one that maximizes shareholder value in the long term by balancing the need to provide executives with the incentive to perform well against the monetary costs and potential detrimental effects of the compensation policy. What constitutes an optimal compensation policy, including which performance metrics should be considered and how much compensation should vary with these metrics, is difficult to ascertain and will vary with a registrant's individual circumstances. Academic research has been mixed as to whether prevailing compensation structures are optimal, are too closely linked to company performance, or should be more sensitive to performance.[135] Thus, it is unclear whether changes that would more closely link executive pay with registrant performance than current compensation structures would have a positive, negative, or no impact on firm value creation.

In addition to uncertainties about the optimality of pay-versus-performance alignment, there are challenges in measuring such alignment. For example, the available performance statistics may not adequately measure a given executive's contribution to a registrant's performance, such as when registrant performance is strongly related to market moves, sector opportunities, commodity prices, or other factors unrelated to managerial effort or skill.[136] Even if the performance measure were not subject to such concerns, it could be

Accounting Studies, Vol. 18, No. 4, (Dec. 2013), at 1159–1190. Because this paper uses data from 1997 to 2008, it might not accurately reflect current practices.

[133] *See* J. C. Bettis, J. Bizjak, J. Coles, and S. Kalpathy, *Performance-Vesting Provisions in Executive Compensation,* working paper (Dec. 2013), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2289566.*

[134] *See supra* note 122.

[135] *See, e.g.,* Alex Edmans and Xavier Gabaix, *Is CEO Pay Really Inefficient? A Survey of New Optimal Contracting Theories.* Eur. Fin. Mgmt, Vol. 15, No. 3, (June 2009), at 486–496, Michael Jensen and Kevin Murphy, *Performance Pay and Top-Management Incentives.* 98 J. Pol. Econ., No. 2, 225 (Apr. 1990), and Lucian Bebchuk and Jesse Fried, Pay Without Performance: The Unfulfilled Promise of Executive Compensation, Harvard University Press, Oct. 2006.

[136] *See, e.g.,* Marianne Bertrand and Sendhil Mullainathan, *Are CEOS Rewarded for Luck? The Ones without Principals Are,* 116 Q. J. of Econ., No. 3, 901 (2001). Other situations in which registrant performance statistics may differ from an executive's performance include cases in which the statistics measure managerial effort but not of the particular manager in question (which may be particularly likely in the case of NEOs other than the PEO) and situations in which other factors such as registrant size affect the translation of a given level of managerial effort into the measured statistics.

difficult to match performance with associated compensation because of timing differences. For example, an executive may be rewarded with extra compensation for an accomplishment in the year it is made, even though expected profits related to this performance (such as an investment or restructuring decision) might not follow until several years later. Similarly, a registrant's stock price may rise at the announcement of a new PEO who is expected to add significant value to the firm, even though he or she may not commence employment and begin receiving compensation until the following year. Pay-versus-performance alignment can also be difficult to evaluate without also considering holdings of vested equity which link an executive's wealth to the performance of the company even if they were not obtained as compensation or, if they were provided as compensation, even after they have been ''actually paid.'' [137] Such issues may lead to concerns with any standardized approach to evaluating pay-versus-performance alignment.

Despite these challenges, shareholders may evaluate executive compensation packages and consider the optimality of pay-versus-performance alignment when making voting decisions relating to the compensation of the NEOs and the election of directors, as well as when making investment decisions.[138] As discussed above, shareholders currently have access to detailed information disclosed by registrants with respect to executive compensation and financial performance. For example, substantial detail on compensation packages is currently required in proxy statements where action is to be taken with regard to the election of directors, including the specific terms of performance-related awards as well as information in the CD&A (for affected registrants other than smaller reporting companies) regarding how the compensation policy relates pay to performance, to the extent it is considered material. However, data from the required, standardized tables and accompanying information may require further computation and analysis before shareholders can evaluate actual historical pay-versus-performance alignment. Also, CD&A disclosures that may, on a voluntary basis, provide more direct measures of the historical pay-versus-performance relationship lack standardization and comparability, as discussed above. In this vein, the introduction of quantitative analyses of pay-versus-performance alignment by the major proxy advisory firms in recent years may be a sign of shareholder demand for additional computations regarding this relationship, beyond existing disclosures.[139]

The proposed amendments mainly require registrants to repackage in one location information that is disclosed in various other locations under existing rules. The anticipated benefits and costs of the proposed amendments are therefore driven by the impact that this additional format for presenting information may have on shareholders. The economic benefits and costs of the proposed amendments, including impacts on efficiency, competition and capital formation, are discussed below. We also discuss the relative benefits and costs of significant, reasonable implementation alternatives to the amendments as proposed.

1. Benefits

As discussed above, for the most part, the proposed amendments require a different presentation of certain existing information rather than the disclosure of new information. The primary benefits of the proposed amendments relative to the baseline will therefore depend on the extent to which the computations provided or the format used for the proposed disclosure is useful to shareholders.

Shareholders may benefit from the proposed amendments to the extent that the new presentation of data required by these amendments lowers their burden of analysis in evaluating the executive compensation policies of the affected registrants. Shareholders may evaluate executive compensation when making decisions relating to the say-on-pay vote and other votes relating to the compensation of the NEOs and the election of directors, as well as when making investment decisions. As part of this process, shareholders likely spend time and other resources to analyze current disclosures, including making computations that enable them to understand how compensation is related to performance. Existing disclosures regarding compensation are quite detailed, often lengthy, and, in some portions, subject to considerable variation. If the repackaging of some of this information into the required pay-versus-performance disclosure allows shareholders to more quickly or easily process the information accurately, the proposed amendments may generate efficiencies by preventing duplicative analytical effort by shareholders. Also, requiring that the disclosure be provided in a tagged data format may facilitate the extraction and analysis of any or all of this information across a large number of registrants or, eventually, across a large number of years. If the proposed disclosure is of interest to shareholders, it may be particularly beneficial to those shareholders who do not have access to third-party analyses, have fewer analytical resources, or are less adept at interpreting current disclosures on their own. If the disclosure helps shareholders process and understand compensation data faster, this information may also be more quickly incorporated in market prices, marginally increasing the informational efficiency of markets.

The size of this potential benefit depends on the extent to which the proposed disclosure approximates or contributes to any of the calculations and analyses that sophisticated shareholders would choose to perform on their own in order to process the existing disclosures, which is difficult to ascertain. The proposed requirement that registrants use standardized measures of compensation and performance would likely increase the comparability of disclosures specifically addressing the relationship of pay and performance relative to the broad variability under the baseline in the narrative discussion that may be provided in the CD&A and in voluntary pay-versus-performance disclosures.

To the extent that shareholders are interested in the prescribed measures, this enhanced comparability would likely enable more efficient processing of the information. In particular, standardization should reduce the time that shareholders would spend to learn what different measures represent: For example, once they understand what executive compensation actually paid reflects, they can understand what that measure means in other pay-versus-performance disclosures without having to examine each registrant's own

[137] *See, e.g.,* Kevin J. Murphy, *Executive Compensation: Where We Are, and How We Got There,* August 12, 2012, forthcoming in George Constantinides, Milton Harris, and René Stulz (eds.), Handbook Econ. Fin., at 24–25, *available at* SSRN: *http://ssrn.com/abstract=2041679* (stating that incentive compensation is negatively correlated with manager's vested equity interests, reflecting the redundancy of granting further equity awards to executives whose wealth is already substantially tied to the company's equity).

[138] *See, e.g., 2015 Investor Survey: Deconstructing Proxy Statements—What Matters to Investors,* February 2015, Stanford University, RR Donnelley, and Equilar, February 2015, *available at http://www.sec.gov/comments/4-681/4681-3.pdf* (providing survey evidence that 64% of institutional investors surveyed indicated that their firms used pay-for-performance alignment information from proxy statements to make voting decisions; 34% of those surveyed indicated that this information was used to make investment decisions).

[139] *See, e.g., supra* note 122.

definition. In addition, prescribing these measures reduces the ability of registrants to only disclose measures of pay and performance that lead to more favorable pay-versus-performance disclosures, which may allow shareholders to spend less time interpreting the choice of measures in the disclosure. Comparability may also allow shareholders to more easily evaluate a pay-versus-performance disclosure in the context of the pay-versus-performance disclosure of other registrants. Requiring disclosure of the annual values of the prescribed measures in a table should enhance such comparability of the disclosure across registrants by facilitating comparisons of the underlying content of the disclosures even when the format in which the relationship between the prescribed pay and performance measures is presented differs across registrants.

As noted above, these benefits of standardization would apply only to the extent that shareholders find the prescribed measures to be useful. Whether or not shareholders will be interested in the prescribed measures is unclear. For example, as discussed above, there are challenges associated with measuring an executive's contribution to registrant performance that may lead to concerns with any performance measure. However, TSR reflects information from a variety of underlying performance metrics, including market expectations of the future impact of current executive actions, and may thus be a useful metric in this context. While a registrant's own TSR as well as relative performance information will generally be available in Item 201(e) disclosures in annual reports for registrants other than smaller reporting companies, including peer performance in the pay-versus-performance disclosure may be useful to shareholders as it would enable them to evaluate the performance of a registrant relative to peers without requiring shareholders to refer to other disclosure documents.

Similarly, while the prescribed compensation measure would provide little incremental information beyond existing disclosures, the measure would reflect new required computations based on this existing data that may be particularly relevant in the context of evaluating the relationship of pay-versus-performance. These computations, and the tagging of the disclosure, may make information of interest to shareholders more readily available than it is under the baseline. For example, shareholders may be interested in the vesting-date valuations of options because academic studies indicate that changes in the value of equity awards after the grant date are a primary channel though which pay is linked to registrant performance.[140] For this reason, we believe that shareholders may be particularly interested in such post-grant changes in the value of equity awards when evaluating the relationship of pay-versus-performance. Shareholders may also be interested in the actuarial present value of benefits attributable to services rendered during a given year because these amounts may be more comparable to registrant contributions to defined contribution plans than the total change in actuarial pension value. The proposed adjustment with respect to pension plans is also expected to reduce the volatility in measured pension compensation caused by changes in interest rates and other actuarial assumptions, and should thus make it easier to evaluate the relationship of pay-versus-performance. Although shareholders could estimate the amounts proposed to be included in executive compensation actually paid with respect to equity awards and pension plans using existing disclosures, they may benefit from these computations becoming readily available in the prescribed compensation measure.

In addition, some shareholders may be interested in computing slightly different measures or using parts of the required computations for other purposes, in which case they are likely to benefit from the proposed footnote disclosure of the adjustments made to compute executive compensation actually paid and the disclosure of vesting date valuation assumptions, if materially different from the grant date assumptions. Also, as discussed above, requiring that the disclosure be provided in tagged data format may benefit shareholders interested in extracting and analyzing some or all of the data in the disclosure across a large number of filings.

On the other hand, if the prescribed measure of executive compensation actually paid is significantly different from measures that shareholders would choose to construct on their own in order to evaluate compensation alignment, benefits may be limited and some shareholders may be confused by the disclosures, as discussed in more detail below. For example, the potential benefit of more efficient data processing is likely to be tempered by the fact that the proposed measure of executive compensation actually paid may be subject to substantial potential volatility due to its sensitivity to equity award vesting schedules, which may reduce the meaningfulness of relating the variation in the measure over time to stock price performance. Also, while tabular disclosure of the underlying data will provide some degree of comparability, benefits to shareholders may be either mitigated or enhanced by the proposed latitude in format for presenting the relationship between the prescribed pay and performance measures. The impact of this flexibility depends on whether the usefulness of more customized formats outweighs any added complexity in interpreting the disclosure and the reduction in comparability across registrants.

The proposed amendments could also have indirect benefits if the required disclosures lead to more optimal compensation policies, perhaps as a result of increased attention on the level or structure of NEO compensation and/or registrant performance. Specifically, if, by virtue of the disclosure, NEOs become less likely to demand, and/or boards become less likely to approve, a compensation level or structure that is not optimal (in that, as discussed above, it does not maximize long-term shareholder value),[141] then benefits will arise to shareholders and registrants. The resulting pay packages may represent either a benefit or a cost to the NEOs depending on whether or not the more optimal compensation structure, including the level of compensation as well as the risk exposure, is preferred by the executives.

The likelihood of such indirect effects is difficult to estimate because the ideal pay-versus-performance analysis for shareholders, as well as the optimal pay structure, is uncertain and may vary by company, and because reactions to the repackaging of information are difficult to predict. As discussed above, the proposed disclosure is intended to facilitate shareholders' consideration of the alignment between pay and performance when making related voting decisions. However, because the proposal does not require the disclosure of significant new information, and given high levels of existing attention to pay practices, we believe that it is unlikely that the proposed amendments

[140] *See, e.g.,* Kevin J. Murphy, *Executive Compensation: Where We Are, and How We Got There,* (stating that studies show that virtually all of the sensitivity of pay to corporate performance for the typical CEO is attributable to the direct link between stock price performance and the CEO's portfolio of stock and options).

[141] It is important to note that, as mentioned above, a closer link between executive pay and stock performance than the current status of compensation could be either beneficial or detrimental to firm value creation.

would play a significant role in encouraging more optimal pay packages. We therefore believe that the proposed amendments are likely to have no material beneficial effects on competition or capital formation.

We believe that the only incremental information that the required disclosures under the proposed amendments would provide relative to existing public information is related to the calculation of option values as of the vesting date instead of the grant date. Registrants are also not currently required to disclose the actuarial present value of benefits attributable to services rendered during the applicable year, but they must disclose the pension plan terms and assumptions that could be used to compute this value. In contrast, while the valuation of options also involves certain assumptions, registrants are not currently required to disclose vesting-date valuation assumptions for option grants.

Using existing disclosures, shareholders can themselves make estimates of the vesting-date values based on the disclosed option terms, by using publicly available data to make reasonable valuation assumptions.[142] A vesting-date valuation provided directly by the registrant would reflect its discretion in choosing a valuation methodology and estimating the inputs required, particularly the expected option life and the expected volatility of the stock.[143] The grant-date valuations provided by registrants already demonstrate, to some extent, how the registrants choose to apply their discretion in the valuation process.[144] It is unclear to what extent shareholders would find the additional disclosure of a vesting-date valuation, which would similarly reflect registrant discretion, to provide meaningful new information. Also, shareholders may be concerned that such discretion could be used to understate compensation actually paid, affecting the reliability of registrant valuations. We therefore believe that the potential benefits of the proposed amendments derive primarily from the manner in which the information is presented rather than the disclosure of any significant new information.

2. Costs

We believe that the costs to registrants of complying with the proposed amendments likely would be relatively low, given that the required disclosures do not require the collection of any significant new information relative to the baseline and the required additional computations are straightforward. The valuation of options as of a different date and the required computations with respect to pension plans can be accomplished by entering new inputs into the existing valuation models used to calculate currently disclosed values. These costs will also be limited by phasing in the time periods for the disclosure for both new and existing registrants, thereby reducing the computations required when first producing the disclosure, and phasing in the tagging requirement for smaller reporting companies. The primary costs of complying with the proposed amendments include the time and expense to make the required computations, to design and apply a format for the disclosure, to apply XBRL data tagging, and to ensure appropriate review, such as by management, in-house counsel, outside counsel and members of the board of directors. As discussed above, registrants would be required to file the pay-versus-performance disclosure in certain proxy or information statements. While much of the disclosure would be based on information that is otherwise disclosed, the new computations and new presentation of this underlying information, as well as the inclusion of existing measures—TSR and peer group TSR—that are otherwise ''furnished'' but not ''filed,'' may create an incremental risk of litigation under Section 18 of the Exchange Act. However, we note that Section 18 does not create strict liability for ''filed'' information.[145]

The compliance costs are likely to vary somewhat among registrants depending on the complexity of their compensation structures. For example, the computation of executive compensation actually paid from total compensation reported in the Summary Compensation Table involves adjustments to the treatment of equity awards and pension benefits. As shown in the baseline section above, while a relatively higher proportion of large companies have pension plans and grant stock and option awards to executives, a significant fraction of mid-sized and smaller companies feature these components in their compensation plans as well. Thus, while the compliance costs are likely to be low, these costs may be slightly more burdensome for those affected registrants which have complex compensation packages and are small enough that the costs of the disclosure are relatively more consequential in comparison to their size. Smaller reporting companies would be subject to scaled requirements consistent with their existing disclosure requirements, including fewer years of disclosure, no requirement to report peer group performance, and the exclusion of items related to pension plans in computing executive compensation actually paid. Smaller reporting companies are not currently required to comply with Item 201(e), so they may face a small incremental burden of computing their own TSR for the purpose of this disclosure as compared to other affected registrants.

Based on analysis for purposes of the Paperwork Reduction Act (''PRA''), as discussed in Section V of this release, we estimate that the total incremental burden on all registrants of the proposed amendments would be, annually, 67,500 hours for internal company time, and $9,000,000 for the services of outside professionals. Certain registrants—such as those that have infrequent equity grant vesting dates or other compensation structures that result in a more volatile measure of executive compensation actually paid—may be more likely to voluntarily supplement the disclosure with additional measures, explanations, or analyses in order to explain the patterns in the required disclosure, and may thus face higher overall costs. However, we do not believe that any of the variation in the compliance burden will be large enough to have a material detrimental effect on competition or capital formation.

[142] Such data might include financial statement footnote disclosures relating to significant assumptions made by the registrant in arriving at disclosed grant-date valuations and information regarding the past exercise behavior at the registrant or a broader group of firms, as well as market information on bond and dividend yields and stock price volatilities.

[143] While FASB ASC Topic 718 requires that the assumptions used shall not represent the biases of a particular party, there will generally be a range of assumptions that could be considered to be reasonable, and so the choice of particular assumptions will reflect registrant discretion.

[144] An academic study of executive compensation among firms in the S&P 1500 from 1996 to 2001 found that the grant-date valuations of option awards by these registrants were, on average, understated. However, because this paper uses data from 1996 to 2001, it might not accurately reflect current practices. *See* David Aboody, Mary E. Barth and Ron Kasznik, *Do Firms Understate Stock-Based Compensation Expense Disclosed under SFAS 123?* 11 Rev. of Acc. Stud., No. 4, 429 (2006). Notably, when evaluating executive compensation, two major proxy advisory firms each use their own, standardized set of methodologies and assumptions to value option grants rather than relying on each registrant's estimate of grant-date value. *See, e.g., http://www.issgovernance.com/policy/ExecutiveCompensationFAQ,* and *http://www.glasslewis.com/issuer/stock-option-model-details.*

[145] *See* Exchange Act Section 18 [15 U.S.C. 78r]. A plaintiff asserting a claim under Section 18 would need to meet the elements of the statute to establish a claim, including purchasing or selling a security in reliance on the misstatement, and damages caused by that reliance.

Shareholders may bear additional information processing costs as a consequence of the proposed amendments if they increase the length and complexity of existing disclosures without significantly adding to the ease of interpretation. The likelihood and extent of such costs may be a function of the potential confusion resulting from the proposed disclosure, as discussed in more detail below, and the related increase in supplementary disclosures that may result, as well as the complexity of and variation in presentation formats, as discussed above. If the proposed disclosure were to confuse rather than help shareholders and therefore complicate the task of understanding executive pay policies, it may marginally decrease the informational efficiency of markets.

The proposed amendments may confuse shareholders about the optimality of pay practices if it brings attention to a particular relationship that may not be meaningful in the context of a given registrant. As discussed above, there are challenges in measuring pay-versus-performance alignment which are likely to impact any standardized approach to presenting this relationship. Including peer group performance in the disclosure may help shareholders to identify when registrant performance could be driven by market moves, sector opportunities, commodity prices, or other factors unrelated to managerial effort or skill. However, the proposed disclosure may be less meaningful if the disclosed performance, even relative to peers, is different from the contribution of the given NEO to performance, or if the disclosed relationship between compensation and performance does not (because of timing considerations or vested equity holdings) accurately capture the economic relationship between the company's performance and the financial rewards to the NEO.

In addition to the general concerns raised above, the proposed definition of executive compensation actually paid may be particularly subject to volatility based on the vesting pattern of equity awards, because the measure includes in the year of vesting the original grant-date value and all gains (or losses) related to returns in all years since the grant was made. In particular, the proposed measure is likely to increase sharply in any year during which significant equity awards vest, and gains or losses on equity awards are likely to be reflected in different years than the stock performance that generated them. Such volatility could make it difficult to understand the relationship, or lead to incorrect inferences about the relationship, between pay and performance.

The treatment of equity awards may also reduce the comparability of the compensation measure across registrants. The exclusion of grant date values in the year of grant may make it difficult to compare the total value of compensation packages. For example, for a given fiscal year, if one PEO is paid $1 million in cash and another PEO is paid $1 million in restricted stock that vests after one year, the executive compensation actually paid for the year will be $1 million in the first case and zero in the second case. This measure would be accompanied in the proposed tabular disclosure by the Summary Compensation Table measure of total compensation, which reflects the grant date values of equity awards, and may thus contribute to a more complete view of a compensation package. However, the reduced comparability resulting from the exclusion of the grant date values of equity awards from the proposed measure may still complicate the task of interpreting the disclosure.

The sensitivity of the proposed measure of executive compensation actually paid to vesting schedules may also reduce comparability. For example, consider two NEOs who are granted large, one-time awards of restricted stock that vest in full after one year, but with vesting dates that are one day apart—on the last day of a fiscal year versus the first day of the next fiscal year. The pattern in compensation actually paid may look very different for these two executives because the award of stock will be reflected in different years.

The potential for confusion is particularly of concern given that the proposed disclosure may be of most interest to less sophisticated shareholders, who may be less likely to have access to third-party pay-versus-performance analyses or may be less adept at conducting their own such analyses. The possibility of confusion is mitigated by allowing registrants to provide supplemental measures of pay and performance in the proposed disclosure, as well as the ability of registrants to provide further explanatory disclosures (such as in the CD&A for affected registrants other than smaller reporting companies). However, such clarifying disclosures may be more likely to be provided when the proposed disclosure is perceived by the registrant to incorrectly indicate the misalignment of pay and performance than when the proposed disclosure is perceived to incorrectly indicate strong alignment.

The proposed amendments could also lead to indirect costs if the required disclosures lead to changes in compensation packages that are not beneficial. Registrants may make changes to avoid disclosure that they perceived to correctly or, because of the limitations of the standardized approach, incorrectly indicate the misalignment of pay-versus-performance. For example, by virtue of the disclosure, boards may become more likely to approve compensation structures that more strongly link pay to stock price performance, even in situations in which this would not be optimal.[146] More subtle changes in compensation structures may also be made to improve the appearance of pay-versus-performance alignment. For example, registrants may choose to apply shorter or more graduated equity award vesting schedules to generate a less volatile measure of executive compensation actually paid. However, such changes in the design of compensation packages could harm shareholder value creation by, for example, placing more than the optimal weight on short-term performance.[147] Thus, if such changes are indirectly encouraged by the proposed amendments, they may entail costs to registrants and their shareholders. The resulting pay packages may represent either a benefit or a cost to the NEOs depending on whether or not the less optimal compensation structure, including the level of compensation as well as the risk exposure, is preferred by the executives.

As in the case of the potential benefits outlined above, many of these costs are difficult to quantify because the ideal pay-versus-performance analysis for shareholders, as well as the optimal pay structure, is uncertain and may vary by company and because reactions to the repackaging of information are difficult to predict. Still, because the proposal does not require the disclosure of significant new information, and given high levels of existing attention to pay practices, we believe that it is unlikely that the proposed amendments would play a significant role in encouraging poor pay practices. We therefore believe that the proposed amendments likely would have no material detrimental effects on competition or capital formation.

[146] *See supra* notes 135 and 136 regarding academic studies that find that a stronger link between pay and stock price performance may not be optimal.

[147] *See, e.g.,* Alex Edmans, Vivian Fang and Katharina Lewellen, *Equity Vesting and Managerial Myopia,* NBER Working Paper No. 19407, (Sept. 2013), *available at http://www.nber.org/papers/w19407.*

3. Implementation Alternatives

In this section, we present significant implementation alternatives that have been considered and a discussion of their benefits and costs relative to the amendments as proposed.

a. Registrants and Filings Subject to the Disclosure

An alternative to the amendments as proposed would be to require that pay-versus-performance disclosure would accompany any Item 402 disclosure, including in Form 10–K or Form S–1. Such an approach would make pay-versus-performance disclosures more consistently available for Section 12(g) registrants subject to the amendments and broaden the disclosure requirement to include Section 15(d) registrants other than emerging growth companies. As discussed above, we believe that the proposed disclosure would be most useful to shareholders when they are deciding whether to approve the compensation of the NEOs through the say-on-pay vote, voting on the election of directors or acting on a compensation plan. The proposed approach would require pay-versus-performance disclosure in proxy statements in each of these cases. Nonetheless, shareholders making voting decisions at a particular registrant may benefit from broader and more consistent availability of pay-versus-performance disclosures on an annual basis at other registrants. Specifically, these disclosures may allow shareholders to more easily compare pay practices across registrants when deciding how to vote at a particular registrant, particularly, for example, in the case of smaller companies whose peers may be more likely to be Section 12(g) or Section 15(d) registrants. Such disclosures may also be of use to some shareholders in making investment decisions, irrespective of any matters that are up for a vote.

However, registrants with reporting obligations only under Section 12(g) or Section 15(d) do not have securities that are registered on national securities exchanges, so the markets for their shares are likely to be comparatively less liquid. Estimates of share values and therefore of total shareholder return for such registrants may be less precise and less readily available, potentially making pay-versus-performance comparisons based on this metric less meaningful across such registrants. Also, as in the case of smaller reporting companies, Section 15(d) registrants are not subject to Item 201(e) requirements for stock price performance disclosure. Similarly, Section 12(g) registrants may not be required to disclose Item 201(e) information in some or all years, so Section 15(d) registrants and some Section 12(g) registrants would bear an additional burden of calculating their own TSR and, except in the case of smaller reporting companies, the TSR of a peer group for this purpose.

An alternative that would narrow the applicability of the disclosure would be to exempt smaller reporting companies from the proposed disclosure requirement. Exempting smaller reporting companies generally would be consistent with the overall scaled disclosure requirements that apply to smaller reporting companies. While the proposal would subject smaller reporting companies to scaled requirements in order to limit the incremental burdens such companies may face relative to other registrants, some such burdens remain. For example, smaller reporting companies are currently not required to disclose their TSR in annual reports, so they would face a higher burden than other registrants to include this measure in the pay-versus-performance disclosure. We note, also, that requiring only a scaled version of the pay-versus-performance disclosure for smaller reporting companies may limit the benefits to shareholders by reducing the content and comparability of the disclosures. Also, in the absence of CD&A disclosure, shareholders would have less information with which to interpret pay-versus-performance disclosures from these registrants.

On the other hand, it is possible that some shareholders may benefit from the proposed pay-versus-performance disclosure for these registrants, particularly because these registrants currently provide less extensive disclosure about compensation and the data that they do disclose is unlikely to be available in aggregate form from data vendors that collect such data from the proxy statements of larger companies. For example, shareholders who believe that the long-term performance of younger, high growth companies may be particularly sensitive to the design of compensation structures may benefit from smaller reporting company pay-versus-performance disclosures, even if these disclosures are not directly comparable with the disclosures of other affected registrants. Shareholders that are interested in comparing executive compensation across smaller reporting companies would benefit from this data being tagged, particularly because of the lack of commercial databases collecting executive compensation information for such registrants. The proposal would permit smaller reporting companies to present fewer years of information in the disclosure, to not include peer group performance, and to exclude items related to pension plans in computing executive compensation actually paid. While the scaled requirements for smaller reporting companies may limit the potential benefits to shareholders interested in executive compensation at such registrants, these scaled requirements should substantially limit the incremental burdens faced by smaller reporting companies in providing pay-versus-performance disclosure.

b. Disclosure Requirements

We have considered several reasonable alternatives to the proposed disclosure requirements.

Some commenters recommended a more principles-based approach that would permit registrants to determine which measures of pay and performance to disclose and how to disclose the relationship between these measures based on what they deem to be appropriate for their individual situations.[148] Such an approach could have the potential to allow shareholders to more directly observe how management views the alignment of pay and performance at a given registrant, and might reduce reporting costs because registrants need only report what they believe to be appropriate given their unique circumstances. To the extent that the prescribed measures may be less meaningful at particular registrants, a principles-based approach could reduce shareholder confusion in understanding the relationship between pay and performance at a particular registrant. A principles-based approach would also reduce the risk that the disclosure requirements could lead registrants to change their compensation structures in ways that are less than optimal for the sake of achieving what they perceive to be more favorable pay-versus-performance disclosure. However, such an approach may reduce comparability of the disclosure across registrants and could increase shareholder confusion because the choice of pay and performance measures, and the disclosure horizon, may vary significantly. Also, a principles-based approach may allow registrants to selectively choose the measures or horizon that result in the most favorable disclosure. The proposed approach of specifying some uniform requirements for the disclosure and permitting supplemental disclosure

[148] *See* letters from SCSGP, ABA, CEC I, ClearBridge, Protective Life, and Davis Polk.

should promote comparability while preserving flexibility to tailor the disclosure to a registrant's individual situation.

In particular, the proposed disclosure promotes a level of comparability by requiring standardized measures of compensation and performance that are consistent across registrants. Similarly, the proposed requirement that the disclosure cover, at minimum, a five-year (three-year for smaller reporting companies) time period after the initial phase-in should also increase the comparability and usefulness of the disclosure compared with the alternative of allowing the registrant to potentially choose a shorter time period for disclosure. Registrants will be permitted to present supplemental measures of compensation and performance and additional years of data in the pay-versus-performance disclosure, will have flexibility as to the format in which to present the relationship between pay and performance, and will continue to have significant latitude in presenting additional compensation analyses (such as in the CD&A, for affected registrants other than smaller reporting companies), all of which should help registrants to clarify their unique circumstances and considerations in evaluating compensation.

Conversely, we also have considered increasing the comparability of pay-versus-performance disclosures by prescribing a uniform format or some minimum requirements for the presentation format of the relationship. Under the proposal, registrants may apply a wide range of formats when presenting the relationship between the measures that might not be directly comparable, particularly as some registrants may present the relationship between the prescribed measures using percentage changes or ratios while others may present the levels of these measures. However, the tabular disclosure of the annual values of executive compensation actually paid and registrant and peer group performance should allow shareholders to compare the content of the disclosures across registrants using different formats. Still, shareholders' ability to easily compare the disclosure across registrants may be further increased by requiring a uniform format for presenting the relationship, such as a standardized graphical presentation, or some minimum standards for the presentation format, such as a requirement that the disclosure be in the form of a graph. The cost of these more prescriptive approaches would be the restrictions on the ability of registrants to tailor the format of the required disclosures to best reflect their individual circumstances, which may vary significantly.

A further alternative would be to require registrants to provide an analysis of the presented information in narrative accompanying the factual disclosure. For example, registrants could be required to explain which compensation decisions or which elements of compensation, if any, were most responsible for the patterns in the presented relationship between executive compensation actually paid and total shareholder return. Such supplementary analysis may help shareholders to interpret the disclosures, particularly in cases where, as discussed above, the presented relationship may be distorted by issues such as timing mismatches and factors unrelated to managerial performance that may affect stock prices. The proposed amendments permit such explanations to be provided on a voluntary basis but, as discussed above, such clarifying disclosures may be more likely to be provided when the proposed disclosure is perceived by the registrant to incorrectly indicate the misalignment of pay and performance than when the proposed disclosure is perceived to incorrectly indicate strong alignment. However, making the provision of such narrative disclosure mandatory may increase the compliance burden and might suggest that the registrant considered, or should consider, the pay-versus-performance relationship in its compensation decisions.

We have also considered increasing or decreasing the minimum information required to be included in the disclosures. With respect to increasing the minimum information, we considered requiring the inclusion of additional measures of pay or performance or requiring that the disclosure cover a longer time period. Shareholders may find expanded disclosures to be beneficial. For example, a longer time period (*e.g.,* the entire service period of the executive) [149] for the disclosure may provide shareholders with additional context with which to evaluate the disclosure. In particular, requiring a longer horizon may help shareholders to understand timing mismatches that the disclosures may be subject to, as discussed above, by increasing the likelihood that the disclosures include pay (or performance) that may appear in a different time period than the corresponding performance (or pay). Mandating the inclusion of additional measures of pay and performance (such as relative pay measures and accounting measures of performance) may increase the usefulness of the disclosure in some cases by summarizing more information that could be relevant in evaluating pay versus performance alignment. Also, requiring more years of data or more prescribed measures may increase the comparability of the disclosures if, under the proposed requirements, some but not all registrants choose to provide such additional information.

However, such extended requirements would impose a higher compliance burden while potentially requiring registrants to include information that they do not believe to be relevant to their circumstances, and/or which shareholders may not find to be relevant. Also, requiring additional measures may also make the disclosure of the relationship between pay and performance more difficult to process quickly, while not adding to the total amount of underlying information available to shareholders from public disclosures.

With respect to decreasing the minimum required information, we also considered reducing the required disclosure period to three years, excluding Summary Compensation Table total compensation from the required tabular disclosure, or not requiring TSR for a peer group. On the one hand, these alternatives could reduce the compliance burden on registrants by limiting the total amount of information that would need to be included in pay-versus-performance disclosures, while continuing to provide flexibility to registrants to include additional information if they find it to be appropriate. On the other hand, decreasing the minimum required information could reduce the benefits to shareholders discussed above and may not substantially reduce compliance costs given that, for example, the excluded information would generally still be required to be disclosed in other years, other parts of the proxy or information statement, or other filings. Overall, we believe that the proposed minimum required information appropriately balances a level of comparability and usefulness against the costs of complying with the requirements of pay-versus-performance disclosure.

One commenter [150] recommended that registrants subject to the amendments be required to present relative pay compared to relative performance, each measured with respect to a group of peer companies.

[149] *See* letter from CII.

[150] *See* letters from SVA.

While performance information for a peer group would be required to be included under the proposal, also incorporating pay information for a peer group in order to produce relative pay-versus-performance disclosures may be useful to shareholders as it would provide further context in which to evaluate the pay-versus-performance alignment of a registrant. Using a relative approach would also permit the relationship of pay and performance to be presented across registrants using, for example, an aggregate three-year compensation measure, rather than the relationship being presented across time for an individual registrant using annual measures.[151] The use of aggregate measures, recommended by several commenters, may reduce the potential timing mismatches and volatility in executive compensation actually paid.[152] However, requiring further comparisons to a peer group may reduce the comparability of disclosures because of registrant discretion in selecting the peer group or variation in the availability of a closely comparable peer group. There are also practical implementation considerations, as peer compensation for the last fiscal year is not likely to be available at the time a registrant is compiling the disclosure. Further, even if these practical considerations could be mitigated (*e.g.,* by permitting peer information to be excluded when unavailable), requiring relative pay-versus-performance would most likely impose higher compliance costs.

Requiring peer performance but not peer compensation information as in the proposal should help shareholders to understand when registrant performance could be driven by market moves, sector opportunities, commodity prices, or other factors unrelated to managerial effort or skill. Under the proposed amendments, registrants that prefer to include information about peer pay-versus-performance will be permitted to present relative measures of pay and alternative measures of relative performance as additional measures in the pay-versus-performance disclosure and will continue to have the ability to present relative compensation analyses in the CD&A. Because registrants might only choose to present this information when they perceive the comparison to peers to appear favorable, allowing such voluntary disclosure would not provide the full benefits of mandating relative pay-versus-performance disclosure. However, shareholders could also construct relative pay-versus-performance analyses on their own by comparing the separate pay-versus-performance disclosures of each of a registrant's peers, based on the peer group reported by a registrant under Item 201(e) or in the CD&A.

Another commenter recommended that the pay-versus-performance disclosure be limited to the PEO's compensation.[153] This alternative may focus the disclosure on the information that is likely to be of most interest to shareholders. Also, as discussed above, the contribution of NEOs other than the PEO to firm performance is less likely to be adequately measured by overall registrant performance statistics such as the TSR. This alternative would marginally reduce compliance costs as compared to requiring disclosures regarding the average compensation of the other NEOs as proposed. However, limiting the disclosure to the PEO may also reduce the benefits to shareholders, to the extent they would use the proposed disclosures to evaluate the compensation of the other NEOs.

We could require pay-versus-performance disclosure for each individual NEO, rather than or in addition to the average of the other NEOs as a group. Disclosure with respect to the individual NEOs could be required only in the required tabular disclosure of the prescribed measures or in both the disclosure of these measures and in the disclosure of the relationship between the measures. Such approaches would allow shareholders to more directly compare pay-versus-performance for NEOs with the same or similar titles across different registrants. Also, some shareholders may be interested in the pay-versus-performance alignment of particular NEOs other than the PEO and would thus benefit from such individual disclosures. Since the computations required to produce individual disclosures would already be made in order to produce disclosure on an average basis for all of the NEOs, the incremental burden of producing such individual disclosures may be low.

However, while some shareholders may be interested in such disclosure, variability in the composition and number of other NEOs over the horizon of the disclosure may complicate the interpretation of the relationship between pay and performance over the years for which disclosure is required. The roles of individual NEOs might not be comparable, and their titles might not be consistent, across registrants, limiting the benefits to shareholders interested in comparing pay alignment for particular roles across registrants. Also, firm-level performance measures may be less likely to adequately measure an NEO's contribution to a registrant's performance than that of the PEO, given the more focused roles (such as division head or chief technology officer, among many other possibilities) of individual NEOs, so individual disclosures for the NEOs could be of limited benefit in many cases. Because of these limitations, and the increase in the length and complexity of the disclosure required to present individual NEO information, requiring pay-versus-performance disclosures for each individual NEO could increase the time required for a shareholder to analyze and process the information and increase the likelihood of shareholder confusion.

We are proposing to require XBRL tagging of the disclosure because some shareholders may be interested in extracting and analyzing the information in the table across large numbers of registrants or, eventually, a large number of years, and would thus benefit from the proposed tagging requirement.[154] The proposal would require registrants to tag the numerical data disclosed in the required table, and to separately block-text tag, as three blocks, the disclosure of the relationship among the measures, the disclosure of deductions and additions used to determine executive compensation actually paid, and the disclosure regarding vesting date valuation assumptions. We have considered alternatives with respect to the proposed XBRL tagging requirement, including not requiring that the underlying data disclosed in tabular form be provided in an interactive data

[151] Aggregating compensation over a three-year period would result in a single number representing executive compensation actually paid for this full period. Such aggregation would thus make it impossible to demonstrate the relationship between pay and performance over time, and so this relationship could only be demonstrated across another dimension, such as across peers. The proposed amendment requires the use of an annual measure so that registrants can present the relationship of pay and performance over time at the particular registrant.

[152] *See* letters from ClearBridge, Pay Governance, and SVA.

[153] *See* letter from Meridian.

[154] Some shareholders that are interested in analyzing compensation data across a large number of filings may also wish to analyze the substantial amount of other information regarding compensation in the proxy statement. Because this other data is not currently provided in an interactive data format, such shareholders would have to continue to purchase such data from a data vendor that aggregates this data or to electronically parse or hand-collect such data from filings. The incremental benefit of the proposed data tagging requirement is likely to be lower for such shareholders than for those primarily interested in the data proposed to be tagged.

format, requiring more or less of the information to be tagged, allowing supplementary information to be tagged, or requiring a different tagging format.

The affected registrants are familiar with data tagging because they are required to provide information in other filings in interactive data format, but the exact specifications differ and they are not required to provide any interactive data in proxy or information statements.[155] Requiring an interactive data format would impose additional costs and burdens on registrants, beyond what they currently spend on producing interactive data for other purposes, because their contracts with outside data tagging vendors and/or the responsibilities of their in-house staff that works on data tagging would have to be expanded to include the new tagging requirement. Despite these costs, some shareholders may benefit from the data tagging requirement to the extent that it is helpful in extracting the tagged data across large numbers of filings.

We considered not requiring registrants to tag, as a block, the graphical and/or narrative disclosure that would follow the tabular disclosure. While the nature and potential variation in format of this disclosure may make it less suitable for large-scale analysis than the numerical data required to be tagged under the proposal, the incremental costs of tagging this disclosure as block-text should be low and such tagging could benefit shareholders interested in extracting this part of the disclosure from a large number of filings. We also considered not requiring registrants to tag, as blocks, the disclosures of deductions and additions used to determine executive compensation actually paid and the disclosure regarding vesting date valuation assumptions. The cost of block tagging these disclosures should be low and shareholders interested in this information may find such tagging to be useful. Alternatively, we could require that each numerical item in the deductions and additions used to determine executive compensation actually paid and the vesting date valuation assumptions be tagged separately. While such tagging may benefit shareholders interested in using this data, it would require some incremental compliance costs. Another alternative would be to allow registrants to tag any supplemental measures of pay and performance that they include in the disclosure beyond the prescribed measures. While some shareholders may benefit from such tagging, the supplemental measures included, if any, are likely to vary across registrants and such data may thus be less suitable for large-scale analysis than the prescribed measures.

We also considered requiring registrants to provide the data in XML format rather than XBRL. An XML format could be appropriate given the fixed structure of the proposed tabular disclosure and would permit the use of existing EDGAR applications that can convert submitted information to XML. This could increase the ease with which registrants could implement the structured formatting requirement, and could thus reduce costs, particularly for smaller registrants. However, XBRL is more appropriate for capturing information that is not well suited for tabular disclosures; in particular, standard XML is not able to tag large blocks of information without customization, whereas this function is standard in XBRL. XBRL is therefore more suitable for implementing the proposed requirements for block tags. In determining to propose a requirement to tag the data in XBRL format as opposed to XML format, we also considered the fact that XBRL allows for more flexibility to implement, for example, potential extensions to the data to be tagged as discussed above.

c. Definition of Executive Compensation Actually Paid

We have also considered several reasonable alternatives for the definition of executive compensation actually paid.

Incremental Compensation Earned

One approach would be to define ''executive compensation actually paid'' as the incremental compensation earned by an executive in a given year over those amounts that had already been earned in previous years. In this case, executive compensation actually paid would, as in the proposed measure, include all of the components included in the Summary Compensation Table (such as salary and cash bonuses) but with adjustments to the amounts included for equity awards and pension plans. In contrast to the proposal, the measure based on the incremental compensation earned would include in a given fiscal year the grant-date values of any new equity awards granted that year together with the annual change in value (whether positive or negative) of any outstanding, unvested option and stock grants. The change in values of these grants would be included in each fiscal year until their vesting date. In the case of options, these changes in value would be measured by applying the registrant's chosen option valuation methodology (*e.g.,* Black-Scholes or lattice valuation). This treatment of equity awards is similar to an approach used by one commenter.[156]

The corresponding treatment for pension plans would be to include the present value of those benefits that were earned in the last fiscal year, which may differ from the actuarial present value attributable to services rendered during the applicable fiscal year. In particular, the latter may be based on estimates of future benefits that include the impact of assumptions about future levels of compensation. The former, on the other hand, is intended to capture the present value of the impact on future benefits that can be directly linked to the change in inputs to the benefit formula (including compensation levels as well as years of service) over the last fiscal year.

A potential benefit to shareholders of applying these alternative adjustments to equity and pension plans in presenting executive compensation actually paid is that, with respect to equity awards, it would reduce the volatility in executive compensation actually paid, which, as discussed above, could reduce the comparability of the disclosures and the meaningfulness of relating the variation in the compensation measure over time to stock performance. In particular, this alternative approach would limit the value attributed to equity-based awards in any year to the change in value that is directly related to the stock return over that year, rather than including in the year of vesting the gains related to returns in all years since the grant was made. This approach may therefore allow shareholders to more readily interpret the relationship between variation in the compensation measure over time and stock performance. It may also reduce the unintended, indirect encouragement of shorter or more graduated vesting schedules in order to smooth executive compensation actually paid under the proposed definition.

In addition, this alternative approach would limit potentially significant differences in the measured executive compensation of registrants that provide very similar equity awards but with vesting schedules that are not synchronized. As discussed above, if

[155] Business development companies are not currently required to provide their financial statements and financial statement footnotes in XBRL format, and may thus be less familiar with data tagging than other registrants. We estimate that there are approximately 13 business development companies that would be subject to the proposed amendment.

[156] *See* letter from J&J.

two NEOs receive one-time awards of restricted stock that vest in full after one year, but with vesting dates that are one day apart—on the last day of a fiscal year versus the first day of the next fiscal year—the proposed approach would reflect the full value of the award in different years for the two NEOs. The alternative approach based on the incremental compensation earned would reflect any change in the value of each award over a given fiscal year in that same fiscal year, generally resulting in a more similar annual measure of compensation for the two NEOs in this example than the proposed measure.

Finally, including the value of equity awards at the grant date and then reflecting changes in this value in the years until vesting would increase the comparability of the disclosures across registrants that rely on equity awards to different extents while still demonstrating the performance sensitivity of unvested equity awards. For example, consider the example above, in which, for a given fiscal year, one PEO is paid a $1 million salary in cash and another PEO is paid $1 million in restricted stock that vests after one year, each of which comprises their total compensation. In contrast to the proposed approach, which would reflect executive compensation actually paid of $1 million and zero, respectively, for the two executives in that year, this alternative would reflect the same level of compensation for the two PEOs in that year, while still presenting any changes in the value of the second PEO's stock grant over the next year. It is important to note that these changes in value could be negative. For example, if the price of the stock granted to the second PEO were to fall significantly thereafter, or if the vesting conditions were not satisfied, this alternative approach could result in a large negative adjustment to that PEO's executive compensation actually paid in the year of such price change or failure to vest.

With respect to pensions, this alternative approach would provide a measure of future benefits that may be more directly tied to changes over the last fiscal year. Pension benefits may be a function of compensation levels, as in the case of pay-related, final-pay, final-average-pay, or career-average-pay plans. In the proposed approach, the values included for pensions are based on estimates that may already incorporate projections about future compensation levels. As a result, the effect of actual changes in current compensation levels on the value included for pensions in the proposed measure may be dampened. Because actual changes in current compensation may be related to performance, and these changes in compensation may be magnified by pension benefits that are a function of compensation levels, the alternative approach may be more useful in evaluating the relationship between pay and performance. The alternative approach may also further increase the comparability between compensation provided through defined benefit and defined contribution plans, since registrant contributions to defined benefit plans may also be directly related to current compensation levels or other such metrics with respect to the last fiscal year.

However, interpreting compensation ''actually paid'' as the incremental compensation earned by an executive in a given year would increase the reporting burden for registrants, because equity awards would have to be revalued in each year from the grant date until the time of vesting, rather than only at the grant date (for the purpose of the Summary Compensation Table and related disclosures) and at any vesting dates (for the purpose of the proposed pay-versus-performance disclosure). Also, the calculations to be made with respect to pensions may be less directly related to the values already calculated for the purpose of financial statement reporting, and could therefore be more burdensome. Overall, this approach may provide some benefits but could result in additional costs.

Other Alternative Definitions

Some commenters suggested excluding components of pay that may be considered to be unrelated to performance—such as perquisites, values related to retirement benefits, or even base salaries—from the definition of executive compensation actually paid.[157] We believe that restricting the definition of executive compensation actually paid in such a way would not provide shareholders with a complete understanding of compensation and how it relates to financial performance. While compensation committees may rely mainly on particular components of compensation in order to provide performance incentives, other components of compensation (such as perquisites, registrant contributions to defined contribution plans, and life insurance premiums paid by the registrant) may or may not vary with company performance and, even if they do not vary with performance, may be important to consider in order to understand how sensitive the totality of compensation is to performance. Restricting the types of compensation included in executive compensation actually paid may also reduce the comparability of disclosures across registrants that rely more heavily on types of compensation that are excluded from the prescribed measure versus those that rely more heavily on compensation types that are included.

The proposal would require registrants to include the Summary Compensation Table measure of total compensation together with executive compensation actually paid in the tabular disclosure of pay and performance measures, but some commenters have suggested that executive compensation actually paid also be defined to be more similar to this existing measure. For example, four commenters supported the use of grant-date values for equity awards in executive compensation actually paid.[158] Such an approach would reduce the costs of compiling the required disclosure and would result in a compensation measure that, because of its comprehensiveness, would be reasonably comparable across registrants. However, this approach would not reflect the performance sensitivity of unvested equity awards. As discussed above, because academic research has demonstrated that the empirical relationship between pay and performance is driven by changes in the value of executive stock and option holdings, considering only grant-date values may ignore one of the primary channels for relating pay and performance.[159] We note that this concern was raised by one commenter.[160] Some commenters have

[157] *See* letters from CEC II (recommending that the measure exclude one-time special make-whole awards because they are non-performance-based), Compensia (recommending that the measure only include items that ''are paid and awarded based on the financial performance of the company,'' which are listed as amounts paid under both short-term and long-term incentive compensation plans and performance-based equity awards for which the performance measures are based on financial criteria), Cook (recommending that that measure exclude changes in actuarial pension value, above-market earnings on deferred compensation, and the All Other Compensation category ''because these figures have nothing to do with performance''), Davis Polk (recommending that the measure only include ''items that an issuer believes are based in some measure on attainment of company performance objectives'' and exclude items such as pension accruals, deferred compensation earnings, issuer contributions to tax-qualified and non-qualified deferred compensation plans and perquisites and welfare benefits), and Foley (recommending that the measure reflect ''performance-based pay (with or without base salary added in).'')

[158] *See* letters from Compensia, Cook, MDU, and Meridian.

[159] *See supra* note 140.

[160] *See* letter from SCSGP.

also suggested that the definition of executive compensation actually paid follow total compensation in its approach to pension plans, by including the total change in actuarial pension value in the measure.[161] As in the case of the treatment of equity awards, mirroring the approach in total compensation in this way would reduce compliance costs. However, this alternative would introduce additional volatility to the compensation measure for registrants whose NEOs have large pension balances, as the actuarial values of the previously accumulated benefits are likely to be strongly impacted by factors such as changes in interest rates.

D. Request for Comment

Throughout this release, we have discussed the anticipated costs and benefits of the proposed amendments. We request and encourage any interested person to submit comments regarding the proposed amendments and our analysis of the potential effects of the amendments. We request comment from the point of view of registrants, shareholders, and other market participants. With regard to any comments, we note that such comments are particularly helpful to us if accompanied by quantified estimates or other detailed analysis and supporting data regarding the issues addressed in those comments. We also are interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we have overlooked.

55. We seek comment and data on the magnitude of all of the costs and benefits identified as well as any other costs and benefits that may result from the adoption of the proposed amendments. In addition, we seek views regarding these costs and benefits for particular types of covered registrants, including small registrants, and for particular types of shareholders.

56. Would the proposed disclosure facilitate shareholders' evaluation of a registrant's executive compensation practices? Are there alternative definitions of executive compensation actually paid and financial performance, or other types of computations or compensation data, which would be more useful to shareholders in evaluating pay-versus-performance alignment, while still satisfying the mandate of Exchange Act Section 14(i)? Would limiting the applicability of the amendments to PEO compensation rather than that of all NEOs affect the benefit to shareholders? Would requiring the disclosure separately for each NEO affect this benefit?

57. How would the proposed treatment of equity awards, particularly the valuation and inclusion of such awards in executive compensation actually paid at the time at which they meet all vesting conditions, affect compliance costs and the comparability of the disclosure across registrants? Would the registrant's valuation of equity awards as of their vesting date provide new data of use to shareholders, relative to the compensation data currently required to be disclosed? What are the costs and benefits of alternative approaches to treating equity awards in the definition of executive compensation actually paid?

58. How would the proposed treatment of pension plans in executive compensation actually paid for registrants other than smaller reporting companies affect the costs and benefits of the proposed amendments, including any effects on compliance costs and the comparability of the disclosure across registrants? Would the inclusion in this compensation measure of only the actuarial present value of benefits attributable to services rendered during the applicable fiscal year provide new data of use to shareholders, relative to the pension information currently required to be disclosed? Would the adjustment provide a computation that makes information of interest to shareholders more readily available to them, even if this information is already disclosed in another form? What are the costs and benefits of alternative approaches to treating pension plans in the definition of executive compensation actually paid?

59. Would the proposed scaled disclosure requirements for smaller reporting companies reduce the compliance burden for such registrants while not adversely impacting shareholders? Could the disclosure be otherwise scaled for smaller reporting companies to minimize the incremental burden on smaller reporting companies while preserving the benefits to shareholders?

60. What effect would the proposed amendments have on the incentives of boards, senior executives, and shareholders? Would the proposed amendments be likely to change the behavior of these parties, registrants, shareholders, or other market participants? Should we alter the proposed requirements to address that impact? If so, describe any changes that would address that impact and discuss any related costs and benefits that would arise from such a change.

61. Is the proposal likely to lead to shareholder confusion, such as about the optimality of current pay-versus-performance alignment? Is the proposed ability to provide additional, alternative measures of compensation and performance, as well as the proposed flexibility in presentation format, sufficient to offset potential shareholder confusion? Would such additional measures or variation in formats meaningfully limit the comparability of the disclosure across registrants or otherwise affect the benefits of Exchange Act Section 14(i)? Is there additional information that we could require of all registrants, or particular minimum standards for the presentation format, that would enhance comparability and the benefits to shareholders at a reasonable cost to registrants?

62. What effect would the proposed amendments have on competition? Would the proposed amendments put registrants subject to the requirements or particular types of registrants subject to the requirements at a competitive disadvantage? If so, what changes to the proposed requirements could mitigate the impact while still satisfying the mandate of Exchange Act Section 14(i)?

63. What effect would the proposed amendments have on market efficiency? Are there any positive or negative effects of the proposed amendments on efficiency that we should consider? How could the amendments be changed to promote any positive effect or to mitigate any negative effect on efficiency, while still satisfying the mandate of Exchange Act Section 14(i)?

64. What effect would the proposed amendments have on capital formation? How could the amendments be changed to promote capital formation or to mitigate any negative effect on capital formation resulting from the amendments, while still satisfying the mandate of Exchange Act Section 14(i)?

V. Paperwork Reduction Act

A. Background

Certain provisions of the proposed amendments contain a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[162] The Commission is submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[163] An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. The titles for the collections of information are:

[161] *See* letters from MDU and SVA.

[162] 44 U.S.C. 3501 *et seq.*

[163] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

''Regulation S–K'' (OMB Control No. 3235–0071); [164]

''Regulation 14A and Schedule 14A'' (OMB Control No. 3235–0059); and

''Regulation 14C and Schedule 14C'' (OMB Control No. 3235–0065).

We adopted all of the existing regulations and schedules pursuant to the Securities Act or the Exchange Act. The regulations and schedules set forth the disclosure requirements for registration statements and proxy and information statements filed by registrants to help shareholders make informed investment and voting decisions. Our proposed amendments to existing schedules and regulations are intended to satisfy the requirements of Section 14(i) of the Exchange Act.

The hours and costs associated with preparing, filing and sending the schedule constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the amendments is mandatory. Responses to the information collections will not be kept confidential and there is no mandatory retention period for the information disclosed.

B. Summary of Collection of Information Requirements

We are proposing to add new Item 402(v) to Regulation S–K. This item would require registrants to provide a table containing the values of the prescribed measures of executive compensation actually paid and the Summary Compensation Table measure of total compensation for the PEO and as an average for the other NEOs, as well as TSR both for the registrant and the peer group. The data in the table, including the footnote disclosure of the amounts deducted and added to the Summary Compensation Table measure, would be required to be tagged in XBRL. Proposed Item 402(v) also would require a registrant to provide a clear description of the relationship between executive compensation actually paid to its NEOs and the registrant's TSR for each of the five most recently completed fiscal years. A registrant also would be required to disclose the relationship between its TSR and peer group TSR. This disclosure about the relationship between a registrant's executive compensation actually paid and its TSR, and the disclosure about a registrant's TSR and peer group TSR would be required to be tagged in XBRL. Emerging growth companies and foreign private issuers would not be required to provide the disclosure. Smaller reporting companies would be subject to scaled disclosure requirements. The proposed disclosure would be required in proxy statements on Schedule 14A and information statements on Schedule 14C in which executive compensation disclosure pursuant to Item 402 of Regulation S–K is required.

We have proposed to base much of the information required in the pay-versus-performance disclosure on items that are already required elsewhere in the executive compensation disclosure provided by registrants. We believe that using as a starting point the total compensation that registrants already are required to report in the Summary Compensation Table and making adjustments to those figures will help reduce the burden on registrants in preparing the disclosure required by new Item 402(v) of Regulation S–K. As discussed above, the proposed amendments are not expected to result in the provision of significant new information to shareholders, or to require registrants to collect significant new data, relative to current disclosure requirements. All of the individual components and assumptions needed to calculate executive compensation actually paid already must be reported under existing disclosure requirements, with the exception of vesting-date valuation assumptions for options.

We arrived at the estimates discussed below by reviewing our burden estimates for similar disclosure and considering our experience with other tagged data initiatives. We believe that the proposed amendments regarding pay-versus-performance disclosure would enhance the already required compensation disclosure. In addition, we believe that much of the information required to prepare the pay-versus-performance disclosure would be readily available to registrants because it is required to be gathered, determined or prepared in order to satisfy the other disclosure requirements of Item 402 of Regulation S–K.

We estimate that the average incremental burden for a registrant to prepare the pay-versus-performance disclosure would be 15 hours. This estimate includes the time and cost of preparing disclosure that has been appropriately reviewed, including, as applicable, by management, in-house counsel, outside counsel and members of the board of directors as well as tagging the data in XBRL format. Because this estimate is an average of all companies, the burden could be more or less for any particular company, and may vary depending on a variety of factors, such as the degree to which companies use the services of outside professionals, or internal staff and resources to tag the data in XBRL. This burden, as discussed in more detail below, would be added to the current burdens for Schedule 14A and Schedule 14C.

As a result of the estimates discussed above, we estimate for purposes of the PRA that the total incremental burden on all registrants of the proposed amendments would be 67,500 hours for internal company time and $9,000,000 for the services of outside professionals. For the proxy and information statements on Schedule 14A and Schedule 14C, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. There is no change to the estimated burden of Regulation S–K because the burdens that this regulation imposes are reflected in our revised estimates for the forms.

C. Paperwork Reduction Act Burden Estimates

We derived our new burden hour and cost estimates by estimating the total amount of time it would take a registrant to prepare and review the disclosure requirements contained in the final rules. This estimate represents the average burden for all registrants, both large and small. Because it is difficult to determine the precise number of emerging growth companies, we have not adjusted the estimates to back the number of these companies out of our estimate, even though emerging growth companies would not be subject to the proposed amendments. In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the size and complexity of their executive compensation arrangements. We believe that some registrants will experience costs in excess of this average in the first year of compliance with the amendments and some registrants may

[164] The paperwork burden from Regulation S–K is imposed through the forms that are subject to the requirements in those regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to Regulation S–K.

experience less than the average costs.[165]

A summary of the proposed changes is included in the table below.

TABLE 1—CALCULATION OF INCREMENTAL PRA BURDEN ESTIMATES[165]

	Current annual responses (A)	Proposed annual responses (B)	Current burden hours (C)	Increase in burden hours (D)	Proposed burden hours (E) = C+D	Current professional costs (F)	Increase in professional costs (G)	Proposed professional costs = F+G
Schedule 14A	5,446	5,446	714,586	61,268	775,854	$85,664,277	$8,169,000	$93,833,277
Schedule 14C	554	554	66,784	6,232	73,016	7,952,549	831,000	8,783,549
Total				67,500			9,000,000	

D. Solicitation of Comments

We request comments in order to evaluate: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information; (3) whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (4) whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and (5) whether the proposed amendments will have any effects on any other collections of information not previously identified in this section.[166]

Any member of the public may direct to us any comments about the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File No. _____ . Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. _____, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'')[167] requires the Commission, in promulgating rules under Section 553 of the Administrative Procedures Act,[168] to consider the impact of those rules on small entities. Section 603(a) of the RFA[169] generally requires the Commission to undertake a regulatory flexibility analysis of all proposed amendments to determine the impact of such rulemaking on ''small entities.''

A. Reasons for, and Objectives of, the Proposed Action

The proposed amendments are designed to implement Exchange Act Section 14(i), which was added by Section 953(a) of the Dodd-Frank Act and would exempt certain reporting companies. Specifically, the proposed amendments would require registrants, other than emerging growth companies and foreign private issuers, to disclose in any proxy or information statement for which disclosure under Item 402 of Regulation S–K is required, the relationship between executive compensation actually paid to the NEOs and the financial performance of the registrant for the three most recently completed fiscal years, taking into account any change in the value of the shares of stock and dividends of the registrant and any distributions.

B. Legal Basis

We are proposing the amendments pursuant to Section 953(a) of the Dodd-Frank Act and Sections 3(b), 14, 23(a) and 36 of the Exchange Act.

C. Small Entities Subject to the Proposed Amendments

The proposed amendments would affect some companies that are small entities. For purposes of the RFA, under our rules, an issuer, other than an investment company,[170] is a ''small business'' or ''small organization'' if it has total assets of $5 million or less as of the end of its most recent fiscal year and is engaged or proposing to engage in an offering of securities which does not exceed $5 million.[171] We estimate that there are approximately 428 issuers that may be considered small entities. The proposed amendments would affect small entities that have a class of securities that are registered under Section 12 of the Exchange Act. An investment company, including a business development company, is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[172] We believe that the proposal would affect some small entities that are business development companies who have a class of securities registered under Section 12 of the Exchange Act. We estimate that there are approximately five business development companies that may be considered small entities.[173]

D. Duplicative, Overlapping or Conflicting Federal Rules

As noted above, much of the information required by the proposed

[165] The number of responses reflected in the table equals the three-year average of the number of schedules filed with the Commission and currently reported by the Commission to OMB.

[166] We request comment pursuant to 44 U.S.C. 3506(c)(2)(B).

[167] 5 U.S.C. 601 *et seq.*

[168] 5 U.S.C. 553.

[169] 5 U.S.C. 603(a).

[170] For purposes of the RFA, an investment company is a ''small business'' or ''small organization'' that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. [17 CFR 270.0–10].

[171] *See* Securities Act Rule 157 [17 CFR 230.157]; Exchange Act Rule 0–10(a) [17 CFR 240.0–10(a)].

[172] 17 CFR 270.0–10(a).

[173] We estimate that there are 13 business development companies that would be subject to the proposed amendment, five of which may be considered small entities for purposes of the RFA.

amendments is derived from information currently required to be reported under existing disclosure rules. Nevertheless, we believe that the repackaging of this information in the required pay-versus-performance disclosure may allow shareholders to more quickly and easily process the information accurately and thereby lower the burden on shareholders, including shareholders of smaller entities, of evaluating executive compensation packages. We do not believe that the proposed amendments would conflict with other federal rules.

E. Significant Alternatives

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Use of performance rather than design standards; and
- Exempting small entities from all or part of the proposed amendments.

The proposed amendments would require clear disclosure of prescribed measures of executive compensation actually paid and the company's financial performance and the relationship between these measures. All of the individual components needed to calculate executive compensation actually paid already must be reported under current disclosure rules, with the exception of the values to be included with respect to pension benefits and options. Given the straightforward nature of the proposed disclosure, we do not believe that it is necessary to exempt small entities from the proposed requirements. However, we have proposed scaled disclosure requirements for smaller reporting companies in an attempt to limit the compliance burden that would be imposed on such companies.[174] Entities that are smaller reporting companies would be subject to the proposed amendments, but would provide only three years of disclosure, instead of the proposed five years for all other registrants. Also, the proposed amendments would require smaller reporting companies to disclose absolute TSR, but they would not be required to disclose peer group TSR. In addition, because the scaled compensation disclosure that applies to smaller reporting companies does not include pension plans, the pension plan adjustment would not apply to smaller reporting companies. To the extent that a small entity is a registrant, we believe that there are few, if any, small entities that do not qualify as smaller reporting companies because it is unlikely that an entity with total assets of $5 million or less would have a public float of $75 million or more. A small entity, therefore, would likely be subject to the scaled disclosure requirements described above that are proposed for smaller reporting companies. We believe this will minimize any adverse impact on these companies of providing new disclosures which they do not currently provide.

With respect to compliance timetables, the proposed rules provide smaller reporting companies with transitional relief whereby such companies would be required to provide two years of data, instead of three, in the first proxy filing after the rules become effective, and three years of data in subsequent proxy filings. The proposed rules also provide smaller reporting companies with a phase-in of the requirement to provide the disclosure in XBRL format.

Although the proposed amendments would require disclosure of prescribed measures of executive compensation actually paid and financial performance, they would permit issuers significant flexibility in presenting the relationship between these measures. For example, issuers, including small entities, could describe the relationship in narrative form or by means of a graph or chart. In this respect, the proposed amendments make use of both design and performance standards as a means of balancing the need for uniform disclosure across registrants with the desire to provide registrants with flexibility to describe their pay-versus-performance relationship in a format that is best suited to their particular circumstances.

Commenters are asked to described the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[175] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more;
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- any potential increase in costs or prices for consumers or individual industries; and
- any potential effect on competition, investment, or innovation.

VIII. Statutory Authority and Text of Proposed Amendments

We are proposing the amendments contained in this document under the authority set forth in Section 953(a) of the Dodd-Frank Act and Sections 3(b), 14, 23(a) and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 229 and 240

Reporting and recordkeeping requirements; Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The general authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11,

[174] A smaller reporting company is an issuer, other than certain classes of issuers (including an investment company), that had a public float of less than $75 million as of the end of its most recently completed second fiscal quarter, or in the case of an initial registration statement under the Securities Act or Exchange Act for the shares of its common equity, had a public float of less than $75 million as of a date within 30 days of the date of the filing of the registration statement. See Securities Act Rule 405 [17 CFR 230.405]. In the case of an issuer whose public float was zero, an issuer could qualify as a smaller reporting company if it had annual revenues of less than $50 million during the most recently completed fiscal year for which audited financial statements are available.

[175] Public Law 104–121, Title II, 110 Stat. 857 (1996).

and 7201 *et seq.*, and 18 U.S.C. 1350 unless otherwise noted.

* * * * *

■ 2. Amend § 229.402 by adding paragraph (v) to read as follows:

§ 229.402 Executive compensation.

* * * * *

(v) *Pay versus performance.* (1) Provide the information specified in paragraph (v)(2) of this item for each of the registrant's last five completed fiscal years in the following tabular format:

PAY VERSUS PERFORMANCE

Year	Summary compensation table total for PEO	Compensation actually paid to PEO	Average summary compensation table total for non-PEO named executive officers	Average compensation actually paid to non-PEO named executive officers	Total shareholder return	Peer group total shareholder return
(a)	(b)	(c)	(d)	(e)	(f)	(g)

(2) The Table shall include:

(i) The fiscal year covered (column (a));

(ii) The PEO's total compensation for the covered fiscal year as reported in the Summary Compensation Table pursuant to paragraph (c)(2)(x) of this Item, or paragraph (n)(2)(x) for smaller reporting companies (column (b)), and the average total compensation reported for the remaining named executive officers reported pursuant to those paragraphs (column (d));

(iii) The executive compensation actually paid to the PEO (column (c)) and the average executive compensation actually paid to the remaining named executive officers (column (e)). If more than one person served as the registrant's PEO during a fiscal year, include in column (c) the aggregate compensation actually paid for the persons who served as PEO. For purposes of columns (c) and (e) of the table required by paragraph (v)(1) of this Item, executive compensation actually paid shall be the total compensation for the covered fiscal year for each named executive officer as provided in paragraph (c)(2)(x) of this Item, or paragraph (n)(2)(x) for smaller reporting companies, adjusted to:

(A) Deduct the aggregate change in the actuarial present value of the named executive officer's accumulated benefit under all defined benefit and actuarial pension plans reported in the Summary Compensation Table in paragraph (c)(2)(viii)(A) of this Item;

(B) Add the service cost under all defined benefit and actuarial pension plans reported in the Summary Compensation Table in paragraph (c)(2)(viii)(A) calculated as the actuarial present value of each named executive officer's benefit under all such plans attributable to services rendered during the covered fiscal year, consistent with ''service cost'' as defined in FASB ASC Topic 715; and

(C) Deduct the amounts reported in the Summary Compensation Table pursuant to paragraphs (c)(2)(v) and (vi) of this Item and add in their place the fair value on the vesting date of all stock awards, and all options awards, with or without tandem SARs (including awards that subsequently have been transferred), for which all applicable vesting conditions were satisfied during the covered fiscal year.

(iv) For purposes of columns (f) and (g) of the table required by paragraph (v)(1) of this Item, for each year disclose the cumulative total shareholder return of the registrant (column (f)) and peer group cumulative total shareholder return (column (g)) calculated in the same manner, and over the same measurement period, as under Item 201(e) of Regulation S–K. The term ''measurement period'' shall be the period beginning at the ''measurement point'' established by the market close on the last trading day before the registrant's earliest fiscal year in the table, through and including the end of the registrant's last completed fiscal year. The closing price of the measurement point must be converted into a fixed investment, stated in dollars, in the registrant's stock (or in the stocks represented by the peer group). For each fiscal year, the amount included in the table shall be the cumulative total shareholder return as of the end of that year. The same methodology must be used in calculating both the registrant's total shareholder return and that of the peer group.

(3) For each amount disclosed in columns (c) and (e) of the table required by paragraph (v)(1), disclose in a footnote to the table for the PEO and the average remaining named executive officer compensation each of the amounts deducted and added pursuant to paragraph (v)(2)(iii). For disclosure of the executive compensation actually paid to named executive officers other than the PEO, provide the amounts required under this paragraph as averages.

(4) For the value of equity awards added pursuant to paragraph (v)(2)(iii)(C), disclose in a footnote to the table required by paragraph (v)(1) any assumption made in the valuation that differs materially from those disclosed pursuant to Instruction 1 to Item 402(c)(2)(v) and (vi), or for smaller reporting companies, Instruction 1 to Item 402(n)(2)(v) and (vi).

(5) In proxy or information statements in which disclosure is required pursuant to this Item, use the information provided in the table required by paragraph (v)(1) to provide a clear description of the relationship between:

(i) The executive compensation actually paid by the registrant to the PEO (column (c)) and the average of the executive compensation actually paid to the named executive officers other than the PEO (column (e)) listed in the Summary Compensation Table, and

(ii) The cumulative total shareholder return of the registrant (column (f)), for each of the registrant's last five completed fiscal years. This description shall also include a comparison of the cumulative total shareholder return of the registrant (column (f)) and cumulative total shareholder return of the registrant's peer group (column (g)) over the same period.

(6) The disclosure required to be provided pursuant to this paragraph (v) shall appear with, and in the same format as, the rest of the disclosure required to be provided pursuant to paragraph (v) and, in addition, shall be electronically formatted using the eXtensible Business Reporting Language (XBRL) in accordance with the EDGAR Filer Manual (17 CFR 232.11) as an exhibit to definitive Schedule 14A (17 CFR 240.14a–101) or definitive Schedule 14C (17 CFR 240.14c–101). Each amount required to be disclosed in

the table pursuant to paragraph (v)(1) must be tagged separately. The disclosure required to be provided pursuant to paragraphs (v)(3) through (5) of this Item must be block-text tagged.

Instructions to Item 402(v)

1. *Transitional relief.* A registrant may provide the disclosure required by paragraph (v) for three years, instead of five years, in the first filing in which it provides this disclosure, and provide disclosure for an additional year in each of the two subsequent annual filings in which this disclosure is required.

2. *Repricings and other modifications.* If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of previously vested options or SARs held by a named executive officer, whether through amendment, cancellation or replacement grants, or any other means, or otherwise has materially modified such awards, the registrant shall include in the compensation reported under paragraph (v)(2)(iii)(C) of this Item the incremental fair value, computed as the excess fair value of the modified award over the fair value of the original award upon vesting of the modified award. If the modified award is subject to multiple vesting dates, the registrant shall include in the compensation reported under paragraph (v)(2)(iii)(C) the pro rata incremental fair value paid at each vesting date.

3. *Fair value.* Fair value amounts shall be computed in a manner consistent with the fair value measurement guidance in FASB ASC Topic 718.

4. *Presentation.* If more than one person served as the PEO of the registrant during the covered fiscal year, then the compensation for all persons who served as the PEO of the registrant for that year shall be aggregated.

5. *Exempted registrants.* A registrant is not required to comply with paragraph (v) of this Item if it is an emerging growth company, as defined in Section 3(a) of the Exchange Act (15 U.S.C. 78c(a)).

6. *New registrants.* Information for fiscal years prior to the last completed fiscal year will not be required if the registrant was not required to report pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) at any time during that year.

7. *Peer group.* For purposes of determining the total shareholder return of the registrant's peer group, the registrant shall use the same index or issuers used for purposes of Item 201(e)(1)(ii) or, if applicable, the companies it uses as a peer group for purposes of Item 402(b). If the peer group is not a published industry or line-of-business index, the identity of the issuers comprising the group must be disclosed. The returns of each component issuer of the group must be weighted according to the respective issuers' stock market capitalization at the beginning of each period for which a return is indicated.

8. *Smaller reporting companies.* A registrant that qualifies as a ''smaller reporting company,'' as defined by § 229.10(f)(1), may provide the information required by paragraph (v) for three years, instead of five years. A smaller reporting company may provide the disclosure required by paragraph (v) for only two fiscal years in the first filing in which it provides this disclosure, and is not required to provide the disclosure required by paragraph (v)(5) with respect to the total shareholder return of its peer group. For purposes of paragraph (v)(2)(iii) of this Item with respect to smaller reporting companies, executive compensation actually paid shall be the total compensation for the covered fiscal year for each named executive officer as provided in paragraph (n)(2)(x) of this Item, adjusted to deduct the amounts reported in the Summary Compensation Table pursuant to paragraphs (n)(2)(v) and (vi) of this Item, and to add in their place the fair value on the vesting date of the amounts added in paragraph (v)(2)(iii)(C). Disclose in a footnote to the table required pursuant to paragraph (v)(1) for the PEO and average remaining named executive officer compensation the amounts deducted from, and added to, the Summary Compensation Table pursuant to this instruction. A smaller reporting company is required to comply with paragraph (v)(6) in the third filing in which it provides the disclosure required by paragraph (v).

9. *Incorporation by reference.* The information in paragraph (v) of this Item will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7210 *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5521(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376, (2010), unless otherwise noted.

* * * * *

■ 4. Amend § 240.14a–101 by adding Item 25 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

* * * * *

Item 25 Exhibits. Provide the information required to be disclosed by Item 402(v)(1) of Regulation S–K (17 CFR 229.402(v)(1)) in an exhibit to this Schedule 14A electronically formatted using the eXtensible Business Reporting Language (XBRL) interactive data standard.

By the Commission.

Dated: April 29, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–10429 Filed 5–6–15; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 80 Thursday,

No. 88 May 7, 2015

Part III

Department of Energy

Excess Uranium Management: Secretarial Determination of No Adverse Impact on the Domestic Uranium Mining, Conversion, and Enrichment Industries; Notice

DEPARTMENT OF ENERGY

Excess Uranium Management: Secretarial Determination of No Adverse Impact on the Domestic Uranium Mining, Conversion, and Enrichment Industries

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice.

SUMMARY: On May 1, 2015, the Secretary of Energy issued a determination (''Secretarial Determination'') covering continued transfers of uranium for cleanup services at the Portsmouth Gaseous Diffusion Plant and for down-blending of highly-enriched uranium to low-enriched uranium. The Secretarial Determination covers transfers of up to the equivalent of 2,500 metric tons of natural uranium (''MTU'') per year in 2015 and up to the equivalent of 2,100 MTU in each year thereafter. For the reasons set forth in the Department's ''Analysis of Potential Impacts of Uranium Transfers on the Domestic Uranium Mining, Conversion, and Enrichment Industries,'' which is incorporated into the determination, the Secretary determined that these transfers will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry.

DATES: Effective May 1, 2015.

ADDRESSES: The 2015 Secretarial Determination and supporting documents are available on the Department's Web site at *http://www.energy.gov/ne/downloads/2015-secretarial-determination.*

FOR FURTHER INFORMATION CONTACT: Mr. David Henderson, U.S. Department of Energy, Office of Nuclear Energy, Mailstop NE–52, 19901 Germantown Rd., Germantown, MD 20874–1290. Phone: (301) 903–2590. Email: *David.Henderson@Nuclear.Energy.Gov.*

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) holds inventories of uranium in various forms and quantities—including low-enriched uranium (LEU) and natural uranium—that have been declared as excess and are not dedicated to U.S. national security missions. Within DOE, the Office of Nuclear Energy (NE), the Office of Environmental Management (EM), and the National Nuclear Security Administration (NNSA) coordinate the management of these excess uranium inventories. Much of this excess uranium has substantial economic value on the open market. One tool that DOE has used to manage its excess uranium inventory has been to enter into transactions in which DOE exchanges excess uranium for services. This notice involves uranium transfers of this type under two separate programs. Specifically, DOE transfers uranium in exchange for cleanup services at the Portsmouth Gaseous Diffusion Plant and for down-blending of highly-enriched uranium to LEU.

These transfers are conducted in accordance with the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.,* ''AEA'') and other applicable law. Specifically, Title I, Chapters 6–7, 14, of the AEA authorize DOE to transfer special nuclear material and source material. LEU and natural uranium are types of special nuclear material and source material, respectively. The USEC Privatization Act (Pub. L. 104–134, 42 U.S.C. 2297h *et seq.*) places certain limitations on DOE's authority to transfer uranium from its excess uranium inventory. Specifically, under section 3112(d)(2) of the USEC Privatization Act (42 U.S.C. 2297h–10(d)(2)), the Secretary must determine that the transfers ''will not have an adverse material impact on the domestic uranium mining, conversion or enrichment industry, taking into account the sales of uranium under the Russian Highly Enriched Uranium Agreement and the Suspension Agreement'' before DOE makes certain transfers of natural or low-enriched uranium under the AEA.

On May 1, 2015, the Secretary of Energy determined that continued uranium transfers for cleanup services at Portsmouth and down-blending services will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry (''2015 Secretarial Determination''). This determination covers transfers of up to the equivalent of 2,500 metric tons of natural uranium (''MTU'') per year in 2015 and up to the equivalent of 2,100 MTU in each year thereafter. The Secretary based his conclusion on the Department's ''Analysis of Potential Impacts of Uranium Transfers on the Domestic Uranium Mining, Conversion, and Enrichment Industries,'' which is incorporated into the determination. The Secretary considered, *inter alia,* the requirements of the USEC Privatization Act of 1996 (42 U.S.C. 2297h *et seq.*), the nature of uranium markets, and the current status of the domestic uranium industries, as well as sales of uranium under the Russian HEU Agreement and the Suspension Agreement. This Determination replaces the previous determination issued in May 2014, which covered transfers for these two programs of up to the equivalent of 2,705 MTU per year.

The full text of the 2015 Secretarial Determination is set forth below.

Issued in Washington, DC, on May 1, 2015.

Peter B. Lyons,

Assistant Secretary for Nuclear Energy, Office of Nuclear Energy.

Set forth below is the full text of the Secretarial Determination.

Secretarial Determination for the Sale or Transfer of Uranium

Since May 15, 2014, the Department of Energy (''Department,'' ''DOE'') has transferred natural uranium and low-enriched uranium in specified amounts and transactions, subject to a determination I made on that date pursuant to § 3112(d)(2) of the USEC Privatization Act, 42 U.S.C. 2297h-10(d) (''2014 Determination''). For the reasons provided herein, the 2014 Determination is replaced by the determination described below, and no further transfers pursuant to the 2014 Determination will take place.

The 2014 Determination covered transfers of up to the equivalent of 2,705 metric tons of natural uranium (''MTU'') per year, in natural uranium hexafluoride provided to contractors for cleanup services at the Paducah or Portsmouth Gaseous Diffusion Plant and in low-enriched uranium transferred to contractors for down-blending highly enriched uranium. The 2014 Determination concluded that the transfers it described would not have adverse material impacts on the domestic uranium industries. In issuing this determination to supersede the 2014 Determination, I do not repudiate that conclusion or invalidate transfers made pursuant to the 2014 Determination.

However, after balancing the Department's goals regarding the projects being partly supported by uranium transactions with the Department's goal to help maintain healthy domestic nuclear industries, and reviewing responses to the Department's solicitations for public input, I have concluded that the lower rates of uranium transfers described herein are appropriate in the near term. I have therefore determined to permit transfers only at the lower rates described below. To avoid disruption to the projects involved, the Department will continue transferring at the pre-existing rates for approximately two months, as described below.

Accordingly, I determine that the following transfers will not have an adverse material impact on the domestic

mining, conversion, or enrichment industry:

(1) In calendar year 2015, up to 2,000 MTU contained in natural uranium hexafluoride, transferred to contractors for cleanup services at the Portsmouth Gaseous Diffusion Plant, in transfers of up to 600 MTU per quarter until June 30, 2015 and up to 400 MTU per quarter for the remainder of 2015; and

(2) in calendar year 2016 and thereafter, up to 1,600 MTU per calendar year contained in natural uranium hexafluoride, transferred to contractors for cleanup services at the Portsmouth Gaseous Diffusion Plant, in transfers of up to 400 MTU per quarter; and

(3) in calendar year 2015 and thereafter, an amount of low-enriched uranium equivalent to up to 500 MTU of natural uranium per calendar year, transferred to contractors for down-blending highly-enriched uranium to low-enriched uranium;

PROVIDED THAT

(4) in the event transfers of low-enriched uranium do not reach the equivalent of 500 MTU of natural uranium in any calendar year, transfers of natural uranium may exceed 400 MTU in the fourth quarter of that calendar year so long as the total amount transferred by the Department does not exceed the equivalent of 2,500 MTU of natural uranium in calendar year 2015 or the equivalent of 2,100 MTU of natural uranium in a subsequent year.

I base my conclusions on the Department's ''Analysis of Potential Impacts of Uranium Transfers on the Domestic Uranium Mining, Conversion, and Enrichment Industries,'' which is incorporated herein. As explained in that document, I have considered, *inter alia,* the requirements of the USEC Privatization Act of 1996 (42 U.S.C. 2297h *et seq.*), the nature of uranium markets, and the current status of the domestic uranium industries. I have also taken into account the sales of uranium under the Russian HEU Agreement and the Suspension Agreement.

Date: May 1, 2015.

Ernest J. Moniz,

Secretary of Energy.

Analysis of Potential Impacts of Uranium Transfers on the Domestic Uranium Mining, Conversion, and Enrichment Industries

May 1, 2015

Executive Summary

The Department of Energy (''Department'' or ''DOE'') plans to transfer the equivalent of up to 2,100 metric tons (''MTU'') of natural uranium per year (with a higher total for calendar year 2015, mainly because of transfers already executed or under way before today's determination). These transfers would include 1,600 MTU in natural uranium hexafluoride transferred in exchange for cleanup services at the Portsmouth Gaseous Diffusion Plant; and low-enriched uranium, at an assay of 4.95 wt-% U–235, equivalent to 500 MTU of natural uranium, transferred for services to down-blend highly enriched uranium. In support of a determination whether these transfers will have an adverse material impact on the domestic mining, conversion, or enrichment industry, the analysis below assesses the potential impacts of DOE's transfers. It takes account of the transfers just described as well as past DOE transfers still affecting the markets and certain transfers contemplated for later years.

For purposes of the Department's determination, transfers will have an ''adverse material impact'' when a reasonable forecast predicts that an industry will experience ''material'' harm that is reasonably attributable to the transfers. To test that attribution, the analysis compares the expected state of each industry in light of the planned transfers to what would happen in the absence of transfers. Such ''but-for'' analysis identifies what impacts DOE's transfers can be said to cause. As a corollary proposition, the analysis does not conclude that transfers would be impermissible solely because an industry is weak. Conversely, it also does not regard transfers as permissible so long as they are not the sole or primary cause of an industry's problem. The analysis must reflect existing conditions, whether prosperous or difficult; and the proper question is to what degree the effects of DOE's transfers would make an industry weaker.

Not every impact will be an ''adverse material impact'' for these purposes. In general, the Department regards an ''adverse material impact'' as a harm of real import and great consequence, beyond the scale of what normal market fluctuations would cause.

The analysis evaluates six factors for each industry: changes to prices; changes in production levels at existing facilities; changes to employment in the industry; changes in capital improvement plans; the long-term viability of the industry; and, as required by statute, sales under certain agreements permitting the import of Russian-origin uranium. The analysis relies on myriad inputs, including a study prepared for the Department by consultant Energy Resources International, Inc., market data and forecasts from several sources, reports by other market consultants, and additional submissions in response to the Department's requests for comment.

The uranium mining industry serves the market for uranium concentrates. DOE's transfers, including those described above, constitute less than 4% of global demand for uranium concentrates. The Department forecasts, on the basis of consonant results from multiple economic models that these transfers will tend to suppress prices (on average over a 10 year period) by about $2.70 per pound. While this price effect will decrease producers' revenues, the near-term impact will be smaller because most producers primarily sell on long-term contracts and therefore have limited exposure to price fluctuations. The impact on production and employment in the industry will also be limited. As prices increase over the coming decade, there appears to be little domestic production for which DOE's transfers would make the difference between expansion and contraction. In the long-term, the Department concludes that the effect of its transfers would delay decisions to expand or increase production capacity but would not change the eventual outcomes.

The uranium conversion industry processes uranium concentrates into uranium hexafluoride suitable for enrichment. Most conversion is sold on long-term contracts, and the sole domestic converter makes essentially all its sales that way. The distinctive feature of the conversion market is that the price for long-term contracts appears not to be the product of ordinary market forces. It has been stable for five years despite market changes that have caused the prices for uranium and enrichment to change by 50% or more, and despite the fact that none of the major converters in Western countries is producing at full capacity. These conditions arise in part because conversion is a key step in the nuclear fuel cycle, but one that makes up fairly little of the overall price of uranium fuel. At the same time, most of the costs of conversion are fixed costs. It appears that fuel customers are willing to pay the prices converters demand to secure long-term supplies. In light of these conditions, the Department concludes that the term price will remain stable despite DOE's transfers. Transfers will tend to cause a suppression of the global spot price by about $0.70 per kgU, but the domestic industry has no or almost no exposure to the spot price. DOE assumes the domestic industry will lose

some sales as a consequence of DOE-sourced material's appearing on the market. Those sales will reduce the industry's revenues. But if the decrease in production were to increase average costs above current term prices, the industry would be able to increase prices correspondingly. The Department also concludes that its transfers will have, at most, limited impact on employment and plans for capital improvement and expansion. As it did with respect to the uranium mining industry, the Department concludes that the effect of its transfers would, at worst, slightly delay decisions to undertake major capital improvements or capacity expansions.

The enrichment industry applies enrichment capacity to produce low-enriched uranium. It can also, by appropriate use of enrichment capacity, conserve natural uranium (through a mechanism called ''underfeeding'') and effectively generate additional uranium supply. On the basis of several different models, DOE forecasts that its transfers will cause a price suppression of about $5.25 per SWU (separative work units, the unit for measuring enrichment services) in the near term and $5.40 per SWU over the longer term. The vast majority of enrichment is sold on long-term contracts, and indeed an enrichment provider typically will not invest in capacity without having such contracts in hand. The sole domestic enricher began operations in 2008, and contracts typically last 10 years or more. The domestic industry therefore has little exposure to current prices for enrichment. Because enrichers can also sell conserved natural uranium, a suppression of uranium concentrate and conversion prices can also affect their revenues. But that impact should be relatively small because natural-uranium sales consume only 10–15% of enrichment capacity. The Department also concludes that because enrichment facilities cannot easily decrease capacity, DOE transfers will not cause changes in production levels or employment at existing facilities. In the longer term, DOE's transfers will not significantly affect investment decisions because substantially higher prices would be needed to justify investment than could be obtained without market growth, even absent DOE's transfers. As it did with respect to the mining and conversion industries, the Department concludes that the effect of its transfers would, at most, slightly delay decisions to construct additional capacity.

The Department recognizes that market conditions have been difficult in recent years for all three industries. But its analytical task under section 3112(d)(2) is to forecast what additional harm industry would suffer that can reasonably be attributed to its transfers of uranium. The Department concludes that the potential impacts to the domestic uranium mining, conversion, and enrichment industries from transfers at the rates described above are not so great as to constitute adverse material impacts.

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I. Introduction

A. Review of Procedural History

In preparation for this Secretarial Determination, DOE sought information from the public through a Request for Information (RFI) published in the **Federal Register** on December 8, 2014 (79 FR 72661). DOE specifically requested comment on the effects of continued uranium transfers on the domestic uranium industries and recommendations about factors to be considered in assessing the possible impacts of DOE transfers. In response to the RFI, DOE received comments from a diverse group of parties representing interests across the nuclear industry. DOE also received comments from trade associations, nuclear utilities, local governmental bodies, and members of the public.

In addition, DOE tasked Energy Resources International, Inc., (ERI) to assess the potential effects on the domestic uranium mining, conversion, and enrichment industries of the introduction of DOE excess uranium inventory in various forms and quantities through sale or transfer during calendar years 2015 through 2024 (''2015 ERI Report''). This study also updated an earlier analysis that ERI prepared prior to the May 2014 Secretarial Determination [1] (''2014 ERI Report'').

On March 18, 2015, DOE published a Notice of Issues for Public Comment (NIPC) in the **Federal Register** (80 FR 14107). That notice announced the public availability of comments received in response to the December 2014 Request for Information, 2015 ERI Report, and a list of factors for analysis of the impacts of DOE transfers on the uranium mining, conversion, and enrichment industries. DOE received comments from members of the uranium mining, conversion, and enrichment industries, trade associations, and DOE contractors.[2]

B. Legal Authority

DOE manages its excess uranium inventory in accordance with the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.,* ''AEA'') and other applicable law. Specifically, Title I, Chapters 6–7, 14, of the AEA authorize DOE to transfer special nuclear material and source material. Low-enriched uranium (LEU) and natural uranium are types of special nuclear material and source material, respectively.

The USEC Privatization Act (Pub. L. 104–134, 42 U.S.C. 2297h *et seq.*) places certain limitations on DOE's authority to transfer uranium from its excess uranium inventory. Specifically, under section 3112(d) of the USEC Privatization Act (42 U.S.C. 2297h–10(d)), DOE may make certain transfers of natural or low-enriched uranium if the Secretary determines that the transfers ''will not have an adverse material impact on the domestic uranium mining, conversion or enrichment industry, taking into account the sales of uranium under the Russian Highly Enriched Uranium Agreement and the Suspension Agreement.'' 42 U.S.C. 2297h–10(d)(2)(B). The validity of any determination under this section is limited to no more than two calendar years subsequent to the determination. *See* Section 306(a) of Division D, Title III of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235).

Section 3112 of the USEC Privatization Act also contains

[1] The May 2014 Secretarial Determination is available on DOE's Web site at: *http://www.energy.gov/articles/energy-department-announces-secretarial-determination-no-adverse-material-impact-uranium.*

[2] The 2014 ERI Report, the 2015 ERI Report, and the comments received in response to the RFI and the NIPC are available at *http://www.energy.gov/ne/downloads/excess-uranium-management.* Some comments were marked as containing confidential information. Those comments are provided with confidential information removed.

provisions covering transfers of enriched uranium to other federal agencies, § 2297h–10(e)(1), to any person for national security purposes, § 2297h–10(e)(2), and to State or local agencies or nonprofit, charitable, or educational institutions, § 2297h–10(e)(3). For transfers to these entities, the Act does not require that the Secretary determine that there will not be an adverse material act on the domestic uranium industries. Other subsections of section 3112 cover transfers related to the down-blending of Russian highly enriched uranium. § 2297h–10(b).

C. Brief History of DOE Transfers

1. 2008 Plan

In March 2008, then-Secretary of Energy Bodman released a Policy Statement outlining a framework within which DOE intended to make decisions concerning use and disposition of its excess uranium inventory (''2008 Policy Statement'').[3] The Policy Statement observed that uranium DOE possesses ''is a valuable commodity both in terms of monetary value and the role it could play in achieving vital Departmental missions and maintaining a healthy domestic nuclear infrastructure,'' and it laid out certain principles for managing the inventory prudently to achieve those values. The 2008 Policy Statement established that the Department would engage, when appropriate, in transactions in which it would exchange uranium for services or for other uranium. All transactions involving transfers or sales outside the Government, the Statement noted, must provide ''reasonable value'' for the Department. ''Reasonable value takes into account market value, as well as other factors such as the relationship of a particular transaction to overall Departmental objectives and the extent to which costs to the Department have been or will be incurred or avoided.'' The Policy Statement declared that DOE would maintain sufficient uranium inventories to meet its own needs and would sell or transfer only uranium excess to those needs. In addition, the Policy Statement asserted that DOE would manage its uranium ''in a manner that is consistent with and supportive of the maintenance of a strong domestic nuclear industry.'' In that vein, the Statement noted that ''as a general matter, the introduction into the domestic market of uranium from Departmental inventories in amounts that do not exceed ten percent of the total annual fuel requirements of all licensed nuclear power plants should not have an adverse material impact on the domestic uranium industry.'' 2008 Policy Statement, at 2.

Based on this policy statement, in December 2008 DOE released its Excess Uranium Inventory Management Plan providing a comprehensive inventory of its excess uranium and details about DOE's preliminary plans for future management of its excess uranium inventory (''2008 Plan''). DOE's excess uranium inventory in 2008 consisted of highly enriched uranium (HEU), natural uranium hexafluoride (UF_6) of various origins, uranium of various enrichments in forms other than UF_6 that does not meet commercial specifications (''off-spec non-UF_6''), and depleted uranium in the form of UF_6. The volumes of these inventories at the time of the issuance of the 2008 Plan are listed in Table 1. The 2008 Plan identified several transactions that were ongoing, planned, or under consideration for disposition of DOE's excess uranium.

TABLE 1—EXCESS URANIUM INVENTORY FROM TABLE 1 OF 2008 PLAN

Inventory	Amount (in MTU)	Natural uranium equivalent (in MTU)
Unallocated HEU[4]	67.6	12,440
U.S.-origin natural UF_6	5,156	N/A
Russian-origin natural UF_6	12,440	N/A
Off-spec non-UF_6[5]	4,461	2,900
Depleted UF_6[6]	75,300	25,950

2. Recent Uranium Transfers

Since 2008, DOE has managed its inventory in accordance with the 2008 Policy Statement and Plan. The survey below includes the transfers involving the largest volumes, which are the ones most relevant for assessing how DOE's transfers have affected uranium markets.

DOE's National Nuclear Security Administration (NNSA) has transferred LEU down-blended from HEU (''blended LEU,'' or ''BLEU'') to the Tennessee Valley Authority for use in its Brown's Ferry Nuclear Plant. This program is discussed below in Section I.D.2.a. DOE and NNSA have also been transferring a small amount of high-assay LEU (*i.e.* above 5 wt-% U–235) to foreign and domestic research reactors. This program is discussed below in Section I.D.2.e.

In 2008, NNSA began an additional program of down-blending approximately 12.1 metric tons of HEU. In the course of this program, NNSA has transferred a portion of the resulting LEU to the contractor in exchange for the down-blending services. Prior to the start of this program the Secretary determined in October 2008 that the transfer of LEU in exchange for the down-blending of up to 12.1 metric tons of HEU would not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industries. The amount of derived LEU was expected to be equivalent to approximately 336 MTU of natural uranium. 2008 Plan, at 11. NNSA is currently engaged in a successor program to down-blend another 3 metric tons of HEU, and the transfers considered in this analysis include further LEU in exchange for the down-blending services.

In July 2009, DOE announced that it would accelerate cleanup efforts at the Portsmouth Gaseous Diffusion Plant through increased funding and through transferring uranium in exchange for cleanup services. Beginning in

[3] The 2008 Policy Statement and the 2008 Excess Uranium Inventory Management Plan are available at *http://www.energy.gov/ne/downloads/excess-uranium-inventory-management-plan-2008.*

[4] The 2008 Plan explained that ''unallocated'' means HEU that ''is not presently obligated or approved for a specific purpose or DOE program.'' 2008 Plan, at 1 n.1.

[5] 1,680 MTU of this material is either natural or low-enriched. The remaining amount is depleted. The figure for the natural uranium equivalent of this material includes only the natural and low-enriched uranium.

[6] The quantity of depleted uranium includes only the UF_6 with an assay above 0.35 wt-% U–235.

November 2009, DOE's Office of Environmental Management (EM) transferred up to 300 MTU per quarter of natural uranium hexafluoride to the contractor at Portsmouth. Transfers during the period of November 2009 to December 2010 were limited to no more than 1,125 MTU, in accordance with the Secretary's determination in November 2009 that these transfers up to those rates would not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industries.

Beginning in March 2011, EM transferred uranium for cleanup services at Portsmouth at an increased rate of 450 MTU per quarter. These transfers were conducted in accordance with the Secretary's Determination in March 2011 that such transfers between the first quarter of 2011 and the end of calendar year 2013 would not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry. Transfers during this period were limited to no more than 1,605 MTU per calendar year.

Beginning in 2012, EM transferred uranium for cleanup services at Portsmouth at an increased rate of 600 MTU per quarter and no more than 2,400 MTU per year. NNSA also extended its program of transferring LEU in exchange for down-blending services. The rate of transfers for down-blending after May 2012 was equivalent to 400 MTU of natural uranium. These transfers were conducted in accordance with the Secretary's determination in May 2012 that the sale or transfer of these amounts of uranium would not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industries. In addition to these transfers, DOE also transferred in 2012 and 2013 approximately 9,156 MTU of depleted uranium to Energy Northwest. This transfer was included in the May 2012 Secretarial Determination and is discussed further in Section I.D.2.b.

In March 2013, DOE transferred approximately 48 MTU of LEU to USEC Inc. in exchange for an amount of natural uranium hexafluoride equivalent to the feed component of that LEU—409 MTU—and the value of approximately 299,000 SWU of enrichment services. The value of these services was retained by USEC to fund a portion of DOE's cost share under a 2012 Cooperative Agreement between DOE and USEC. This transfer was conducted in accordance with the Secretary's March 2013 determination that the sale or transfer of this uranium would not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industries.

3. 2013 Plan

In July 2013, the Secretary issued a revised Excess Uranium Inventory Management Plan (''2013 Plan''), based on an updated inventory of the Department's uranium as of December 31, 2012.[7] This updated inventory is summarized in Table 2.

TABLE 2—EXCESS URANIUM INVENTORY FROM TABLE 1 OF 2013 PLAN

Inventory	Amount (in MTU)	Natural uranium equivalent (in MTU)
Unallocated HEU	18.0	3,394
Allocated HEU	11.4	2,077
LEU	47.6	409
U.S.-origin natural UF_6	5,234	N/A
Russian-origin natural UF_6	7,705	N/A
Off-spec LEU as UF_6	1,106	1,876
Off-spec non-UF_6 [8]	221	600
Depleted UF_6 [9]	114,000	25,000–35,000

The 2013 Plan reaffirmed the Department's goals of maintaining sufficient inventories to meet DOE needs, transacting ''in a transparent and competitive manner,'' and managing inventories in a manner ''consistent with and supportive of the maintenance of a strong domestic uranium industry.'' The plan included the transfer of enriched uranium to pay for down-blending of HEU to LEU and the transfer of natural uranium in exchange for cleanup services at the Portsmouth Gaseous Diffusion Plant through 2021. 2013 Plan, 13–15. The 2013 Plan also announced that DOE would no longer use the ten percent guideline established in the 2008 Policy and Plan. The 2013 Plan explained that DOE's experience between 2008 and 2013, including a 2012 market impact analysis and a 2009 Finding of No Significant Impact and Mitigation Action Plan, led it to determine that DOE ''can meet its statutory and policy objectives in regard to DOE uranium sales or transfers without an established guideline.'' In addition, the plan noted that in light of the two-year limit on the validity of a determination under section 3112(d), an established guideline was no longer necessary.

4. 2014 Determination

On May 15, 2014, the Secretary determined that sales or transfers of a total of 2,705 MTU per calendar year will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industries (''2014 Secretarial Determination''). The 2,705 MTU was broken down as follows:

- Up to 2,055 MTU per year to DOE contractors for cleanup services at the Paducah or Portsmouth Gaseous Diffusion Plant, in quarterly transfers of up to 600 MTU for the period 2014 through 2021;
- Up to 650 MTU per year to the National Nuclear Security Administration (NNSA)'s contractors for down-blending of HEU to LEU for the period 2014 through 2022;
- Provided that, in the event down-blending transfers do not reach 650 MTU in any year, transfers for cleanup

[7] The 2013 Excess Uranium Inventory Management Plan is available at *http://www.energy.gov/ne/downloads/excess-uranium-inventory-management-plan.*

[8] This figure includes only natural and low-enriched uranium. As of the 2013 Plan, DOE had disposed of the depleted uranium in forms other than UF_6 either through disposal or sale.

[9] The quantity of depleted uranium in this table includes only the UF_6 with an assay above 0.34 wt-% U–235. The corresponding figure from the 2008 plan included UF_6 with an assay above 0.35 wt-% U–235.

services may exceed 600 MTU in the fourth quarter of that same calendar year so long as the total amount does not exceed 2,705 MTU.

D. Transfers Considered in This Determination

This section provides an overview of the various uranium transactions considered in this analysis. The first category of transfers are those that DOE plans to undertake during the next two years pursuant to today's determination under section 3112(d). The second category includes other transfers that have been made or may be made that may be relevant to DOE's analysis of the possible impacts of transfers in the first category. The third category includes the Russian HEU Agreement and Suspension Agreement. This last category of transactions does not directly involve DOE, but section 3112(d) of the USEC Privatization Act instructs DOE to take account of them.

1. Planned Transfers That are Covered by Today's Determination Under Section 3112(d)

Today's determination concludes that certain transfers will not cause adverse material impacts on the domestic uranium industries. Those transfers, outlined below, include transfers of natural uranium for cleanup services at the Portsmouth Gaseous Diffusion Plant and of LEU for down-blending services.

a. Portsmouth Cleanup

Through its Office of Environmental Management (EM), DOE contracts with Fluor B&W Portsmouth for cleanup services at the Portsmouth Gaseous Diffusion Plant. This work involves decontamination and decommissioning of approximately 415 facilities (including buildings, utilities, systems, ponds, and infrastructure units) that make up the former uranium enrichment facility. In recent years, work under this contract has been funded through both appropriated dollars and uranium transfers. As the value of transferred uranium changes depending on market prices and on the Department's decisions regarding how much uranium to transfer, uranium can constitute a greater or lesser proportion of the total funding.

During the period covered by today's determination, DOE plans to transfer up to 1,600 MTU per calendar year of natural uranium hexafluoride in exchange for cleanup services at the Portsmouth Gaseous Diffusion Plant. Today's determination will be issued in the middle of calendar year 2015, after DOE has transferred material for part of the year at the higher rates permitted by the 2014 Determination. However, performing the analysis and determination on a calendar-year basis will just mean that DOE's analysis reflects a higher overall rate for 2015, in light of the material already transferred. Accordingly, for the sake of simplicity, DOE will analyze 2015 transfers for the cleanup program of up to 2,000 MTU.

b. Down-Blending of HEU

NNSA contracts with WesDyne International for down-blending of HEU to LEU. The HEU is transferred to WesDyne's contractor, Nuclear Fuel Services, Inc., in many forms—including metal, oxide, and compounds—and the resulting LEU is in the form of aqueous uranyl nitrate. This program is part of the United States' efforts to eliminate more than 200 metric tons of excess HEU, which is a material that is costly to store securely and represents a proliferation risk. To complete down-blending, the contractor buys natural uranium and uses it to dilute the U–235 contained in the HEU, producing LEU enriched to 4.95 wt-% U–235.

Work under these contracts continues to be funded through the transfer of some of the LEU that results from the down-blending. Under the terms of the contract with WesDyne, DOE can use a mix of money and uranium—ranging from entirely money to entirely uranium—to fund this contract, but in practice funding has been entirely through uranium transfers and is expected to continue to be entirely through uranium unless circumstances necessitate the use of appropriated money.

During the period covered by today's determination, DOE plans to transfer an amount of low-enriched uranium equivalent to up to 500 MTU of natural uranium. This amount is derived by transferring up to 60 MTU per calendar year of low-enriched uranium at 4.95 wt-% U–235 in the form of aqueous uranyl nitrate for down-blending services. Assuming a tails assay of 0.20 wt-% U–235, it would require approximately 555 MTU of natural uranium and approximately 520,000 separative work units (''SWU'') to produce that quantity of LEU. In order to down-blend the HEU to LEU, the down-blending contractor must purchase natural uranium hexafluoride for use as diluent in an amount equal to about 10% of the natural uranium equivalent contained in the LEU, *i.e.* 55 MTU. Thus, DOE considers the natural uranium equivalent of this amount of LEU to be 500 MTU.

As with the transfers for cleanup services at the Portsmouth Gaseous Diffusion Plant, DOE has already transferred some amount of LEU during 2015 at rates permitted by the 2014 determination. For the sake of clarity and for simplicity, and for reasons like those discussed above, today's determination and this analysis cover an amount of low-enriched uranium equivalent to up to 500 MTU of natural uranium for 2015.

2. Other Uranium Transfers by DOE

In addition to transfers described above, this analysis considers several transfers that are not covered by today's determination, for various reasons. Although some of these transfers are not subject to section 3112(d), the Department has analyzed their potential impacts on domestic industries, for those transfers already concluded, and will analyze such impacts for those yet to be carried out, to provide a complete picture of the Department's uranium transfers. In addition, in 2009, DOE issued a Finding of No Significant Impact (''FONSI'') in connection with its National Environmental Policy Act review of its proposed action to sell or disposition excess depleted, natural, and low-enriched uranium. In the Mitigation Action Plan included as part of the 2009 FONSI, DOE undertook to ''conduct an analysis prior to particular sales or transfers . . . to ensure there would be no potentially significant impacts to the domestic uranium industry.'' As part of its Mitigation Action Plan, the Department committed to conducting a market impact analysis of depleted uranium sales or transfers to determine whether such sales or transfers would cause potentially significant impacts on the domestic uranium industries, and to adjust the proposed sales or transfers ''as necessary to ensure that such potentially significant impacts are avoided or mitigated.'' 74 FR 31420, at 31421–22 (July 1, 2009).

In addition, this analysis considers some transfers that may be subject to section 3112(d) but that are still only being planned. While today's determination does not cover those transfers because they are not yet close enough to fruition, DOE conducts this analysis with awareness that these other transfers may happen in years to come.

a. Blended Low-Enriched Uranium to Tennessee Valley Authority

DOE has a significant quantity of HEU inventory that contains various contaminants, so that the down-blended LEU product would not meet American Society for Testing and Materials commercial nuclear fuel specifications. Under a 2001 Interagency Agreement

between DOE and the Tennessee Valley Authority (TVA), DOE provides such ''off-spec'' blended low-enriched uranium (BLEU) to TVA, which uses it in its Brown's Ferry Nuclear Plant. Through 2012, NNSA had down-blended and transferred to TVA an amount of LEU derived from 46 MTU of HEU. In July 2013, NNSA and TVA modified the Interagency Agreement to add a small amount of additional down-blended material.

b. Depleted Uranium Hexafluoride to Energy Northwest

In 2012 and 2013, DOE transferred 9,075 MTU of high assay depleted uranium hexafluoride (DUF_6) to Energy Northwest. Energy Northwest then contracted with USEC, Inc.—now known as Centrus Energy Corp.—to enrich the tails to LEU. Energy Northwest sold most of the resulting LEU to TVA, for use in its reactors between 2015 and 2022. Energy Northwest retained the remaining LEU for use in its own reactors. DOE accepted title to 8,582 MTU of secondary tails resulting from the enrichment of the high-assay tails.

c. Depleted Uranium Hexafluoride to Global Laser Enrichment

In July 2013, DOE issued a Request for Offers for the sale of depleted and off-specification uranium hexafluoride inventories. These inventories include large amounts of high-assay and low-assay depleted UF_6 (DUF_6). In total, the material includes approximately 538 thousand MTU of DUF_6 contained in over 65,000 cylinders currently stored at DOE's Paducah and Portsmouth sites. Under the terms of the Request for Offers, transfers of DUF_6 would begin in calendar year 2019 and would not exceed 2,000 metric tons natural uranium equivalent each year.[10] In November 2013, DOE announced that it was entering into negotiations with GE-Hitachi Global Laser Enrichment, LLC (GLE) for the sale of this material. GLE proposed to license, construct, and operate a new laser enrichment facility in Paducah, KY, to re-enrich the depleted tails.

d. Off-Specification Uranium

The July 2013 Request for Offers also sought offers for the sale of certain amounts of uranium hexafluoride that, like the LEU provided to TVA mentioned above, do not meet American Society for Testing and Materials specifications. This ''off-spec'' material consists of approximately 1,106 MTU contained in 239 cylinders at the Paducah and Portsmouth Gaseous Diffusion Plants. In November 2013, DOE announced that it would enter into negotiations with AREVA for the sale of this inventory.

In 2008, a DOE contractor issued a Request for Proposals for the sale and disposition of off-specification, non-UF_6 uranium located at the Portsmouth Gaseous Diffusion Plant. This inventory consists of approximately 4,461 MTU of uranium in various forms, including metal, oxides, fluorides, and aqueous solutions.

e. Uranium Transfers for Research Applications

DOE also transfers LEU enriched to assays between 5 and 20 wt-% U–235 for domestic and foreign research applications. Most of these transfers are conducted in accordance with section 3112(e) of the USEC Privatization Act, such as transfers to domestic and foreign research reactors; however, some may fall within section 3112(d), such as transfers for use in commercial research and isotope production applications. In general, these transfers do not contribute to any impacts that DOE uranium transfers overall have on domestic uranium industries, because the transfers do not displace commercially supplied uranium, conversion, or enrichment from the market. No commercial supplier is currently capable of providing LEU at these assays, so a research reactor operator would not be able to replace DOE-sourced material by buying uranium hexafluoride and having it enriched to those levels. In general, it would also be technologically infeasible for research reactor operators to replace DOE-sourced high-assay LEU by converting the reactors to use commercial-assay LEU and retain the ability of the reactor to be used for research. Even if these reactors could use LEU (either at high or low assay) from commercial suppliers, the amounts are extremely small. Thus, DOE's supply of high-assay LEU for research applications has at most a *de minimis* effect on the commercial uranium markets, and this analysis therefore does not consider these transfers further.

3. Transactions Under Russian HEU Agreement and Suspension Agreement

As explained below, section 3112(d) of the USEC Privatization Act states that a Secretarial Determination must take into account the sales of uranium under two agreements relating to uranium from the Russian Federation: The Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, Feb. 18, 1993 (''Russian HEU Agreement''), and the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 57 FR 49220, at 49235 (Oct. 30, 1992) (''Suspension Agreement'').

a. Russian HEU Agreement

The Russian HEU Agreement was originally signed on February 18, 1993, and provided for the purchase over a 20-year period of LEU derived from 500 MTU of weapons-origin HEU from Russia. In total, this material contained the equivalent of almost 400 million pounds U_3O_8, 150 million kilograms of uranium (kgU) of conversion services, and approximately 92 million SWU of enrichment services.

The sale of this uranium into the commercial market has not directly involved DOE. The material was actually transferred to the United States through a commercial agreement between the U.S. and Russian Executive Agents. The U.S. Executive Agent—initially the United States Enrichment Corporation, and later the private corporation USEC, Inc.—then sold the LEU into the U.S. nuclear fuel market to commercial utilities.

The USEC Privatization Act altered the implementation of the Russian HEU Agreement. The Act directed the Executive Agent to enter into an agreement to return to the Russian Executive Agent an amount of uranium equivalent to the natural uranium component of LEU received under the agreement after January 1, 1997, or, if the Russian Executive Agent did not enter such an agreement, to auction the uranium.[11] The Act also placed annual limits on the delivery to U.S. utilities of the uranium thus provided to the Russian Executive Agent. Specifically, the Act limited deliveries to no more than 2 million pounds U_3O_8 equivalent in 1998. The limit increased annually, finally reaching 20 million pounds U_3O_8 equivalent in 2009 and each year thereafter. 42 U.S.C. 2297h–10(b)(5). The USEC Privatization Act did not place any limit on the delivery of the conversion component of uranium

[10] Note that the amount of ''natural uranium equivalent'' contained in a given amount of depleted uranium depends on the assay of the depleted uranium. These terms are discussed more fully below.

[11] Under this arrangement, USEC received LEU from Russia, sold the enrichment component, and then returned the natural uranium component in the form of natural uranium hexafluoride to the Russian Executive Agent. The Russian Executive Agent entered into a separate agreement with a consortium of western uranium producers to sell the natural uranium and conversion.

returned to the Russian Executive Agent or auctioned in the absence of a return agreement. 42 U.S.C. 2297h–10(b)(8). The last deliveries under the Russian HEU Agreement took place in 2013.

b. Suspension Agreement

In 1991, the Department of Commerce initiated an antidumping duty investigation under the Tariff and Trade Act to determine whether imports of uranium from the U.S.S.R. were being sold into the United States at less than fair value. In 1992, the Department of Commerce entered into an agreement with the Russian Federation (''Suspension Agreement'') suspending the antidumping investigation and establishing export limits on uranium from those countries. 57 FR 49220 (Oct. 30, 1992).

The Suspension Agreement has been amended several times since it first came into force. At the time the USEC Privatization Act was passed in 1996, the Suspension Agreement allowed Russian natural uranium and SWU to be imported only if it was matched with an equal portion of newly-produced U.S.-origin natural uranium or SWU. These ''matched sales'' were subject to annual volume limits ranging from 1.9 million to 6.6 million pounds U_3O_8 equivalent between 1994 and 2003. 59 FR 15373, at 15374 (Apr. 1, 1994). The USEC Privatization Act specifically stated that sales of the natural uranium component of HEU under the Russian HEU Agreement were excluded from the Suspension Agreement limits. 42 U.S.C. 2297h–10(b)(6).

The most recent iteration of the Suspension Agreement entered into force in 2008. 73 FR 7705 (Feb. 11, 2008). That agreement provides for the resumption of sales of natural uranium and SWU beginning in 2011. While the HEU Agreement remained active (*i.e.* 2011–2013), the annual export limits were relatively small—between 0.4 and 1.1 million pounds U_3O_8 equivalent. After the end of the Russian HEU Agreement, restrictions range between 11.9 and 13.4 million pounds U_3O_8 equivalent per year between 2014 and 2020. 73 FR 7705, at 7706 (Feb. 11, 2008).

II. Overview of Uranium Markets

The nuclear fuel market consists of four separate industries: mining/milling, conversion, enrichment, and fabrication. These industries interact in complicated and sometimes counterintuitive ways. In order to analyze the effect on the various industries of introducing a given amount of uranium into the market, it is necessary to understand how uranium is processed into nuclear fuel, how the different aspects of this process interact, and how the consumers of uranium—nuclear reactor owners/operators—procure uranium. This section provides an overview of these industries and markets, beginning with the process for producing nuclear fuel from uranium ore.

A. The Nuclear Fuel Cycle

In order to be useful as fuel for a reactor, uranium must be in a specific chemical form, it must have the correct isotopic concentration, and it must be fabricated into the correct physical shape and orientation. The four nuclear fuel cycle industries—mining, conversion, enrichment, and fabrication—ensure that reactor operators have a steady supply of usable fissile material to fuel their reactors.

1. Mining

The first step in the nuclear fuel cycle is mining. Uranium is relatively common throughout the world and is found in most rocks and soils at varying concentrations. There are two primary methods of mining uranium: Conventional and in-situ recovery. Which method is used for a particular deposit depends on the specific characteristics of the deposit and surrounding rock.

Conventional mining can involve either open pit or underground removal of uranium ore. Once removed from the ground, the uranium ore must be transported to a mill for processing. Many mining operations are located close to mills; where mines are close together, one mill may process ore from several different mines. Once at the mill, the ore is crushed and chemically treated to remove the uranium from the other minerals, a process called ''leaching.'' The solids are then separated from the solution and dried. The final result is a powdered uranium oxide concentrate, often known as ''yellowcake'' and predominately made of triuranium octoxide, or U_3O_8. This powdered yellowcake can be packed in drums and shipped for the next stage of processing.

An alternative mining process is known as in-situ recovery (ISR). In ISR mining, the uranium ore is not removed from the ground as a solid. Instead, an aqueous solution—either acid or alkali—is pumped into the ground through injection wells, through a porous ore deposit, and back out through production wells. As the solution moves through the ore deposit, the uranium in the ore dissolves or leaches into the solution. Once the uranium-laden solution is pumped out, it is pumped to a treatment plant where uranium is recovered and dried into yellowcake. In order to maintain a stable rate of production, wellfields must be continually developed and placed into production.

There are several key differences between conventional and ISR mines. ISR mining typically has lower costs, both capital and operational. ISR mines also have a shorter lead-time for development. There are other advantages compared to conventional mining such as decreased radiation exposure for workers, reduced surface disturbance, and reduced solid waste. However, ISR mining can only extract uranium located in deposits that are permeable to the liquid solution used to recover the uranium, and the permeable deposit must have an impermeable layer above and below to prevent the solution from leaching into groundwater. To the extent that uranium is located in other types of deposit ISR mining may not be possible.

2. Conversion

The second step in the nuclear fuel cycle is conversion. When yellowcake arrives at conversion facilities it may contain various impurities. The conversion process refines the uranium compounds and prepares it for the next stage.

As discussed in the next section, most nuclear reactors require uranium that is enriched in the isotope U–235.[12] The enrichment process typically requires uranium to be in a gaseous form. To meet this need, U_3O_8 is converted into uranium hexafluoride (UF_6), which sublimes—*i.e.* converts directly from solid to gas—at a temperature (at normal atmospheric pressure) of approximately 134 °F (56.5 °C). The UF_6 is then loaded into large cylinders and shipped to an enrichment facility.

There are several different processes for converting U_3O_8 to UF_6. The two most significant processes are known as the ''wet process'' and ''dry process.'' Both processes have three essential steps: Reduction, hydrofluorination, and fluorination. These steps do not differ substantially between the two processes. The main difference between the wet process and dry process is in how they remove impurities. In the wet process, used in facilities in France and Canada, yellowcake is treated with nitric acid, concentrated, and dried into UO_3 powder prior to reduction.[13] In the dry

[12] Some nuclear reactors, particularly pressurized heavy water reactors, use natural uranium.

[13] Port Hope, Ontario, Canada, and COMURHEX Malvési/Pierrelatte, France, use the wet process. *See* AREVA, ''Chemical Operations Around the World,'' *http://www.areva.com/EN/operations-687/*

Continued

process, used at the Metropolis Works facility in Illinois, purification takes place at the very end of the process through distillation of UF_6.[14]

3. Enrichment

The third step in the nuclear fuel cycle is enrichment. As found in nature, uranium consists of a mixture of different uranium isotopes. The two most significant isotopes are U–235 and U–238. The relative concentration of the various isotopes of uranium in a given amount is referred to as the isotopic concentration or ''assay.'' [15] Uranium as found in nature consists of approximately 0.711% U–235, 99.283% U–238, and trace amounts of U–234. Uranium that exhibits the naturally occurring isotopic concentration is called ''natural uranium.''

Nuclear reactors typically require uranium that is enriched in the isotope U–235, meaning that it has a higher concentration of U–235 compared to natural uranium. Commercial light water reactors, which are the most common type of nuclear reactor, typically require an assay of 3% to 5% U–235. Uranium enriched in the isotope U–235 is referred to as low-enriched uranium (LEU) if the assay is less than 20% but above 0.711%, and highly-enriched uranium (HEU) if the assay is greater than 20%.

There are many different enrichment processes, but only two have been used commercially: Gaseous diffusion and gas centrifugation. These technologies exploit the mass difference between U–238 and U–235 atoms. In a centrifuge, centripetal acceleration tends to concentrate lighter materials towards the center of the rotation and heavier materials towards the outside of the rotating vessel. The mass difference between a UF_6 molecule with U–238 and one with U–235 is slight, so even at high rotation speeds the concentration changes are small. To achieve a concentration increase from 0.711% to 5%, a facility passes material through many stages of centrifugation. Currently, all commercial enrichment services use gas centrifuge technology; the last commercial-scale gaseous diffusion facility ceased operating in 2013.

After UF_6 arrives from a conversion facility, it can be introduced into the enrichment centrifuges. Material introduced in this manner is referred to as ''feed.'' The centrifuges then separate the isotopes into varying levels of enrichment and produce two streams of material: Product and tails. The product is the enriched UF_6 output. This LEU is then pumped into a 2.5 ton cylinder and shipped to a fabrication facility. Just as the product stream has a higher proportion of U–235 to U–238 than the original feed, the other stream, the tails, has a lower proportion of U–235 to U–238. This material is referred to as ''depleted.'' It is pumped into large (typically 10 or 14 ton) cylinders and then stored on site at the enrichment facility for eventual disposal or other use. The assay of U–235 in the tails from an enrichment process depends on what concentration of U–235 was needed in the enriched product and how much natural uranium was used as feed. Typical tails assays range from 0.1% to 0.4%.

4. Fabrication

The final step in the process is fabrication. Almost all nuclear reactors require fuel to be in the form of uranium dioxide (UO_2). At the fabrication facility, the enriched UF_6 is converted into UO_2 powder, and then formed into small ceramic pellets. These pellets are then loaded into metal tubes and attached together to form fuel assemblies. Fuel design is reactor specific, and thus each fuel assembly is manufactured to the unique specifications of the reactor operator. Although fabrication is an important step in the fuel cycle, this analysis does not cover effects in the fabrication market.

5. Secondary Supply

Uranium that undergoes the above-described four steps without any intermediate use is generally termed ''primary supply.'' However, there are other sources of uranium available in the market. Uranium from these other sources is collectively known as ''secondary supply.'' In addition to government inventories of uranium left over from other uses such as weapons production, the most significant secondary supplies come from excess enrichment capacity.

Due to technical constraints, enrichers generally cannot easily decrease capacity that is already constructed and operating. If an enricher were to shut down a centrifuge that is currently spinning, it may not be possible to restart the centrifuge. Due to this possibility, decreasing capacity risks damaging the machines and destroying the substantial capital investment in construction. As a result, enrichers that have unsold capacity will tend to apply the excess enrichment work in one of two ways.

First, enrichers can apply extra separative work to a given amount of feed material, thus extracting more of the U–235. This is known as ''underfeeding'' because it enables the production of a given amount of enriched product with a smaller amount of feed material. Normally, a purchaser of enrichment services seeking a specific amount of enriched product would need to determine (1) how much natural uranium feed to provide and (2) how much SWU to apply to it. Increasing the amount of enrichment services has a cost, but the additional work will extract more of the U–235 content of the feed material so that less is needed, at less cost. The relationship between the prices of uranium concentrates, conversion, and enrichment can be used to determine the amount of feed and SWU—and thus also the resulting tails assay—that will lead to the lowest cost per kilogram of enriched product. This is known as the ''optimal tails assay.'' If an enricher knows that it has excess capacity, it may choose to feed in a smaller amount of natural uranium and apply more SWU to that material than was purchased. Thus, the end result is the desired amount of enriched product, depleted tails, and the natural uranium that was delivered to the enricher but was not fed into the enrichment process. The enricher can then sell this natural uranium on the open market.

Second, enrichers can feed depleted tails back into the enrichment process and apply additional separative work to them. This is known as re-enrichment of tails. As described above, the optimum tails assay varies over time as the prices of uranium concentrates, conversion, and enrichment change relative to each other. Over time, depleted tails with relatively high assays may accumulate. An enricher may choose to select the highest-assay tails and feed them back into the enrichment process. These tails can be enriched up to the level of natural uranium (0.711%) or higher. The enricher may then sell the resulting natural uranium or LEU on the open market.

An additional source of secondary supply is from recycled uranium and plutonium either from reprocessing of commercial spent fuel or from weapons-

chemistry-business-unit-sites-around-the-world.html (accessed Mar. 31, 2015); Cameco, ''Port Hope Conversion,'' *http://www.cameco.com/fuel_services/port_hope_conversion/* (accessed Mar. 31, 2015).

[14] Details on the dry process are described at: ConverDyn, ''Honeywell Dry Fluoride Volatility Conversion Process,'' *http://www.converdyn.com/product/conversion.html* (accessed Mar. 31, 2015). Although the three most significant western converters use either the wet or dry process, conversion plants in Russia use a slightly different process called the ''direct fluorination'' method. This method is described in UxC Conversion Market Outlook—December 2014, 8–9 (2014).

[15] The measure of assay is sometimes referred to in terms of ''weight-percent'' or ''wt-%.''

grade plutonium disposition. The product of these processes enters the fuel cycle and is fabricated into mixed oxide (MOX) fuel. MOX fuel is currently in use in Europe and Japan. Two commercial facilities currently produce MOX fuel in France and in the United Kingdom. Other facilities, such as the J–MOX project in Japan, are either planned or under construction.

6. Note on Units

As discussed above, the different uranium industries use slightly different units. Uranium concentrates are generally measured in pounds U_3O_8, conversion services are generally measured in kgU as UF_6, and enrichment services are measured in SWU.

It is worth noting that the measures of uranium concentrates and conversion services are not identical for several reasons. In addition to the fact that one is denominated according to U.S. customary units and the other is denominated under the international system of units (SI), the measure of uranium concentrates refers to the mass of U_3O_8 whereas the conversion metric refers only to the mass of the uranium atoms. Only about 85% of the mass of U_3O_8 consists of uranium. Thus, one kilogram of U_3O_8 contains approximately 0.848 kgU. Furthermore, converting between pounds U_3O_8 and kgU as UF_6 must take into account an estimated 0.5% loss during the conversion process. Taking all this into account, one pound U_3O_8 is equivalent to 0.383 kgU as UF_6, and one kgU as UF_6 is equivalent to 2.61 pounds U_3O_8.

Converting between uranium concentrates or conversion services and enrichment is more difficult because the amount of SWU necessary to produce a given amount of product depends on the desired product assay, the feed assay, and the tails assay. An example will serve to illustrate the significance of different assumptions. Assuming a tails assay of 0.30%, enriching 1,000 kgU as UF_6 of natural uranium to an assay of 4.50% would require approximately 609.7 SWU and would yield 97.9 kgU of enriched uranium; if a tails assay of 0.20% is used instead, enrichment would require approximately 913.9 SWU and would yield 118.8 kgU of enriched uranium.

DOE typically describes its uranium inventory in terms of MTU for natural uranium and MTU ''natural uranium equivalent'' for depleted and enriched uranium. These terms have a slightly different meaning depending on the form. For natural UF_6—*i.e.* with an assay of 0.711%—1 MTU would represent 2,610 pounds U_3O_8, 1,000 kgU as UF_6 of conversion services, and 0 SWU. For enriched or depleted UF_6, the amount of natural uranium equivalent depends on the assay. For depleted UF_6, DOE calculates natural uranium equivalent as the amount of natural uranium product that could be produced by re-enriching the depleted material. For the purposes of this analysis, DOE assumes the enrichment process would use a tails assay of 0.20%. As an example, 1,000 MTU of DUF_6 with an average assay of 0.40% would yield approximately 350 MTU natural uranium equivalent. For LEU, DOE calculates natural uranium equivalent as the amount of natural uranium that would be needed as feed material to produce the LEU, given the assay of the LEU and assuming a tails assay of 0.20% and a feed assay of 0.711%. For LEU resulting from down-blending of HEU, DOE then subtracts out the amount of natural uranium feed—''diluent''—that is necessary to down-blend the HEU to the desired product assay. The amount of diluent required is typically equivalent to approximately 10% of the natural uranium that would be needed as feed for enrichment. This subtraction is appropriate for purposes of section 3112(d) analysis to indicate how much natural uranium a given amount of LEU would displace from the market. Because DOE's contractor procures diluent on the market (rather than from DOE inventory) in order to produce the transferred LEU, the transfer displaces that much less commercially supplied natural uranium.

B. The Uranium Markets

1. The Uranium Markets Are Separate

Uranium concentrates, conversion services, and enrichment services can be traded separately. Prices for uranium concentrates are typically quoted in terms of dollars per pound U_3O_8. Prices for conversion services are typically quoted in terms of dollars per kilogram uranium (kgU). Prices for enrichment services are typically quoted in terms of dollars per SWU.

A typical transaction may involve a single purchaser purchasing a given amount of uranium concentrate through a contract directly with the mining company. The uranium concentrate is typically delivered directly to a conversion facility rather than to the purchaser. The purchaser will also enter into a separate contract for conversion services. The terms of this contract will require the purchaser to deliver U_3O_8 to the converter, and the converter will provide UF_6 in return. The UF_6 will then be shipped directly to an enricher. As with conversion, the purchaser will enter into a separate contract for SWU from an enricher. Contracts terms vary, but this contract will likely require the purchaser to deliver a specific amount of natural UF_6 feed and the enricher to deliver a specific amount of UF_6 enriched to the desired assay. This LEU will typically be delivered directly to the fabricator to be made into nuclear fuel.

Although there are separate markets for each step in the process, the different steps are sometimes combined. It is possible to buy natural UF_6, which would reflect both the uranium concentrate and the conversion services. Similarly, it is possible to buy enriched UF_6—usually known as enriched uranium product (EUP)—which would reflect all three steps. The price for these products is typically developed by adding the cost of the various steps together. Thus, the price of EUP would be based on the price of an equivalent amount of uranium concentrates, conversion, and enrichment. In practice, however, the price of a product material, like EUP or natural UF6, may occasionally differ somewhat from the sum of the input prices. Because most volume is transacted in long-term contracts, a small price gap may not be eliminated quickly by arbitrage. In addition, the price of a product material reflects transaction and shipping costs needed to move material through the various steps.

In addition, even though the three components are traded separately, there is some interrelationship between the prices. Since optimal tails assay is a function of the relative price of uranium concentrates, conversion, and SWU, changes in one price can lead to shifts in demand and supply in the other markets. Similarly, excess enrichment capacity used for underfeeding or re-enrichment of tails increases supply of uranium concentrates and conversion services. Thus, changes in enrichment supply may contribute to changes in uranium concentrate and conversion prices.

2. Uranium Is Fungible

Although the above represents a typical series of uranium transactions, there are many other potential types of transactions. These other forms are possible because uranium at each stage of the fuel cycle is fungible. As long as the basic characteristics like form and assay are the same, one kilogram of material is essentially the same as any

other.[16] Accounting mechanisms allow the ownership of each kilogram of material to be traceable, and they also allow ownership to be exchanged freely without physically manipulating the material.

A simple example illustrates the types of transaction that this fungibility enables. After U_3O_8 is converted into UF_6, it will typically be shipped to a specific enrichment facility. If the uranium was mined and converted in North America, it will typically be sent to an enricher in North America. However, the purchaser is not necessarily required to purchase enrichment services from the company whose facility the material is shipped to. Instead, the purchaser may be able to exchange ownership of an amount of UF_6 located at a North American enrichment facility with an equivalent amount located at a facility in Europe. This is referred to as a ''book transfer.''

An entity can also sell conversion services or enrichment services without actually physically converting or enriching any material. A person that owns enriched UF_6 may enter into a contract to sell SWU whereby it provides the desired amount of enriched UF_6 in exchange for the cost of the SWU and a specific amount of natural UF_6 ''feed.'' A person can also use natural UF_6 to sell conversion services by exchanging it for the cost of the conversion services plus the equivalent amount of U_3O_8.

3. The Uranium Markets Are Global

All three markets are global in nature. Purchasers are able to buy from suppliers worldwide and vice versa. Pricing for uranium concentrates and enrichment are essentially the same worldwide. Shipping costs are relatively low compared to other components of the prices, and the fungibility of the material allows suppliers and purchasers to minimize shipping costs through book transfers.

Although conversion services also trade on a worldwide market, in recent years there has been a persistent difference between prices in North America and those in Europe. DOE believes this stems from a geographical imbalance in conversion capacity relative to enrichment capacity. There is more conversion capacity in North America than enrichment capacity, and conversely in Europe there is more enrichment than conversion capacity. Consequently, there is a regular net flow of conversion services from North America to Europe. Meanwhile, it seems likely that the cost of shipping is larger relative to the conversion price than it is relative to the price of uranium or enrichment—mainly because conversion is the least costly input among the three, roughly $7.50 per kilogram at current spot prices compared to just over $100 per kilogram for uranium in concentrates. DOE believes the price difference between North American conversion and European conversion reflect simply the additional cost of shipping converted material from North America to Europe, together with the fact that net flow is from North America to Europe.

C. The Nature of Demand for Uranium

1. Utility Use of Uranium

The vast majority of uranium in commercial use is fuel for commercial power generation. According to the International Atomic Energy Agency (IAEA), there are 440 commercial reactors operating worldwide, 99 of which are in the United States. *See* IAEA, ''Power Reactor Information System,'' Mar. 2015, *http://www.iaea.org/pris/* (accessed March 24, 2015). The total installed electricity generation capacity of all reactors worldwide is 378,220 MW_e (megawatt electrical), 98,638 MW_e of which is from U.S. reactors. *Id.*

Nuclear reactors typically provide what is known as ''baseload'' electricity supply. This means that nuclear reactors generally operate close to their full practical capacity continuously. Thus, the amount of uranium needed for each reactor in a given year does not generally fluctuate with electricity use patterns. It depends instead on the total capacity of the reactor and the fuel reload schedule. The average reactor capacity worldwide is approximately 860 MW_e, and the average capacity of U.S. reactors is 996 MW_e. *Id.* Reload schedules vary, but reactors typically must reload a portion of the total fuel in the core every 18 to 24 months.

According to the World Nuclear Association (WNA), a typical 1,000 MW_e light water reactor operating today requires approximately 24 MTU of LEU at an assay of 4% each year.[17] At a tails assay of 0.25%, this corresponds to approximately 140,000 SWU of enrichment, 195,000 kgU of conversion services, and 510,000 pounds U_3O_8. *See* WNA, ''The Nuclear Fuel Cycle,'' Oct. 2014, *http://www.world-nuclear.org/info/Nuclear-Fuel-Cycle/Introduction/Nuclear-Fuel-Cycle-Overview/* (accessed March 24, 2015). Reload amounts and schedules differ depending on reactor size and type. Pressurized heavy water reactors, for example, do not require enrichment at all.

It is also worth noting that nuclear fuel makes up a very small percentage of overall costs for nuclear reactors—typically less than 10%. According to DOE's Energy Information Administration (EIA), for new nuclear generation, variable operations and maintenance costs, which include fuel costs, account for only about 12% of total system levelized costs. *See* EIA, ''Levelized Cost of New Generation Resources in the Annual Energy Outlook 2014,'' Apr. 2014, *http://www.eia.gov/forecasts/aeo/electricity_generation.cfm* (accessed Mar. 24, 2015). Further, the Nuclear Energy Institute reports that nuclear fuel costs make up about 30% of total operating costs. *See* NEI, ''Fuel as a Percentage of Electric Power Production Costs,'' *http://www.nei.org/Knowledge-Center/Nuclear-Statistics/Costs-Fuel,-Operation,-Waste-Disposal-Life-Cycle/Fuel-as-a-Percent-of-Production-Costs* (accessed Mar. 30, 2015).

2. Uranium Requirements

The amount of fuel necessary to keep a reactor operating is relatively predictable. Although there is always the possibility of unplanned outages, reactor operators generally know how much enriched uranium they will need. The amount of uranium needed to fuel operating reactors is generally referred to as ''requirements.'' Small uncertainties in predictions about requirements are possible in the short run because an operator can vary its need for fuel to some degree by changing operating conditions.

For a given reactor operator, this predictability enables the operator to purchase uranium, conversion, and enrichment on long-term contracts. These contracts often have first delivery as much as five years in the future and can extend as long as ten or even fifteen years from the contract date. In addition, because shutting down a reactor for refueling is a complex and carefully orchestrated process that requires extensive planning, a reactor operator generally has strong incentives to ensure well in advance of each refueling that the reactor will be sufficiently supplied with fuel. Long-term contracts help meet that goal by providing a reactor operator guaranteed quantities of supply. Consequently, the vast majority of purchases of uranium concentrates, conversion, and

[16] Other important characteristics include the presence and concentration of contaminants, some of which can render material unusable as nuclear fuel. Industry standards specify the acceptable levels of contamination.

[17] This is an annual average. Since reactors do not necessarily refuel every year, each reactor would actually require somewhat more than 24 MTU every 18–24 months.

enrichment are through term contracts—above 80%. The specific proportions of short-term versus long-term contracts are discussed below in Section II.E.1.

Aggregate requirements are also relatively predictable. However, long-term projections of future requirements must take into account changes in requirements from short-term outages, permanent shutdowns, and new reactor construction. Various entities develop and publish projections of future uranium requirements based on different assumptions about the rates of these changes, as well as different assumptions about operating conditions like reload schedules and fuel utilization (''burnup''), and about the possibility of unplanned outages or other temporary fluctuations in nuclear fuel use. These forecasts typically are based only on the nuclear fuel expected to be used in operating reactors; they do not include purchases of strategic or discretionary inventory.

3. Requirements Versus Demand

Demand for uranium, conversion, or enrichment is generally not the same as reactor requirements in a given year. Some sources of demand are either in excess of or unconnected to reactor requirements. For example, many reactor operators hold strategic inventories of uranium beyond their requirements. This material provides flexibility in the event of a supply disruption. Different operators may have different strategic inventory policies, and those policies will shift over time. Changes in the level of strategic inventories held by individual reactors can produce additional demand or remove demand. Demand from reactor operators purchasing uranium for strategic inventory is commonly referred to as ''discretionary demand.''

There are a number of market participants that are currently building inventory well above the strategic inventory that is typical of other operators. China, for example, has in recent years purchased as much as three times its current annual requirements. Japanese reactors have also been building inventory well in excess of requirements. Many Japanese reactors were shut down following the accident at the Fukushima Daiichi nuclear power plant in March 2011. Even though the reactors are not currently operating, many Japanese operators have continued to receive contracted deliveries of uranium.

In addition to reactor operators purchasing in excess of demand, there are a number of market participants that do not operate reactors at all. These include traders, brokers, and investment funds. These entities may purchase uranium when prices are low and resell it to reactor operators under future delivery contracts or hold uranium inventory until prices increase.

These activities mostly involve only uranium concentrates. However, some purchases in excess of requirements involve natural UF_6 or EUP. Thus, this behavior typically affects demand for uranium concentrates much more than it affects conversion and enrichment demand.

Finally, changes in optimal tails assay can affect demand in a given year. Estimates of future reactor requirements typically assume a specific tails assay for enrichment. However, if enrichment prices change relative to uranium concentrate and conversion prices, some purchasers may have flexibility to specify a different tails assay for enrichment. This changes the amount of uranium concentrates, conversion, and SWU that are necessary to produce a given amount of fuel.

4. Price Elasticity of Demand

Price elasticity of demand is an economic measure that shows how the quantity demanded of a good or service responds to a change in price. If purchasers are highly responsive to changes in price, demand is relatively elastic. If purchasers are weakly responsive to changes in price, demand is relatively inelastic. If purchasers demand the same amount regardless of the price, demand is perfectly inelastic.

In general, demand for uranium, conversion, and enrichment are relatively inelastic. Since requirements are largely fixed, changes in price have a weak effect on demand. However, uranium markets exhibit different degrees of elasticity on different time frames.

a. Short Term

In the short term, DOE expects that demand is more elastic than in the medium and long terms. Some of the behaviors discussed in the previous section are responsive to short term changes in price. Traders and investment funds are more likely to make speculative purchases when prices are low. Similarly, large-scale strategic buying, as China is doing, has corresponded with a period of very low prices. It seems likely that these purchases would decrease if short term uranium prices increased substantially.

These practices may be somewhat counteracted by the behavior of utilities. Although some utilities choose to build inventories when prices are low, others do the opposite. Somewhat counterintuitively, some reactor operators actually purchase less strategic inventory when prices are low. This appears to be related to perceptions about long-term security of supply. When prices are high, it may suggest scarcity in long term supplies. When prices are low, this may signal that long term supplies are relatively secure. Thus, reactor operators may paradoxically purchase more strategic inventory when prices are high.

As mentioned above, these behaviors are much more prevalent in the uranium concentrates markets. Demand in the conversion and enrichment markets may therefore exhibit less elasticity in the short term than the uranium market.

b. Medium and Long Term

DOE expects that demand in the medium and long term is less elastic than in the short term. Indeed, in the medium term, demand for long-term contracts may actually increase, relative to spot purchases, as prices rise. As discussed above, fuel costs represent a very small portion of the overall cost of nuclear power.

Conversely, the cost of not having fuel can be very high, because the economics of nuclear reactors—*i.e.* large up front capital costs and low marginal operating costs—incentivize operators to operate more or less continuously. Compared to the opportunity cost of an extended period where the reactor is not generating electricity, fuel costs are relatively small. Typically, fuel costs are about 1 cent per kilowatt hour generated, while the market value of the electricity is between 5 and 8 cents per kilowatt hour.

An increase in prices generally indicates a tightening of supply relative to demand. That signal can encourage reactor operators to increase, rather than decrease, long-term contracting to ensure future fuel supplies in the face of the anticipated tightening. The additional cost of a high-priced contract may be less important than the avoided risk of not having enough fuel. As a possible example of such behavior, long-term contracting for uranium concentrates increased significantly in 2005 and remained high in 2006 and 2007 as prices rose from approximately $20 per pounds in 2004 to over $90 in 2007; long-term contracting activity then fell in 2008 and 2009 as term prices fell from above $90 to closer to $60.

In the long term, elasticity of demand for nuclear fuel would reflect decisions about whether to construct new reactors or shut down existing reactors in response to long-run prices for fuel. This contribution to elasticity is likely to be small. Because fuel costs are such

a small portion of the overall cost of nuclear power, even a large increase in fuel price would be unlikely to significantly affect decisions about new reactor construction. Meanwhile, for existing reactors the capital costs are ''sunk.'' And ongoing variable fuel costs for nuclear power are, at current prices, lower than for most other types of generation.[18] Thus, among existing plants, it would take a very large increase in the cost of fuel to influence a decision about whether to shut down a reactor early.

As noted above, plans for reactor construction do change over time, so that uranium requirements will evolve over time. Demand for uranium is not constant. However, the changes in long-term demand are unlikely to be responses to uranium price signals. For these reasons, the analysis below will assume that medium- and long-term demand has low elasticity.

D. The Nature of Uranium Supply

1. Primary Versus Secondary Supply

As explained above, supply of uranium concentrates, conversion, and enrichment includes both primary and secondary supply. According to charts developed by uranium market consultancy ERI, total production of uranium concentrates in 2015 and 2016 will be approximately 190 million pounds U_3O_8. 2015 ERI Report, 9.[19] Secondary supply is expected to total approximately 40 million pounds, about 20% of the total. Over half of secondary supplies of uranium concentrates come from enricher underfeeding and tails re-enrichment. Other sources of secondary supply include DOE inventory, plutonium/uranium recycle (MOX), and other commercial inventories. 2015 ERI Report, 80. Prior to 2014, the natural uranium component of LEU delivered under the Russian HEU Agreement represented a significant source of secondary supply. This program ended in 2013. Consequently, natural uranium from Russian HEU is no longer a significant source of secondary supply.

For conversion services, ERI expects that primary supply in 2015 and 2016 will total approximately 65 million kgU as UF_6, with secondary supply representing between 15 and 16 million kgU or about 25%. 2015 ERI Report, 14. As with uranium concentrates, over half of secondary supplies of conversion come from enricher underfeeding and tails re-enrichment. Other sources of secondary supply include DOE inventory, plutonium/uranium recycle (MOX), and other commercial inventories. *Id.*

For enrichment services, ERI expects that primary supply in 2015 and 2016 will total approximately 63 million SWU, with secondary supply representing between 4 and 5 million SWU or about 8%. 2015 ERI Report, 16. Unlike uranium concentrates and conversion services, underfeeding and tails re-enrichment do not constitute a secondary supply of enrichment because those processes utilize enrichment capacity. Sources of secondary supply of enrichment include DOE inventory, plutonium/uranium recycle (MOX), and other commercial inventories. *Id.*

2. Price Elasticity of Supply

Price elasticity of supply measures how the quantity supplied of a good or service responds to a change in price. If suppliers are highly responsive to changes in price, supply is relatively elastic. If suppliers are weakly responsive to changes in price, supply is relatively inelastic.

Enrichment services are relatively inelastic, and conversion services are complicated by pricing phenomena described below. With respect to uranium concentrates, the level of elasticity in the uranium markets varies depending on the time frame, just as demand elasticity does.

a. Short Term

In the short term, supplies of uranium concentrates from primary producers are relatively inelastic. There is some limited capability for mines to decrease production. Conventional mines may choose to continue operation and stockpile uranium ore without milling it into yellowcake. ISR mines require constant development of new wellfields; these mines may slow production gradually by slowing wellfield development. These measures may take many months. Thus, in the short term, mines will be weakly responsive to changes in price. In contrast, secondary sources of uranium concentrates may respond more to changes in price. Underfeeding and tails re-enrichment, for example, depend on the relationship between SWU and uranium concentrate prices. In the short-term, enrichers cannot increase or decrease capacity, but they can quickly shift how much capacity is devoted to underfeeding versus primary enrichment.

Primary supply of conversion services is relatively inelastic in the short term. Conversion plants typically have high fixed production costs. Thus, there is relatively little incentive to change production in response to changes in price. (As discussed below, conversion supply has fluctuated in recent years; but those changes were not necessarily caused by price changes.) Secondary supplies of conversion, however, are more able to respond to changes in price. Underfeeding and tails re-enrichment results in natural UF_6, which includes both uranium concentrates and conversion services. Since the price of uranium concentrates is a larger proportion of the value of that UF_6, secondary supplies of conversion from these two sources can be expected to respond more strongly to the uranium concentrates price than to the conversion price.

Primary supply of enrichment is also relatively inelastic in the short term. As discussed above, enrichers typically cannot remove machines from production due to technical concerns. Enrichers also cannot bring additional machines online in the short term to respond to changes in price because it takes several years to add new machines. Secondary supply of enrichment is a smaller proportion of the total supply than for uranium concentrates or conversion services. In addition, enrichers can change the amount of capacity devoted to primary enrichment as opposed to underfeeding. These supplies are more able to respond to changes in price.

b. Medium and Long Term

In the medium and long term, primary supplies of uranium concentrates and enrichment should be more elastic than in the short term. Producers can develop and install additional capacity in response to projections that prices will increase. These decisions, however, typically involve very long time frames. It may take several years of active development before a new mine may begin production. New enrichment and conversion capacity may take on the order of ten years.[20] Alternatively,

[18] Variable costs are higher for fossil fuel technologies by a factor of 4 for natural gas, and by a factor of almost 3 for conventional coal. The only technologies with lower variable costs are geothermal, wind, solar, and hydro. *Id.*

[19] DOE tasked ERI to assess the potential effects on the domestic uranium mining, conversion, and enrichment industries of the introduction into the market of DOE excess uranium inventory. ERI's analysis of these effects is contained in the 2015 ERI Report. ERI's analysis is based in part on information it collects to develop its forecasts for annual reactor requirements, uranium demand, and uranium production. ERI develops these forecasts for various customers. The references to information from ERI in Section II are generally based on this type of information rather than on ERI's economic analysis of these data specifically for DOE. Because of ERI's expertise in the uranium markets and contacts with market participants, DOE believes ERI's general market information is reliable.

[20] Louisiana Energy Services, LLC, now a subsidiary of URENCO, submitted a license

producers can reduce production and accelerate plans to retire capacity if prices are projected to decrease. URENCO, for example, has chosen to retire enrichment capacity at its European facility without replacement. *See* 2015 ERI Report, 16.

E. Uranium Prices

Uranium markets function in two ways, broadly speaking: Short-term deliveries, called the spot market, and longer-term commitments, called the term market.

1. Spot and Term Prices

For all three markets discussed here, there is a price for an immediate delivery, called the spot price, and a price for long-term contractual commitments, commonly called the term price. The vast majority of purchases on these markets are through term contracts. According to data from EIA, over 80% of purchases of uranium by U.S. owners and operators of nuclear power reactors in 2013 were through term contracts.[21] EIA, 2013 Uranium Marketing Report, 3 (2014). In addition approximately 97% of enrichment services purchased by U.S. owners and operators in 2013 were through term contracts. *Id.* at 46. EIA does not report data on conversion contracts. Ux Consulting Company, LLC (UxC), a private consulting firm, publishes data on spot and term contract volume for conversion services. According to UxC, deliveries in 2013 under term contracts—[REDACTED]. UxC Conversion Market Outlook—December 2014, 36 (2014). In contrast, spot contract volume in 2013 [REDACTED]. *Id.* at 26. Thus, term contract deliveries represented [REDACTED] of 2013 deliveries of conversion services.

Several commenters say that medium-term futures contracts have increased in importance in recent years. Such a contract entitles a buyer to delivery of material at a future date between one and a few years after contract execution. The commenters observe that these contracts differ from traditional term contracts in that they involve one-time-only deliveries and that buyers ordinarily do not use them to secure long-term fuel supplies. In a sense, the commenters suggest, these contracts form an extension of the spot market to deliveries up to a few years in the future.

2. Price Information

Unlike many other commodities, most uranium contracts are not traded through a commodities exchange. Instead, a handful of entities with access to the terms of many bids, offers, and contracts develop what are called ''price indicators'' based on those transactions. Two private consulting firms—UxC and TradeTech, LLC (TradeTech)—publish monthly spot and term price indicators for uranium concentrates, conversion, and enrichment. Both also publish weekly spot price indicators for uranium concentrates.[22] Note, however, that the UxC and TradeTech indicators do not necessarily summarize completed transactions. They may be based only on offers. The UxC and TradeTech price indicators are influential; industry practice is generally to price sales contracts based on one or both of these price indicators.

There are also a number of related published prices for U_3O_8. These include a Broker Average Price (BAP) and a Fund Implied Price (FIP), both published by UxC. The former is based on pricing data from ''commodity style'' brokers that have agreed to provide information to UxC and the latter is based on the traded value of the Uranium Participation Corporation (UPC) compared to its uranium holdings.[23] UxC Uranium Market Outlook—Q4 2014, 35–37 (2014). Futures contracts for U_3O_8 are also traded through CME/NYMEX. Through this platform, futures contracts are traded with delivery dates ranging from a month to five years. *See* UxC, ''CME/NYMEX Uranium Futures (UX) Contract,'' *http://www.uxc.com/data/nymex/NymexOverview.aspx* (accessed Mar. 25, 2015); CME Group, ''UxC Uranium U3O8 Futures Quotes,'' *http://www.cmegroup.com/trading/metals/other/uranium.html* (accessed Mar. 25, 2015).

III. Analytical Approach

As noted above, section 3112(d) states that DOE may transfer ''natural and low-enriched uranium''[24] if, among other things, ''the Secretary determines that the sale of the material will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry, taking into account the sales of uranium under the Russian HEU Agreement and the Suspension Agreement.'' After considering this statutory language, DOE has developed a set of factors that this analysis considers in the section 3112(d)(2) assessment.

A. Overview

The USEC Privatization Act does not clearly indicate what kind or degree of effect or influence on an industry would constitute an ''adverse material impact.'' As discussed below, these words are susceptible of many meanings. Contextual clues provide some guidance in understanding the phrase, but DOE has not identified context (such as a

application for a gas centrifuge enrichment plant in late 2003. The facility, known as Urenco USA (UUSA), began operation in mid-2010, almost seven years after the license application was submitted. Given the licensing process, planning for the facility would have had to have begun well before the license application was submitted. Similarly, the timeline for AREVA's COMURHEX II conversion project included feasibility and design studies taking place between 2004 and 2007, with full production capacity reached in 2015. AREVA, ''COMURHEX II: Investing for the Future,'' Nov. 2010, available at *http://www.areva.com/mediatheque/liblocal/docs/activites/amont/chimie/plaket%20CXII%20GB%20MD.pdf.*

[21] EIA defines these contracts as those having one or more deliveries to occur after a year following contract execution.

[22] The Euratom Supply Agency (ESA) also publishes spot and term price indicators for U_3O_8 based on deliveries to EU utilities. These prices are published annually rather than monthly or weekly. *See* ESA, ''ESA Average Uranium Prices,'' *http://ec.europa.eu/euratom/observatory_price.html* (accessed Mar. 25, 2015).

[23] UPC is a publicly traded holding company that invests substantially all of its assets in uranium. UPC's stated investment strategy is to buy and hold uranium rather than actively trading in response to short-term shifts in prices. UPC, Investor Update Presentation, 17 (Aug. 2014), available at *http://www.uraniumparticipation.com/i/pdf/ppt/UPC-Investor-Update-August-2014.pdf.*

[24] In the nuclear industry, the term ''natural,'' with respect to uranium, ordinarily refers to material that contains the various uranium isotopes in their naturally occurring concentrations—most significantly, U–235 at 0.711 wt-%. Uranium can be converted into many different physical or chemical forms without necessarily altering the isotopic concentrations, and in common usage any physical or chemical form with the naturally occurring concentrations is called ''natural uranium.'' Although the USEC Privatization Act does not define the term, it appears to use ''natural uranium'' in accordance with its customary technical meaning. In particular, section 3112(a) refers to ''natural uranium concentrates'' and ''natural uranium hexafluoride'' as being species of ''uranium.'' This usage indicates that being ''natural'' is a characteristic that cuts across chemical and physical form, and confirms that ''natural'' does not refer to the form in which uranium is found in nature (uranium ore). Moreover, section 3112(d) establishes prerequisites for a transfer of ''natural uranium.'' If ''natural uranium'' were only a particular physical or chemical form, the Department would be permitted to transfer other forms of uranium without regard to the section 3112(d) conditions. For example, if ''natural uranium'' meant uranium concentrates, DOE need not make a section 3112(d)(2) determination before transferring uranium hexafluoride. DOE believes such a limited understanding of ''natural'' would not best serve the purposes of section 3112. Accordingly, DOE understands ''natural uranium'' to refer to the isotopic concentrations, regardless of the physical or chemical form.

One commenter has argued that section 3112 does not permit DOE to transfer uranium hexafluoride (except pursuant to section 3112(b)). According to the commenter, ''natural uranium'' as used in section 3112(d) does not include uranium hexafluoride, at any isotopic concentration. For the reasons just given, DOE interprets ''natural uranium'' section 3112(d) to encompass transfers of uranium hexafluoride with the naturally occurring isotopic concentrations.

statutory definition) that would unambiguously settle what an ''adverse material impact'' is.

Moreover, the meaning of the phrase is likely to depend in part on the factual context in which it is to be applied.[25] Uranium transactions can take myriad forms, and the effect of any given transaction on any one or all of these industries will depend on the facts and circumstances at the time of the transaction. DOE's inventory of uranium is changing over time, and Congress could not have anticipated the specific characteristics of every potential transaction. Thus, it would be unsurprising for the statute to describe DOE's mandate in open-ended terms, leaving DOE to elaborate details as and when DOE applied the statute over time.

Thus, the Department will need to exercise judgment to develop an understanding of ''adverse material impact,'' in its statutory context, as applicable to a given potential transfer or sale of uranium. Part of that task involves establishing an analytical framework to form the basis of and reach a determination about the impacts of DOE's transfers. The Department is responsible for analyzing relevant information in light of the statutory text and purposes to determine whether a particular sale or transfer will have an ''adverse material impact'' on the domestic uranium mining, conversion, or enrichment industry.

To make that assessment, DOE must first articulate what is the ''domestic industry'' for each of these markets. DOE interprets the word ''domestic'' to refer to activities taking place in the United States, regardless of whether the entity undertaking those activities is itself foreign. Hence, a facility operating in the United States would be part of ''domestic industry'' even if the facility is owned by a foreign corporation. DOE believes that the phrase ''uranium mining, conversion or enrichment industry'' includes only those activities concerned with the actual physical processes of mining, converting, and/or enriching uranium. Thus, acting solely as a broker for material mined, converted, or enriched by other entities does not constitute part of the domestic ''industry.'' The relevant purpose of section 3112(d) is to help preserve, to the degree possible, viable mining, conversion, and enrichment capacity in the United States. That purpose depends on the actual operation of facilities. To that end, DOE believes ''domestic industry'' should also include, to some extent, activities to develop and activate a facility in the United States, even if the facility has not yet entered production.

One commenter suggested that DOE should interpret ''domestic . . . industry'' to include secondary suppliers and supply chain companies, including remediation, reclamation, decontamination, decommissioning, and waste management. NIPC Comment of Fluor B&W Portsmouth (FBP), at 2–3. DOE believes that these other entities should not be included because doing so would not be necessary for the purpose noted above of preserving viable mining, conversion, and enrichment capacity in the United States. Participants in those industries need various services and supplies to be available, but they need not as a general matter obtain those services or supplies from domestic suppliers.

Next, DOE elaborates what it means for transfers to ''have'' an ''impact.'' DOE believes that it can appropriately fulfill the purpose of the statute by reading this phrase to refer to ''impacts'' that have a causal relationship to DOE transfers. The overall thrust of section 3112 is to permit transfers and sales of uranium to the degree consistent with various policy considerations set forth in various paragraphs.[26] Section 3112(d) calls for the Secretary's predictive judgment, before DOE engages in a transaction, whether the transaction will have an adverse material impact on the domestic uranium industries. The notion of causation is implicit in this structure. If domestic industries would experience a given negative condition regardless of whether DOE made a particular transfer, it would ill serve the purposes of the USEC Privatization Act for section 3112(d) to block the transfer.

Thus, in assessing a given transfer, DOE will essentially evaluate two forecasts: One reflecting the state of the domestic uranium industries if DOE goes forward with the transfer, and one reflecting the state of the domestic uranium industries if DOE does not go forward with the transfer. DOE will then compare these two forecasts to determine the relevant impacts on the domestic uranium industries.

Some commenters agreed that DOE's approach is reasonable. But other commenters believed DOE's approach amounted to saying DOE could justify a transfer solely on the basis that it has less impact than other factors. These commenters appear to have misunderstood DOE's analytical approach. DOE has not suggested that it will compare the impact of its transfers to the impact of other factors and consider an impact from its transfers ''material'' only if it is larger than others. Rather, DOE simply believes that if a given state of affairs would exist whether or not DOE made a certain transfer of uranium, that status should not be regarded as an ''impact'' that the transfer ''ha[s],'' for purposes of section 3112(d). Other comments argued that it should not be relevant whether a given negative outcome for domestic industry would occur independent of DOE's transfers. DOE disagrees. If, for example, a set of industry participants have halted plans to invest in production, and they would maintain that position with or without DOE transfers, it is appropriate under section 3112(d) to conclude that the transfers do not ''have'' the abandoned investments as an ''impact.''

Commenters also suggested that DOE should not try to ''justify'' transfers on the ground that DOE transfers ''are not the driver of the current negative state'' of domestic uranium industries. Whether DOE's transfers are the ''driver'' of an industry's current state is not directly at issue. The statute uses the future tense; it directs DOE to determine, before a transfer, that the transfer ''will not have an adverse material impact.'' Thus, DOE's task is to make a prediction, before engaging in a transfer, about what consequences will flow from that transfer in the future. What contribution past transfers have made to the existing situation can be important for informing DOE's predictive judgment, and this analysis appropriately considers such matters. But whether or how DOE's past transfers caused or contributed to current circumstances is not, itself, the question that section 3112(d) poses.

DOE recognizes that causation can be difficult to determine, especially with respect to something as complex as a set of three interlocking markets and industries being possibly affected by DOE transactions that may vary over

[25] Some commenters objected that the meaning of ''adverse material impact'' cannot change depending on circumstance. DOE did not suggest that it would alter its interpretation of the statutory language over time. But statutory interpretation is not simply a matter of supplying for one word, like ''material,'' a longer recitation drawn from a dictionary. Applying a statute to a given factual circumstance inevitably involves an exercise in interpretation, and no verbal formula developed *ex ante* can answer all questions that may arise. Indeed, some phrases are, by their nature, best ''given concrete meaning through a process of case-by-case adjudication.'' *INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 446 (1987). ''Adverse material impact'' is such a phrase.

[26] In passing the USEC Privatization Act, Congress recognized that DOE would have a substantial uranium inventory after privatization. Congress included section 3112(d) to ensure that DOE could continue to use sales or transfers from its uranium inventory as a management tool. *See* S. Rep. 104–173, at 16–17; *see also* 141 Cong. Rec. S6106–07 (daily ed. May 3, 1995) (statement of Sen. Domenici).

time. It will often not be possible to have certainty that past transfers did or did not cause a present state of affairs, and it will be less certain that a possible future outcome was actually the result of DOE transfers. Accordingly, DOE does not interpret the statute to require certainty about what impacts its transfers will or will not have. DOE will regard its transfers as having as impacts, for purposes of section 3112(d), the consequences that can reasonably be attributed to the transfers.

DOE also notes that the statute directs DOE's attention to the ''impact'' on ''industry.'' Consistent with common understandings of these words, DOE believes a section 3112(d) analysis should address the actual effects on each industry. A set of transfers may have various influences on a given market (for uranium, conversion, or enrichment), but section 3112(d) does not instruct DOE to assess effects on the markets. Of course, market effects will be the most common mechanism through which transfers have impacts, if any, on domestic industry. But DOE will focus ultimately on the impacts to industry, rather than the market effects in the abstract. For example, if a hypothetical domestic company had locked in prices for the next ten years in long-term contracts, a decrease in prices during that time would not have an adverse impact on that company. Indeed, the price decrease could ultimately be beneficial to that company, if competitors were more exposed to and thus suffered greater harm from the price change.

With respect to assessing whether the adverse impacts of a transfer would be ''material,'' DOE observes that the word ''material'' is used to denote situations ''of real importance or great consequence.'' *See Webster's Third New International Dictionary* 31, 1392 (1961). How large consequences must be to qualify as ''material'' varies in different legal contexts. In light of the overall goals and structure of the USEC Privatization Act, DOE takes ''adverse material impact'' to mean harms that go beyond the effects of normal market fluctuations, such as those that threaten the viability of an industry.

As noted above, one purpose of the USEC Privatization Act was that DOE should manage and eventually dispose of the large legacy inventory that the privatization of USEC would leave it. In privatizing the United States Enrichment Corporation, Congress recognized that DOE would have uranium inventory left over and that this inventory would have substantial economic value. By including section 3112(d), Congress preserved the Secretary's discretion to utilize uranium transfers as a tool in managing the uranium inventory, and the substantial value embodied therein. If Congress had not wanted DOE to make productive use of its inventory, it could have prohibited all sales by the Department with or without a determination. Instead, the USEC Privatization Act explicitly directed DOE to transfer various quantities of uranium to market participants and permitted certain other transfers. 42 U.S.C. 2297h–10(b)(2), (c) & (e).

Section 3112 also provides helpful context that indicates the magnitude of industry impact that Congress considered acceptable. The statute specifically authorized material delivered under the Russian HEU Agreement to enter the U.S. market notwithstanding a preexisting suspension agreement limiting the entry of this material. 42 U.S.C. 2297h–10(b)(3), (5)–(7). The act contained annual limits on deliveries of the natural uranium content of the Russian material. The limits started at 2 million pounds U_3O_8 equivalent in 1998, and increased by 2 million pounds each year reaching a maximum of 20 million pounds U_3O_8 equivalent in 2009 and each year thereafter. 42 U.S.C. 2297h–10(b)(5).[27] For comparison purposes, this last figure represented over four times the volume of U_3O_8 produced at U.S. mines in 1996, the year the statute was passed. EIA, Domestic Uranium Production Report (2005). The size of this explicit authorization informs DOE's understanding of what impacts Congress would have regarded as ''material.'' It seems unlikely that Congress would have authorized in section 3112(b) transfers that would have been inconsistent with the policy goals of section 3112(d).

Indeed, the structure and legislative history of section 3112(b) confirm that the schedule for Russian material's entering domestic markets reflects Congress's balancing of concerns similar to those that motivated section 3112(d)(2). Congress could have simply allowed all Russian material into the United States without limitation. Instead, Congress provided a schedule that ramped up over a period of 20 years. Congress evidently balanced the competing concerns of providing a market for down-blended Russian HEU and protecting the domestic uranium industries from large-scale disruption. The schedule outlined in section 3112(b) reveals the level of market interference that Congress believed struck that balance. This notion is further confirmed by the legislative history of this provision, which specifically states that Congress was trying to balance the interests in maintaining the Russian HEU Agreement with the interests of the domestic uranium industries. *See* S. Rep. 104–173, at 14. Further, the legislative history explains that the schedule of maximum deliveries was designed to protect against disruptions to the uranium markets by providing a ''reasonable, predictable, and measured introduction of this Russian material into the domestic uranium market.'' *Id.* at 28.

The preceding discussion is not intended automatically to support transfers of up to 20 million pounds under section 3112(d). DOE must exercise judgment as to whether a given set of transfers would cause an adverse material impact, in light of market and industry conditions today. However, DOE believes that this provision provides some insight into what scale of market interference Congress considered acceptable and expected would not cause ''adverse material impact.''

B. Comments on DOE's Interpretation of Section 3112(d)(2)

Several commenters stated their belief that DOE's understanding of ''material'' sets an impermissibly high bar and would make the section 3112(d)(2) restriction meaningless. NIPC Comments of ConverDyn, at 3; NIPC Comment of UPA, at 3. DOE clarifies that it does not read section 3112(d)(2) to mean that an impact must threaten the viability of an industry to be ''material.'' That example illustrates a type of impact that would be material, but other impacts could, depending on the circumstances, also be material. Exactly what impacts would rank as ''material'' cannot be specified in advance; as noted above, ''adverse material impact'' is a phrase the meaning of which is best developed by applying it to specific situations, as in the analysis below. DOE does believe that ''adverse material impact,'' in section 3112(d)(2), should be taken to mean harmful effects of great consequence, and it adheres to the view that effects comparable to what would result from ordinary market fluctuations will usually not qualify as ''material.'' As the example of the Russian uranium supply authorized by section 3112(b) illustrates, Congress contemplated that the government would affect uranium markets to a substantially greater extent than do commercial market participants. In addition, the USEC Privatization Act left DOE with a large inventory of

[27] Sales under the Russian HEU Agreement ceased at the end of 2013.

surplus uranium. Section 3112 reflects an intent to enable DOE to reduce that inventory—and the associated storage costs the government bears—while making productive use of the uranium, so long as the domestic industries are adequately protected from harm. That framework does not suggest that DOE should be limited to the scale of participation of a typical commercial market participant.

Some commenters also stated that ''material'' should mean any impact that is greater than *de miminis.* NIPC Comment of ConverDyn, at 4; NIPC Comment of UPA, at 3–4. This suggestion is at odds with ordinary methods of statutory interpretation. Because an effect that was only *de minimis* would not really be an adverse impact at all, the word ''material'' would add little if it simply reinforced the point that section 3112(d) is concerned only with non-trivial effects. In addition, the suggested interpretation would make section 3112(d) largely irrelevant to DOE transfers as a practical matter. Nearly every transfer has some nontrivial impact on some segment of the industry; if DOE could transfer uranium pursuant to section 3112(d) only when the forecast impacts were *de minimis,* it would make use of section 3112(d) rarely if at all.[28] DOE believes section 3112(d) was meant to be a practical mechanism for managing the uranium inventory subject to certain constraints, not a restriction so severe it becomes a virtual dead letter. Consistent with that view, section 3112(e)(2) permits DOE to transfer enriched uranium in any quantity to any person ''for national security purposes.'' It would be odd for Congress to commit such open-ended authority to DOE, with such extensive discretion, for one type of transfer, while simultaneously constricting section 3112(d) transfers to essentially zero. For these reasons, DOE rejects the suggestion that any impact that is more than *de minimis* is material.

Commenters also cited examples of other meanings of ''material,'' particularly in statutes that include definitions for the term. There is no such definition in the USEC Privatization Act, however. These examples confirm that ''material'' can have a variety of meanings, depending on context, but are of little help for identifying a specific meaning for the phrase ''adverse material impact'' in the particular context of section 3112(d)(2).

Commenters also contended that DOE's transfers would have material impacts because they would affect prices or profits by a given percentage. To the extent commenters tied these claims to specific arguments why the given numerical effects are material in current circumstances, DOE addresses those arguments below. However, some commenters appear to believe that a change in price or profits is material solely because it exceeds some threshold percentage. DOE does not believe such rigid formulas are appropriate. First, as discussed above, DOE's task under section 3112(d)(2) is to predict impacts on the domestic industries, not just market effects. How much a given change in price affects an industry depends on the circumstances, including the degree to which industry members are exposed to that price change. Second, whether a given impact is material will generally depend on the circumstances as well. As a hypothetical example, suppose a transfer had the consequence of forcing a production facility to close. That outcome might not rank as a material impact on the industry if the facility were one out of fifteen facilities industry-wide and the others were in good financial condition.

With respect to the relationship DOE observes between section 3112(d) and uranium permitted under the Russian HEU Agreement, several commenters objected to DOE's observation, for several reasons. NIPC Comments of ConverDyn, Uranerz, and UPA. Some argued that the language in section 3112(d)(2) directing DOE to ''take account'' of the Russian HEU Agreement was meant only to ensure the viability of the Agreement. Under this view, section 3112(b) was the more important provision because it permitted the reduction of weapons stockpiles. Congress knew that section 3112(b) sales might severely disrupt domestic industries, and, the argument continues, it did not want section 3112(d) transfers to interfere with the process by disrupting them further. To that end, these commenters say, the statute directed DOE to bear the section 3112(b) sales in mind in making section 3112(d) determinations, so that DOE transfers would not ''get in the way'' of the Russian HEU Agreement.

The commenters' interpretation of the ''taking account'' language seems unduly constrained. Section 3112(d)(2) does not, by its terms, indicate that DOE's goal in taking account of Russian-origin uranium sales should be to facilitate or preserve those sales. To be sure, as commenters note, the successful implementation of the Russian HEU Agreement was an important policy goal of section 3112. However, the ''taking account'' clause also covers sales under the Suspension Agreement. Congress is unlikely to have had as strong an interest in ensuring the success of the Suspension Agreement, because it was simply the settlement of a trade dispute regarding Russian uranium producers. The mention of the Suspension Agreement supports DOE's view that it should ''tak[e] account'' of the two categories of Russian-origin uranium in various ways that depend on the circumstances. When sales of uranium under the two Agreements are high, that contribution to supply should be an important consideration when DOE makes a determination under section 3112(d)(2). When sales under the Agreements decrease, that decrease in supply can also be important to a determination.

Some commenters pointed out that market participants took steps to mitigate the effects of section 3112(b) sales, for example by committing the uranium on long-term contracts. DOE recognizes that the practical consequences of section 3112(b) were not as significant as section 3112(b) would have permitted. In addition to the mitigation efforts commenters described, the actual amounts delivered have generally been lower than the section 3112(b) caps. But as DOE stressed in the Notice, it does not believe the comparison to section 3112(b) leads to the conclusion that any transfers short of 20 million pounds per year would be permissible under section 3112(d). Section 3112(d) directs DOE to predict the actual impacts of transfers, in current conditions; DOE does not seek to rely on a numerical trigger like 20 million pounds. Rather, the comparison to section 3112(b) informs DOE's understanding of what degree of impact is ''material'' in the section 3112(d) sense.

It also bears mention that DOE's use of the section 3112(b) caps to inform interpretation of section 3112(d)(2) is not the mechanism by which DOE ''tak[es] account of the sales of uranium'' under the two Russian Agreements. As commenters point out, the sales that have actually occurred under the Russian HEU Agreement were smaller than what section 3112(b) permitted. DOE takes account of these sales—as well as those under the Suspension Agreement—in its analysis, below, of impacts on the domestic uranium industries. Apart from that analysis and the amounts of actual sales, DOE considers the volumes that Congress authorized in section 3112(b) to be informative for understanding what degree of consequence would

[28] DOE has identified one type of transfer for which the impacts, if any, may truly be *de minimis,* namely the transfers of high-assay LEU for research reactors mentioned above in section I.D.2.e. The rarity of this circumstance demonstrates the point.

constitute an ''adverse material impact.'' The section 3112(b) limits would be relevant in that regard even if section 3112(d) lacked the ''taking account'' clause. But the inclusion of that clause confirms DOE's view because it indicates that Congress legislated the two provisions congruently.

Section 3112(b) itself provides further evidence in support of that conclusion. It directs the President to monitor sales under the Russian HEU Agreement and report on any actions the President proposes to take ''to prevent or mitigate any material adverse impact'' the sales might have on the domestic uranium industries. But it does not require any particular presidential action. Thus, Congress evidently intended section 3112(b) sales not to have material adverse impacts but realized that they might. Notably, the possibility of material impact was uncertain enough that Congress deemed it unnecessary to mandate any preventative steps. Taken together, the structure of section 3112(b) suggests that ''material'' impacts refers to consequences of such significance that they might or might not result from sales at the rates section 3112(b) contemplated.

In general, commenters on this topic suggest that by instructing DOE to ''tak[e] account'' of sales under the Russian HEU Agreement, section 3112(d) meant to limit DOE's sales in light of the impact of the Agreement. These commenters argue that in the past DOE implicitly viewed the ''taking account'' clause as such a limit; Secretary Richardson placed a 10-year moratorium on transfers of Russian-origin uranium hexafluoride in DOE's inventory. DOE agrees that the ''taking account'' language can limit DOE's transfers: To the extent that sales under the Russian HEU Agreement are causing impacts on an industry, DOE must consider those impacts when assessing the possible impacts of a transfer it contemplates pursuant to section 3112(d). The discussion above is consistent with that view.

Finally, commenters argued that section 3112(b) sales have less impact, relative to the amount of uranium, than DOE's section 3112(d) transfers because they are capped, predictable, and transparent. DOE notes that the cap was 10 million pounds in 2002 and has now increased to 20 million pounds. Neither DOE's section 3112(d) transfers nor the section 3112(b) sales have ever reached those scales, so it seems unlikely that simply having the cap would make a difference to the actual economic impact of the transactions. DOE does recognize that the predictability of supply is an important factor, and predictability or lack thereof can increase or decrease the impact of a program of transfers. The analysis below considers this factor. With respect to transparency, as distinct from predictability, DOE believes it provides at least as much public notice about planned section 3112(d) transfers as was available for section 3112(b) sales. The Department publicly announces its determinations, each of which reflects an amount actually to be transferred; and the Department has published an accounting of the quantities of uranium it has available for transfer. By contrast, section 3112(b) sales happened through a private entity that had no obligation to release data publicly about sales. The statutory limit on sales, being much larger than the sales that actually occurred, provided little information about how sales of Russian uranium would affect the markets in practice.

One commenter pointed out that Russian-origin material continues to be available from commercial sources. NIPC Comment of ConverDyn, Enclosure, at 4. DOE believes this commenter was referring to the 2008 amendment to the Suspension Agreement discussed in Section I.D.3.b. DOE will take account of any sales under the Suspension Agreement in the analysis below.

Several commenters suggested that DOE should utilize a quantitative annual cap on transfers. Although the specific proposals varied, several suggested a rate of approximately 5.0 million pounds U_3O_8 per year. *E.g.* RFI Comment of UPA, at 9; RFI Comment of ConverDyn, at 8; NIPC Comment of Cameco, at 2–3.[29]

These commenters appear to have two chief reasons for their proposal. First, the commenters seem to think the various limits they propose are, in fact, the outside bounds of what DOE can transfer consistent with section 3112(d). Thus they would have DOE keep transfers below their preferred limits to avoid material impacts. However, DOE does not believe a quantitative trigger—whether implemented as an annual cap or only as a guideline—is a necessary or appropriate way to analyze whether DOE transfers will cause adverse material impacts. In the past, DOE has stated that, as a general matter, the introduction into the domestic market of uranium in amounts that are less than ten percent of the annual fuel requirements for U.S. nuclear power plants should not have an adverse material impact on the domestic uranium industries.[30] *See* 2008 Policy Statement, at 2; 2008 Plan, at ES–1. In July 2013, DOE noted that DOE's experience between 2008 and 2013 led it to determine that DOE ''can meet its statutory and policy objectives in regard to DOE uranium sales or transfers without an established guideline.'' In addition, DOE noted that in light of the two-year limit on the validity of a determination under section 3112(d), an established guideline was no longer necessary. 2013 Plan, at 2. DOE further notes that the global nature of the markets for uranium concentrates, conversion services, and enrichment services suggests that a focus on U.S. reactor needs will not adequately capture the impact on domestic industries. DOE therefore adheres to the views it expressed in 2013. It further notes that what impacts would be material will depend on the circumstances expected to prevail at the time of a transfer, and what impacts a transfer has will depend on those circumstances as well as on the details of the transfer. A simple rule that transfers below a certain amount are acceptable and those above are not would be inaccurate. In some circumstances, a transfer below the trigger could actually cause an adverse material impact to one or more of the domestic uranium industries; and in some circumstances a transfer above the trigger would actually not cause adverse material impacts. Rather than commit itself to a course that risks both types of inaccuracy, DOE prefers to perform the relevant analysis for each determination.

Commenters also urge DOE to maintain a cap because they believe long-term certainty about the maximum scale of transfers would mitigate the impact of the transfers and help industry attract investors. DOE recognizes that certainty and predictability are important for planning investments and industrial activities, especially in industries like the uranium

[29] One commenter suggested the possibility of waiver of future Secretarial Determinations if DOE would maintain such a cap. NIPC Comment of Cameco, at 3. The commenter did not suggest who might waive DOE's obligation to perform a determination before a transfer pursuant to section 3112(d). The statute imposes that duty and does not seem to provide a mechanism for it to be waived.

[30] Commenters argue it was impermissible for DOE to eliminate the ''cap'' they say the 2008 Plan imposed. DOE does not regard the 2008 plan as having prescribed a strict cap on transfers. The plan itself said only that transfers below ten percent of annual U.S. reactor requirements would generally not be an adverse material impact. It did not purport to prohibit DOE from making section 3112(d) determinations for transfers above that amount. Moreover, the 2008 Plan specifically stated that DOE may transfer more than the 10 percent figure for certain purposes. 2008 Policy Statement, at 2. DOE announced in July 2013 that it would no longer utilize that guideline. 2013 Plan, at 2.

industries where developing new facilities can take many years. At the same time, DOE needs some degree of flexibility for transferring uranium as appropriate—and consistent with section 3112—in support of its various missions. After balancing the value of certainty for fostering industrial investment against the mandate to make effective use of the excess uranium inventory, DOE declines to commit to a preset limit on transfers.

C. Factors Under Consideration

For these reasons, DOE believes that whether the effects of a given transfer constitute an ''adverse material impact'' should not depend on a quantitative bright-line test, but rather should be based on an evaluation of potential impacts by examining a number of factors. Accordingly, this analysis considers the effects of DOE transfers using the following six factors:

1. Prices
2. Production at existing facilities
3. Employment levels in the industry
4. Changes in capital improvement plans and development of future facilities
5. Long-term viability and health of the industry
6. Russian HEU Agreement and Suspension Agreement

While no single factor is dispositive of the issue, DOE believes that these factors are representative of the types of impacts that the proposed transfers might have on the domestic uranium industries. Not every factor will necessarily be relevant on a given occasion or to a particular industry; DOE intends this list of factors only as a guide to its analysis.

DOE notes two ways that these factors differ from the list of factors DOE provided in the March 2015 Notice of Issues for Public Comment. First, DOE has combined the first two factors listed in the NIPC, ''market price'' and ''realized prices of current operators.'' DOE continues to believe that the effect of DOE transfers in these two areas is a relevant consideration. However, DOE recognizes that market prices, in the abstract, will not always be directly relevant for assessing the impact on an industry. More important will be the prices that various industry members actually receive for their products or services, which under most circumstances is a function of both the change in price and the contours of the various contracts through which industry members sell their uranium. As DOE's focus is ultimately the effect on industry, it is appropriate to consider these two aspects of price together. Second, DOE has added a factor regarding the Russian HEU Agreement and Suspension Agreement. Although the analysis below, to a certain extent, considers these transfers as part of the discussion for all of the factors, DOE believes it is appropriate to discuss these two Agreements separately as well.

Several comments submitted in response to the March 2015 Notice of Issues for Public Comment refer to some or all of these factors. Uranerz Energy Corporation expressed its view that the six factors listed in the NIPC provide significant context for analyzing the impacts to the domestic uranium industries. NIPC Comment of Uranerz, at 1. Similarly, Fluor B&W Portsmouth (FBP), contractor to DOE for cleanup services at Portsmouth, noted that these factors are ''reasonable and indicative of the types of impacts that DOE Transfers of Excess Uranium could have on the domestic industries.'' NIPC Comment of FBP, at 3. Nuclear Fuel Services, Inc. (NFS), which conducts down-blending services for DOE through a subcontract with WesDyne, suggested that DOE should consider the potential impact of DOE transfers on the ability of DOE to meet nonproliferation and defense missions. NIPC Comment of NFS, at 2–3. While DOE agrees that these policy concerns can be significant to DOE's decision whether to undertake a given transfers, DOE does not believe these concerns are relevant to the prerequisite section 3112(d)(2) finding on whether DOE transfers will have an adverse material impact on the domestic uranium industries.

ConverDyn states that DOE should consider ''displaced sales'' as a separate factor. NIPC Comment of ConverDyn, at 6. DOE disagrees that this should be considered separately. DOE believes that displaced sales are an aspect of production at existing facilities. Thus, these considerations fit within that category and do not need to be considered separately. ConverDyn also commented that DOE appears to give double weight to prices by considering both ''market price'' and ''realized price.'' *Id.* at 7. As discussed above, DOE has combined these two concepts into a single factor, ''prices.'' However, as discussed above, DOE continues to believe it is appropriate to consider the effect of DOE transfers on ''market price'' and ''realized price.''

In any case, it bears emphasis that DOE does not place extra ''weight'' on price or any other individual factor. DOE's analysis considers all the factors taken together as a whole. DOE has not assigned specific ''weights'' to the factors. To the extent that some considerations overlap multiple factors, DOE will take this into account in its analysis. ConverDyn also argues that the long-term viability and health of the industry factor should be ''of minimal weight'' because the Secretarial Determinations are only valid for two years. *Id.* at 8. As stated above, DOE has not assigned any particular weight to each factor. DOE agrees that the relevant analysis for this factor should focus on the impact of DOE transfers on the long-term viability and health of each industry, not simply on the long-term prospects for each industry in the abstract. Finally, ConverDyn suggests that DOE should expressly consider the need for domestic capacity to produce material for national defense needs. *Id.* DOE notes that section 3112 of the USEC Privatization Act implements a policy of ensuring, to the degree consistent with the statute's purpose, that domestic capacity remains within the uranium mining, conversion, and enrichment industries. DOE believes that section 3112(d), which requires the Secretary to determine whether DOE transfers will have an ''adverse material impact'' on these industries, itself addresses, in part, the national security concern ConverDyn mentions.

In addition to the above discussion, several comments in response to the December 2014 Request for Information suggested additional factors that DOE should consider. DOE has chosen not to consider those factors in the manner commenters suggested, for the reasons given in the March 2015 Notice of Issues for Public Comment.[31]

Several commenters also inquired whether the analytical method DOE is now articulating is consistent with the analyses supporting prior section

[31] One commenter takes issue with DOE's assertion in the NIPC that many domestic producers are part of multiline businesses, so that their share prices are not related solely to uranium markets. The commenter does not dispute DOE's related observations that share price reflects myriad inputs such as the nature of company management, gearing ratio (debt vs. equity), inflation, and the particular risks associated with the uranium market (such as the influence of political changes, like the shift in energy policy in Germany, or public responses to nuclear accidents). Because of this complexity, it is difficult to meaningfully attribute a change in a company's share price to DOE transfers; and it is also not fully meaningful to predict how a given change in share price will affect investment decisions. Indeed, while the commenter contends that ERI's report shows market capitalization to be tied to market prices, in fact ERI notes that producers' share prices have not reacted to recent price increases as much as could be expected based on the rough correlation between share prices and market prices in the aftermath of the Fukushima disaster. For these reasons, DOE remains convinced that analyzing the economic case for investments in new production is a more reliable and appropriate method for assessing the impact of transfers than would be a focus on share prices.

3112(d) determinations. While today's approach is broadly tracks DOE's analyses of past transfers, DOE recognizes that this analysis elaborates in much greater detail than DOE has provided before. The level of detail with which DOE has performed this analysis, the set of factors being considered, and the process in which DOE has engaged are appropriate for this determination for several reasons, including the scale of the transfers considered in this analysis and the rate at which market conditions have changed in the recent past. Depending on the circumstances, a different approach may be warranted for subsequent determinations.

IV. Assessment of Potential Impacts

This section assesses the potential impacts of DOE transfers at the levels and for the purposes described above in Section I.D.1. The overall volume of transfers for cleanup services at Portsmouth and down-blending services in each year from 2015 to 2024 is provided in Table 3. Although this assessment focuses on the impacts of transfers in the next few years, parts of the analysis make assumptions about transfers under these programs in future years.

This assessment assumes that DOE transfers for cleanup at the Portsmouth Gaseous Diffusion Plant will continue at the preexisting rates through the first six months of 2015. Beginning in July 2015, DOE would transfer at a rate of 1,600 MTU per year of natural uranium hexafluoride. DOE has a finite amount of natural uranium hexafluoride. DOE anticipates that at this rate, this material would be exhausted in the year 2020. Transfers for down-blending services would decrease to a total of no more than 60 MTU of enriched uranyl nitrate at an assay of 4.95 wt-% in 2015 and each year thereafter. DOE assumes transfers for down-blending will continue at this rate throughout the next 10 years Together, the natural uranium and LEU to be transferred each year are the equivalent of 2,100 MTU contained in uranium concentrates, 2,100 MTU as UF_6 in conversion services, and 520,000 SWU of enrichment services.

TABLE 3—VOLUME OF TRANSFERS FOR PORTSMOUTH CLEANUP AND HEU DOWN-BLENDING IN THE "ASSESSED CASE"

	Concentrates (MTU/million lbs U_3O_8)	Conversion services (MTU as UF_6)	Enrichment services (SWU)
2015	2,500/6.5	2,500	520,000
2016	2,100/5.5	2,100	520,000
2017	2,100/5.5	2,100	520,000
2018	2,100/5.5	2,100	520,000
2019	2,100/5.5	2,100	520,000
2020	992/2.6	992	520,000
2021	500/1.3	500	520,000
2022	500/1.3	500	520,000
2023	500/1.3	500	520,000
2024	500/1.3	500	520,000

In addition to the transfers listed in Table 3, this assessment also includes potential impacts associated with transfers that are not subject to section 3112(d). Specifically, this analysis includes prior transfers of depleted uranium hexafluoride to Energy Northwest, prior and continuing transfers to the Tennessee Valley Authority of blended low-enriched uranium, potential future transfers of off-specification uranium, and potential future transfers of depleted uranium hexafluoride to GE-Hitachi Global Laser Enrichment.[32] These transfers are discussed above in Section I.D.2.[33]

Collectively, this assessment refers to the transfers described above as the "assessed case." Consistent with the analytical approach described above, this section reflects comparison of two forecasts: one reflecting the state of each domestic uranium industry if DOE goes forward with transfers at this level, and one reflecting the state of each domestic uranium industry if DOE does not go forward with these transfers.

A. Uranium Mining Industry

The domestic uranium mining industry consists of a relatively small number of companies that either operate currently producing mines or are in the process of developing projects expected to begin production at some point in the near future. These projects are mostly concentrated in the western states—in recent years, there have been producing facilities in Arizona, Nebraska, Utah, Texas, and Wyoming. Most uranium mining facilities are owned and operated by publicly traded companies based in the United States or Canada. According to DOE's Energy Information Agency ("EIA"), production from domestic producers in 2014 totaled approximately 4.9 million pounds U_3O_8. EIA, Domestic Uranium Production Report Q4 2014, 2 (January 2015). For comparison, the World Nuclear Association (WNA) reports that worldwide production in 2013 was approximately 155 million pounds U_3O_8.

1. Prices for Uranium Concentrates

The effect of DOE transfers on prices is one of the chief vehicles through which the transfers can cause impacts on an industry. Accordingly, DOE has considered numerous inputs to forecast how transfers in the assessed case will affect prices. DOE analyzes both market prices and the prices that, on average, industry actually realizes for its products. Realized prices may be more significant for assessing the impact of transfers, but, as discussed below, they are not necessarily the same as market prices at any given time.

As described above, market prices for uranium concentrates are generally described in terms of the spot price and the term price. Although there are other types of published uranium prices, these two prices are the ones most frequently used as the basis for pricing terms in contracts for the purchase and sale of uranium concentrates. This section discusses the potential impacts

[32] Although some of these transfers have already taken place, DOE nevertheless recognizes they can affect the uranium industries in future years. DOE believes it is reasonable to view these transfers as affecting the market in the years and quantities ERI analyzes—typically one year prior to the material being reloaded into a reactor for uranium concentrates and conversion, and six months prior for enrichment.

[33] This assessment also takes account of sales of uranium under the Russian HEU Agreement and the Suspension Agreement. However, these transfers are considered as part of the background market, and are not part of the "assessed case."

of DOE transfers on these two prices.[34] For reference, as of March 30, 2015, UxC's spot price indicator was $39.50 per pound U_3O_8 and its term price indicator was $49.00 per pound U_3O_8.

DOE has reviewed several different estimates of the effect of DOE transfers on the market prices for uranium concentrates based on different economic models. These estimates appear in market analyses from four different uranium market consultants: ERI, TradeTech, NAC International (NAC), and UxC. DOE has reviewed and evaluated to the extent possible the methodology, assumptions, data sources, and conclusions of each of the market analyses.

a. Energy Resources International Report

DOE tasked ERI with estimating the effect of DOE transfers on the market prices for uranium concentrates. In the 2015 ERI Report, as in previous reports, ERI estimated this effect by employing two different types of model that rely on somewhat different assumptions and methods: a market clearing price model and an econometric model. For its market clearing price model, ERI constructs individual supply and demand curves and compares the clearing price with and without DOE transfers.[35] To develop its supply curves, ERI gathers available information on the costs facing each individual supply source. ERI then uses that information to estimate the marginal cost of supply for each source using a discounted cash flow model. 2015 ERI Report, 41 n.22. To develop its demand curve, ERI assumes a perfectly inelastic demand curve based on its Reference Nuclear Power Growth forecast.[36] ERI develops this forecast by combining estimates of the needs and reload schedules for operating plants with projections about future reactor retirements and new development. 2015 ERI Report, 17–18. The second model that ERI used to predict the effects of DOE transfers on the spot price for uranium is an econometric model. ERI compared the monthly spot and term market prices published by TradeTech with published offers to sell uranium for delivery within one year of publication and published inquiries to purchase uranium for delivery within one year. Based on this information, ERI developed a multivariable correlation to estimate how the market prices would respond to the availability of new supply from DOE. 2015 ERI Report, 50.

Several commenters requested that DOE subject the 2015 ERI Report to peer review. *E.g.* NIPC Comment of UPA, at 9; NIPC Comment of ConverDyn, Enclosure, at 1. DOE is not obligated to subject the 2015 ERI Report to peer review. DOE also does not believe the lack of peer review is a reason to doubt the ERI Report. Peer review is not appropriate in all circumstances, particularly outside of the scientific research context; and market analyses like ERI's are commonly not subject to peer review. DOE has reviewed the 2015 ERI Report for completeness and evaluated ERI's methodology, assumptions, and conclusions, particularly in comparison to other reports submitted by commenters. Meanwhile, DOE made the 2015 ERI Report available for public review through the March 2015 Notice of Issues for Public Comment. DOE also made public in May 2014 an analogous report that ERI prepared to assist the deliberations for the 2014 Determination. The analytical methods in the 2015 report are largely the same as those ERI used in the 2014 report. The public has thus had opportunities to offer substantive criticisms of ERI's analyses. One commenter points out that the Office of Management and Budget has advised that notice-and-comment procedures for agency rulemaking would not be considered an adequate substitute for peer review. DOE notes, however, that the concern motivating this advice was that the relevant experts may not file comments in such a process.[37] This concern seems less significant here, because commenters on the RFI submitted reports that three expert uranium market consultancies prepared specifically to address DOE's proposed transfers. To the extent commenters offered critiques of ERI's work, DOE has considered that input in its evaluation of the 2015 ERI Report.

After reviewing the 2015 ERI Report and ERI's explanation of its methodology, as well as comments such as those that provided additional or alternative forecasts of market prices, DOE believes that ERI's first methodology described above is reasonable for estimating the impact of DOE transfers in the long-term. The methodology is consistent with common economic principles applicable to a competitive market. In general in such a market, competition from DOE-sourced uranium can be expected to displace units of supply that have the highest marginal cost. Given buyers that demand uranium at the lowest price available, the displacement of those supplies would cause the price to decrease towards the highest marginal cost of the remaining supplies. However, some producers with relatively high marginal cost have entered into long-term contracts based at least partially on fixed price mechanisms. Under such circumstances, DOE-sourced uranium might not immediately displace units of supply with the highest marginal cost. Over the longer term, these fixed price contracts will eventually expire and the higher marginal cost producers would have to enter into new contracts at the then-prevailing market prices. Therefore, DOE believes the price for uranium concentrates reflects an ordinary price-setting mechanism over the long term.

In a market with elastic demand, calculating the effect of an addition to supply would be more complicated than ERI's analysis. ERI assumes a perfectly inelastic demand curve, and in that case the ERI analysis is consistent with the pricing mechanism just described. As stated above, it appears that the uranium concentrate market exhibits behavior suggesting that demand is relatively inelastic, but perhaps not completely inelastic. To the extent that demand is at all elastic, this would tend to dampen the price effect of DOE material. However, given that ERI's assumption about the market is conservative, in that it will tend to produce overestimates of the effect of DOE's transfers on prices, DOE believes it is reasonable for achieving the purposes of this analysis.

ERI relies upon an extensive collection of data about the production costs for various aspects of supply. ERI has explained the various sources from which it collects data about the different primary producers. ERI then applies a discounted cash flow analysis to determine an expected production cost. Where information is not available publicly, ERI makes assumptions based on information from similar production facilities. DOE believes that this approach would yield reasonably accurate data because most of the uranium producers are publicly traded companies that must disclose company financial and production information to

[34] DOE further notes that several of the other published uranium prices described in Section II.E appear to be based—either directly or indirectly—on either the spot or term price. To the extent there are differences between these and other published prices, DOE believes that the behavior of the spot and term price is representative of changes its transfers may cause in other prices.

[35] The market clearing price is the price at which quantity supplied is equal to quantity demanded.

[36] In other words, ERI assumes that demand for uranium will stay the same regardless of variations in market price.

[37] Office of Management & Budget, Final Information Quality Bulletin for Peer Review, (Dec. 16, 2004), available at *https://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2005/m05-03.pdf.*

regulatory agencies. DOE also notes that this approach to data collection about the industry appears to be standard among similar consulting firms. DOE is aware of no errors that would call ERI's data and methodology into question. In addition, the cost curve that ERI constructed from its data is comparable to analogous curves published by its industry peers.

DOE tasked ERI with estimating the effects of DOE transfers under three scenarios.[38] Under Scenario 1, DOE would transfer 2,055 MTU per year in the form of natural UF_6 and 650 MTU natural uranium equivalent per year of LEU for a total of no more than 2,705 MTU per year. Under Scenario 2, DOE would transfer 1,410 MTU per year in the form of natural UF_6 and 445 MTU natural uranium equivalent per year of LEU for a total of no more than 1,855 MTU per year. Under Scenario 3, DOE would transfer no uranium under these two programs. The transfer rates in these scenarios refer only to the level of uranium transfers for cleanup at the Portsmouth Gaseous Diffusion Plant and down-blending of LEU. For each scenario, ERI also analyzes the impacts of transfers under the following programs: TVA BLEU, Energy Northwest depleted uranium, potential future transfer of off-specification uranium, and a possible future sale of depleted uranium currently under negotiation. 2015 ERI Report, 21–32. The level of transfers across these three programs is the same in all three scenarios, and ERI's predictions about market price reflect these transfers as well as the cleanup services and down-blending transfers.

ERI notes that uranium transfers do not necessarily impact the market at the time of transfer. In general, the market impact will take place at the point in time where the transfers displace commercial supply. This can be estimated based on the expected schedule for delivery as reactor fuel. Thus, even though most of the TVA BLEU and all of the Energy Northwest transfers have already taken place, ERI estimates that these transfers will affect the market at various times in the future based on the expected delivery schedule. 2015 ERI Report, 21–22. Given that these transfers are targeted for specific reactors on predictable time-frames, DOE believes it is reasonable to assume that these transfers affect the market at the point when they displace commercial supply.

The transfer rates analyzed by ERI for down-blending services and cleanup at the Portsmouth Gaseous Diffusion Plant are summarized in Table 4. The assessed case is included for reference. Transfers under the other three programs mentioned above are included in ERI's analysis but are not included in this table because they are the same under any of the scenarios.[39]

TABLE 4—DIFFERENT SCENARIOS CONSIDERED IN THIS ANALYSIS

MTU natural uranium equivalent			
	Portsmouth cleanup	Down-blending	Total
ERI Scenario 1	2,055	650	2,705
ERI Scenario 2	1,410	445	1,855
ERI Scenario 3	0	0	0
Assessed Case (2016 and after)	1,600	500	2,100

Using its market clearing approach, ERI estimates that DOE transfers will have the effects listed in Table 5. For each year ERI included (2015–2024), the relationship between the amount of transfers under each scenario and the price effect is essentially linear. Compare Table 3.6 to Table 4.1 of 2015 ERI Report, 25–26, 45. This linearity is unsurprising, because the slope of ERI's cost curve does not change much as a function of supply at the levels of current supply. Therefore, the price effect of DOE transfers under the assessed case can be interpolated from ERI's estimates. Table 5 presents ERI's estimates of the price effect of DOE transfers for all three scenarios and DOE's interpolation of the price effect for the assessed case.[40]

TABLE 5—ERI'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON URANIUM CONCENTRATE SPOT AND TERM PRICES IN $ PER POUND U_3O_8

[Market clearing approach]

2015 ERI Report				
	ERI Scenario 1	ERI Scenario 2	ERI Scenario 3	Assessed case (interpolated)
2015	$3.00	$2.10	$0.30	$2.80
2016	2.80	1.90	0.10	2.20

[38] One commenter suggests that DOE should not have tasked ERI to consider specific scenarios; instead the commenter states that DOE should have asked ERI to evaluate the ''optimal conditions for transfers, including how to minimize the adverse impact of the transfers on domestic industry while also maximizing the benefit to DOE.'' NIPC Comment of ConverDyn, Enclosure, at 9. As the impact of DOE transfers depends heavily on the specific circumstances, it is unlikely that there is a single ''optimal'' level of transfers. DOE believes a more appropriate approach is for DOE to seek out information regarding how its uranium transfers will affect the domestic uranium industries—including through tasking ERI to analyze these effects—and then for DOE to assess whether those effects amount to an adverse material impact on one or more of the domestic uranium industries.

[39] Under each of the three scenarios analyzed by ERI and the assessed case, the annual rate listed in Table 4 represents the rate only until uranium available for the Portsmouth cleanup is exhausted. Under scenarios 1 and 2 and the assessed case, this will occur by 2019, 2021, and 2020, respectively. The rates transferred for down-blending are the same throughout the study period.

[40] Note that to infer the price effect, DOE has not simply interpolated the 2,100 MTU figure between the annual rate for Scenarios 1 and 2. As discussed above, the appropriate time for assigning a price effect to a quantity of transferred uranium is the time at which it would displace commercial supply. In addition, both Scenario 2 and the assessed case involve transferring natural uranium more slowly than Scenario 1, yet DOE assumes (as ERI did) that it will continue transferring natural uranium until it exhausts its current inventory. Thus, in Scenario 2 and the assessed case, the Department will be transferring uranium in later years when, under Scenario 1, natural-uranium transfers would have ceased. The Department's interpolation reflects these calculations.

TABLE 5—ERI'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON URANIUM CONCENTRATE SPOT AND TERM PRICES IN $ PER POUND U_3O_8—Continued

[Market clearing approach]

	2015 ERI Report			
	ERI Scenario 1	ERI Scenario 2	ERI Scenario 3	Assessed case (interpolated)
2017	2.70	1.80	0.00	2.10
2018	3.30	2.50	0.60	2.70
2019	2.50	3.00	1.20	3.20
2020	2.80	4.00	2.10	3.10
2021	3.00	3.20	2.40	2.90
2022	2.70	2.50	2.10	2.60
2023	3.20	3.00	2.50	3.10
2024	2.60	2.40	2.00	2.50
Average (2015–2024)	2.80	2.60	1.30	2.70

It is important to emphasize that this is not a prediction that prices will drop by the specified amount once DOE begins transfers following a new determination. A level of price suppression consistent with the estimate for Scenario 1 would, in this model, already be roughly reflected in the current market price because DOE is currently transferring uranium at that rate. 2015 ERI Report, 44. The price suppression that ERI estimates would persist under Scenario 3 is largely attributable to past DOE transfers, from which some of the uranium is still expected to be entering the market in future years. Similarly, if DOE begins transferring at the level of the assessed case, instead of at current rates, a positive effect on market prices of $0.60, compared to existing prices, could be expected in 2016, the first full year of DOE transfers at the rate of 2,100 MTU per year.

One commenter argues that the price effect described by ERI under Scenario 1 is not already built into current market prices and suggests that the price effect described by ERI should be cumulative. NIPC Comment of UPA, at 9. This commenter appears to misunderstand the nature of ERI's analysis. ERI's market-clearing approach is based on the economic principle that the market price will tend toward the competitive equilibrium price, *i.e.* the price at which the demand curve intersects the supply curve. The existing supply and demand curves include DOE transfers at the existing rates. Thus, the current market price should reflect, in part, this level of supply.[41] The price effect estimated by ERI is based on a calculation of where the two curves would intersect in the absence of DOE-sourced material. ERI uses its production data to estimate the amount of U_3O_8 that will be supplied *each year* over the next ten years, and uses these annual supply curves to estimate the price effect. 2015 ERI Report, 42. Since ERI is comparing the volume of DOE transfers in each year to the expected amount of supply *in that year,* these estimates take account of future changes in supply. For these reasons, it would be inappropriate to add the estimated price effect in separate years together, as the commenter proposes to do. In addition, the commenter's argument that adding 2,705 MTU to a market will necessarily cause a further price decrease does not take account of the fact that material is continually produced and consumed over time. Transfers at a rate of 2,705 MTU per year would be at the same rate as (or slightly below) transfers in the past few years. It is appropriate to assess the effect of that rate of transfers in light of the ongoing rates of production and consumption. DOE notes that the commenter's suggestion is also contrary to the forecasts of the three other market reports discussed below.

ERI also used its econometric model to estimate the effect of DOE transfers on the spot market price. As with ERI's market clearing price analysis, the relationship between the average volume of DOE transfers and ERI's estimated price effect over each time period is roughly linear. Thus, the price effect of transfers at the levels in the assessed case can be interpolated.[42] ERI's predictions based on its econometric model and the interpolated price effect for the assessed case are summarized in Table 6. By comparison to the market clearing analysis, the econometric model deals with short-term supply and demand and spot prices. Existing market prices should reflect already ongoing transfers at the levels of Scenario 1. Thus, on ERI's analysis prices already exhibit a level of price suppression similar to the level predicted in the near term under Scenario 1. 2015 ERI Report, 52–53. Thus, ERI's econometric model estimates suggest that if DOE begins transferring at the lower level represented by the assessed case, a positive influence on market prices approximately $0.40 would be expected in the near term.

[41] As noted above, the majority of uranium production is sold on long-term contracts. While DOE has been transferring at a rate at or below 2,800 MTU per year since 2012, contract terms may run 10 years. Thus, the market may not have fully equilibrated in response to continued transfers at the current rate.

[42] See note 40 above for details of how DOE performs the interpolation.

TABLE 6—ERI'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON URANIUM CONCENTRATE SPOT PRICE IN $ PER POUND U_3O_8

[Econometric model]

2015 ERI Report	Estimated price effect (2015–2017)	Estimated price effect (2018–2024)
ERI Scenario 1	$2.40	$5.10
ERI Scenario 2	1.70	4.80
ERI Scenario 3	0.30	2.00
Assessed Case (Interpolated)	2.00	4.80

DOE notes that certain assumptions in the model seem relatively uncertain over the longer term. The basic nature of the model is that ERI calculated a functional relationship between published prices and certain supply and demand variables representing, in essence, uncommitted supply and demand. ERI established this relationship by means of statistical correlations between past prices and past supply and demand variables. The model then predicts future prices based on the future course of the supply and demand variables. However, forecasts of uncommitted supply and demand require assumptions not only about how supply and uranium requirements will evolve, but also about how suppliers and purchasers will vary their mix of long-term and short-term purchasing. In the short-term, the mix of long- and short-term purchasing can be predicted based on the mix in recent years and on the estimates of uncovered supply. Such forecasts become significantly less reliable for later years. Thus, for example, market consultant UxC provides only limited future projections of future contracting activity in its annual Uranium Market Outlook—[REDACTED]. UxC Uranium Market Outlook—Q4 2014, 63, 66 (2014). Consequently, while DOE believes that ERI's econometric model provides a reasonable estimate of the response of the spot price to DOE transfers in the near term, it believes estimates of this response in future years will be increasingly less reliable the further out in time the estimate.

Commenters urge DOE to distinguish between spot sales, term sales, and other types of ''forward sales.'' Cameco Corporation (Cameco) states that forward delivery contracts are ''simply contracts along the forward price curve, which is essentially the spot price with a minor adjustment for carrying costs.'' NIPC Comment of Cameco, at 3. Similarly, ConverDyn states that a new market has arisen for ''buy and hold'' or ''carry trade'' sales that should be characterizes as ''an extension of the spot market to approximately a 3-year term.'' NIPC Comment of ConverDyn, Enclosure, at 5. DOE recognizes that market participants use a range of contracts with characteristics that fall somewhere between the ''traditional'' term contracts and spot contracts described by commenters. EIA defines a ''spot contract'' to call for delivery of the entire contracted amount within one year. A ''term contract''—of short, medium, or long term—involves one or more deliveries after one year. A contract that would be a ''term contract'' under this definition may influence either the spot market or the term market (as defined by UxC and TradeTech) more or less depending on various contractual terms such as length of time before initial delivery, number of deliveries, and the pricing mechanism. Consistent with this notion, and as noted above in Section II.E.2, sources other than the UxC and TradeTech offer price indicators for future-delivery contracts that appear to be similar to what commenters describe.

With respect to DOE transfers affecting the spot market, ERI assumes that 50% of DOE transfers for cleanup at Portsmouth are introduced through term contracts. 2015 ERI Report, 34. ERI's assumption relies in part on statements by Traxys North America LLC (Traxys), the entity that currently purchases the material that DOE transfers to Fluor B&W Portsmouth for cleanup work at the Portsmouth Gaseous Diffusion Plant. Traxys has stated it sells as much as 90% of the material it purchases from Fluor under forward delivery contracts that do not affect the spot market. Declaration of Kevin P. Smith, *ConverDyn* v. *Moniz,* Case no. 1:14–cv–01012–RBW, Document 17–7, at ¶ 14 (July 7, 2014); RFI Comment of Traxys, at 1. Some of the commenters that made observations about the difference between forward delivery contracts and term contracts also rejected ERI's assumption because, these commenters say, the Traxys sales are actually spot sales even if they are for future delivery.

DOE notes that ERI's assumption that only 50% of these sales enter the term market is conservative, in that Traxys claims this figure is closer to 90%. In any case, if in fact more or less than 50% of DOE transfers for Portsmouth cleanup in fact are not sold through term contracts—in that they do not affect the term price indicators published by UxC and TradeTech—such an error in ERI's assumptions would simply decrease the reliability and certainty of ERI's econometric forecast in the mid- to long-term.[43] As described above, DOE concludes that this analysis is likely to be less reliable over the longer term anyway, because predictions about uncommitted supply and demand in future years are uncertain. Comments about the nature of Traxys's sales do not call into question the utility of ERI's econometric analysis for near-term forecasting, because commenters do not dispute that Traxys sells at least 50% of its material on contracts with deliveries more than a year in the future.[44] Even if those deliveries would affect future spot prices, it is appropriate for ERI's econometric model not to include the material in present supply.[45]

[43] ERI's report includes tables laying out how much DOE-sourced material will enter each spot market—uranium, conversion, and enrichment—in coming years. These tables would be relevant for comparing the scale of DOE's transfers to the volume of uncommitted supply and demand in the various markets. However, as explained in the NIPC, DOE does not consider such a comparison, on its own, as useful for assessing the impact of transfers as forecasts about price.

[44] Commenters suggest that sometimes a seller of a future-delivery contract will ''forfeit'' its contract. They do not claim Traxys does so with DOE-sourced material.

[45] In the analysis ERI prepared for the Department's deliberations on the 2014 Determination, it made a similar assumption that around 50% of the material transferred for cleanup services at Portsmouth would only affect term markets. If in fact those sales have essentially been one- to three-year spot sales, the material transferred in 2012 through 2014 could be affecting spot markets at present and in the near term. The

Continued

Furthermore, ERI's market clearing approach forecasts how prices will respond to changes in supply over the longer term and depends on the overall level of supply rather than on the specific mix of spot versus term contracts in a given year. Accordingly, ERI's market-clearing analysis did not use the assumption about Traxys's mix of spot and term deliveries of DOE-sourced uranium.

b. TradeTech Report

The Uranium Producers of America (UPA) attached to its comment in response to the RFI a market analysis it commissioned from TradeTech, LLC, a uranium market consultant. RFI Comment of UPA, Attachment, TradeTech, ''UPA DOE Material Transfer Study'' (2015) (hereinafter ''TradeTech Report''). A summary of TradeTech's estimates appears in Table 7. TradeTech explains that it estimated the price effect of DOE transfers using its proprietary Dynamic Pricing Model. This model uses an econometric forecasting approach to estimate the equilibrium between two dimensions TradeTech calls ''active supply'' and ''active demand.''[46] In its estimates, TradeTech assumes that 50 percent of DOE transfers enter the spot market and 50 percent enter the term market. TradeTech Report, 14. Using its model, TradeTech estimates that DOE's transfer reduced the spot price by an average of $3.55 per pound between January 2012 and December 2014. TradeTech Report, 15. TradeTech also estimates that continued DOE transfers at current rates would reduce the spot price by an average of $2.43 per pound between January 2015 and December 2016. TradeTech Report, 20.

DOE understands this ''reduction'' to mean, as with ERI's analysis, not an additional decrease in prices beginning in January 2015, but a continued price suppression. In other words, TradeTech suggests that if DOE ceased transferring at current rates then prices could be higher by an average of $2.43 per pound in 2015 and 2016.

TradeTech also provides estimates for the effect of DOE transfers at several decreased transfer rates. If DOE transfers decreased to 75% of current levels, TradeTech estimates that the spot price would increase by an average of $0.53 per pound between January 2015 and December 2016. TradeTech Report, 26.[47] Based on TradeTech's estimate of the price suppression of DOE transfers at current levels, it appears that TradeTech is estimating that price suppression at 75% of current levels would be $1.90. If DOE transfers decreased to 50% of current levels, TradeTech estimates that the spot price would increase by an average of $1.10 per pound between January 2015 and December 2016. TradeTech Report, 25. This corresponds to a price suppression of $1.33. If DOE transfers decreased to 25% of current levels, TradeTech estimates that the spot price would increase by an average of $1.73 per pound between January 2015 and December 2016. TradeTech Report, 24. This corresponds to a price suppression of $0.70. The TradeTech Report does not state the numerical volumes that correspond to these decreased transfer rates. However, DOE notes that the 2,100 MTU rate is slightly above 75% of the level included in the May 2014 Determination. Thus, DOE believes that TradeTech's ''75%'' figure is roughly equivalent to, although slightly below, that level.

TABLE 7—TRADETECH'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON URANIUM CONCENTRATE SPOT PRICE IN $ PER POUND U_3O_8

TradeTech Report	
Transfer rate (compared to current)	Estimated price effect (2015–2016)
100%	$2.43
75%	1.90
50%	1.33
25%	0.70

TradeTech's forecast for the scenario in which DOE continues transferring uranium at current rates is fairly similar to the forecast ERI generated for that scenario using its econometric model. This apparent agreement could be taken as confirmation that the forecasts are reasonable. Alternatively, the agreement between the two could just indicate that TradeTech and ERI have applied similar mathematical tools to similar inputs and modeling assumptions. It does not necessarily validate either the assumptions or the choice of mathematical model.

As with ERI's econometric model, DOE notes that TradeTech's assumptions about the amounts of uncommitted supply and demand seem relatively uncertain over the longer term because they depend on the actions of individual market participants that may reflect economic influences about which little information is available. For example, a strategic buyer or seller of uranium does not have to buy uranium at a given time; that participant may or may not contribute to uncommitted supply and demand depending on current prices, the participant's expectations of prices, and other factors. In responding to the possibility of such effects, ERI assumes that uncommitted supply and demand will repeat their courses of recent years. Meanwhile TradeTech introduces a ''quadratic coefficient to capture market exuberance, which measures market momentum.'' TradeTech Report, 14. Although the mix of long- and short-term purchasing can likely be predicted in the short-term based on prior contracting activity, forecasts based on this type of data would be significantly less reliable in the long-term.[48]

For reasons like these, although TradeTech's forecast based on uncommitted supply and demand may provide a reasonable estimate of the price response of DOE transfers in the short term, DOE believes the price response over the medium- and long-term is most appropriately estimated and forecast using information and assumptions about overall demand and supply. ERI's ''market-clearing'' model is a reasonable implementation of this approach.

c. NAC International Report

Fluor-B&W Portsmouth attached to its comment in response to the RFI an April 2014 market analysis from NAC

econometric analysis of future transfers need not account for that material explicitly, because existing uncommitted supply and demand already reflect those quantities.

ERI assumed that the other past transfers included in the assessed case—such as the blended LEU provided to the TVA—are effectively on term contracts. Commenters do not contest that characterization, and DOE believes it is reasonable to assume these materials are not appearing on spot markets.

[46] TradeTech states that the uranium markets are relatively illiquid and are characterized by periods of high price volatility. TradeTech Report, at 2–5. It does not appear that TradeTech is suggesting that DOE transfers significantly affect these characteristics of the market. Instead, it appears that TradeTech believes these are mechanisms by which DOE transfers impact the market price. DOE assumes that TradeTech's prediction of the price effect of DOE transfers reflects these market characteristics that TradeTech highlights.

[47] Figures 16–19 of the TradeTech Report show TradeTech's estimates for the price impact at a range of different transfer rates. Although these charts and the related text refer to ''Transfers at [25, 50, or 75] Percent of Established 2014 Volumes,'' it appears that these charts actually reflect an estimate for a 25%, 50%, or 75% *decrease* relative to current levels, rather than transfers at the specified percentage of current levels.

[48] In addition, TradeTech has assumed that 50% of the uranium that DOE transfers ultimately goes on the term market. As noted above, commenters suggest that assumption is incorrect because, they say, the material is actually sold on spot-like future-delivery contracts. As explained above with respect to ERI, this argument simply serves to decrease further the reliability of medium- and long-term price forecasts based on these econometric models.

International (NAC). RFI Comment of Fluor-B&W Portsmouth, Attachment A, NAC International, ''Impact of DOE Excess Uranium Sales on the U_3O_8 Market'' (April 2014) (hereinafter ''NAC Report'').[49] In its analysis, NAC based its production cost estimates on its Uranium Supply Analysis System (USAS). NAC updates this model each year based on a review of various published reports and presentations. NAC then applies cost models to derive specific cost estimates for individual properties. NAC Report, C–1. Specifically, NAC applies a discounted cash flow rate of return model based on both full cost (including sunk costs) and forward costs for each property. NAC Report, C–2 to C–3. NAC also utilized an estimate of reactor requirements and uncommitted demand developed from its Fuel-Trac database. NAC Report, D–1.

NAC developed a range of estimates of the impact of DOE transfers utilizing its production cost estimates at three different rates: 2,800 MTU per year, 2,400 MTU per year, and 10% of U.S. reactor requirements. NAC Report, 3–21 to 3–22. First, NAC applied a methodology it believes approximates ERI's approach to its own cost estimates. Specifically, NAC identified the incremental cost of the last property needed to meet demand in a given year based on total supply and demand. NAC Report, 3–22. NAC then explains that because long-term contracts with fixed pricing mechanisms have allowed some high-cost producers to produce ahead of lower cost supply, it believes a better approach is to base the model on uncommitted supply and demand. NAC then applies a multiplier to these estimates to account for additional incremental costs not included in its site forward production costs estimate. These additional costs include increased site forward costs due to operation at less than nominal capacity, taxes, corporate overhead, and variations in the required rate of return. NAC Report, 3–23. NAC also applies a time shift to the cost trend to account for the fact that producers need a price signal before investing in a new production center—*i.e.* producers need to have prices that justify an investment before actually making the investment. NAC Report, 3–24. The specific quantitative impact projected by NAC is summarized in Table 8.

TABLE 8—NAC ESTIMATES OF PRICE EFFECT OF DOE TRANSFERS ON URANIUM CONCENTRATE SPOT PRICE IN $ PER POUND U_3O_8 [51]

	NAC Report					
	Uncommitted supply demand			Uncommitted supply demand adjusted by [REDACTED] [50]		
	2400 MTU	2800 MTU	10% of US Req.	2400 MTU	2800 MTU	10% of US Req.
2014 2015 2016 2017 2018 2019 Average (2014–2018)	[REDACTED]					

DOE has considered NAC's forecast, but does not place much weight on these estimates for the reasons explained below. DOE notes that NAC estimates a price effect from DOE transfers that is much smaller than what other experts (including ERI) conclude. While, as noted above, an agreement between two similar models does not necessarily increase the credibility of either, a substantial difference like that between NAC's model and others creates some doubt. Some important input, either of data or of modeling assumption, must have caused the departure; the difference in predictions thus represents a disagreement between the modeler and other experts. That is not to say that NAC's model is necessarily incorrect. But in this context, where an error would mean substantially misestimating the potential impact of DOE's transfers, DOE would only rely on the estimate if the difference from other forecasts were well understood and justified.

In addition, DOE does not agree that it is appropriate to focus on uncommitted supply and uncommitted demand, as opposed to total supply and demand, in the manner described by NAC. Entities other than primary producers and reactor owners/operators participated in the uranium concentrates market. NAC's estimate of uncommitted supply and demand appears not to incorporate these other participants. *See* NAC Report, 3–20.[52] Given this uncertainty, DOE does not believe relying on NAC's conclusions would be justified.

d. UxC Report

Cameco Corp. attached to its comment in response to the RFI a market analysis it commissioned from UxC, another uranium market consultant. RFI Comment of Cameco Corp., Attachment, UxC Special Report, ''Impact of DOE Inventory Sales on the Nuclear Fuel Markets'' (January 2015) (hereinafter ''UxC Report''). A summary of UxC's

[49] As this report was prepared in April 2014, it does not contain updated information on developments in the markets since that time. The level of uranium transfers that it analyzes is based on the levels specified in the May 2012 Secretarial Determination, which is roughly similar to, though slightly higher than, the current rate of transfers. NAC Report, A–1 to A–3.

Some commenters expressed concern that DOE's 2014 Determination relied on information from Fluor-B&W that was outdated and that, because Fluor-B&W is not a regular participant in uranium markets, warranted no reliance. DOE recognizes that the NAC Report is based on data that are now more than one year old. DOE's analysis relies on information from myriad sources, described throughout, and uses the data currently available. Data from EIA and other sources may lag the market by as much as several months, but given the rate at which these markets change, it is appropriate to rely on data after such a limited delay.

[50] Note that NAC states that it believes it is appropriate to apply a multiplier [REDACTED]. *See* NAC Report, 3–22 to 3–24.

[51] NAC also provides estimates based on Total Supply and Demand at Table 3.4. NAC Report, 3–22. Given that the report states that NAC believes this approach is inaccurate, these estimates are not reproduced in this table.

[52] NAC explains that its estimate of uncommitted demand consists of uncommitted utility demand plus supplier delivery commitments in excess of estimated production capability. This second aspect may refer to some of the demand created by brokers and traders. However, it is not clear whether this includes strategic or discretionary purchases by utilities or other entities.

estimates of the effect of DOE transfers on future prices appears in Table 9. UxC explains that it estimated the price effect of DOE transfers using two proprietary econometric models: The U–PRICE model and the SWU–PRICE model. UxC explains that these models were developed using historical data on the nuclear fuel markets collected and compiled by UxC. These two models take into account and quantify the impact of ''key factors influencing the markets.'' UxC also explains that the two models can be linked to simulate the interrelationship between uranium concentrates and enrichment. UxC Report, 3.

Using these two models, UxC estimates the effects of DOE transfers on prices during the period between 2012 and 2014. UxC provides two estimates. It derived the first, which it labels the ''incremental approach,'' by running its models from 2011 onwards, with and without DOE transfers. It prepared the second, which it calls the ''total impact approach,'' by running its models from 2008 onwards. UxC's models generally ascribe to DOE's transfers an accumulating effect on price, because, according to UxC, past transfers ''have a longer-term effect on market perceptions among both buyers and sellers.'' UxC Report, 5. Thus, by running its models from 2008 onwards, UxC produces 2012 estimates that reflect cumulative effects it ascribes to transfers between 2008 and 2011. UxC's ''incremental'' estimate is that between 2012 and 2014 DOE's transfer reduced the spot price by an average of $4.50 per pound and the term price by an average of $2.88 per pound. UxC's ''total impact'' estimate is that between 2008 and 2014 DOE's transfers reduced the spot price by an average of $7.11 per pound and the term price by an average of $5.10 per pound. UxC Report, 6–7.

UxC also forecasts the effect of continued DOE transfers at current rates for the period 2015 to 2030. UxC predicts that such transfers in the near and medium terms would reduce the spot price by an average of $5.78 per pound. UxC projects that this effect will change slightly in the medium term as market prices start to recover. Specifically, DOE transfers (at current rates) would reduce the spot price between 2018 and 2030 by an average of $4.47 per pound. UxC also notes that the former number is larger relative to the expected price of uranium than the latter number (14.1% versus 7.1%). UxC Report, 10. UxC forecasts that DOE transfers (at current rates) in the near and medium terms would reduce the term price by an average of $4.86 per pound. Between 2018 and 2030, DOE transfers are predicted to reduce the term price by an average of $5.30 per pound. Again, the near and medium term impact is larger in relation to the expected price (9.0% versus 7.1%). UxC Report, 11.

TABLE 9—UxC'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON URANIUM CONCENTRATE SPOT AND TERM PRICES IN $ PER POUND U_3O_8

	UxC Report			
	Near- & mid-term price effect	Percent of expected price	Long-term price effect	Percent of expected price
Spot Price	$5.78	14.1%	$4.47	7.1%
Term Price	4.86	9.0%	5.30	7.1%

UxC puts particular emphasis on the interrelationship between the uranium and enrichment markets. UxC states that uranium and SWU are ''substitutes.'' Thus, UxC uses enrichment prices as an input into its uranium concentrate price forecast, and vice versa. UxC Report, 5, 8, 17. As described in Section II.A.5, DOE understands that this interplay can take several forms. First, to the extent that enrichers have unsold enrichment capacity, they may apply that excess capacity to underfeeding and/or re-enriching DUF_6 tails. This essentially allows enrichers to generate additional natural uranium hexafluoride, which could then be sold on the open market. Second, if the price of enrichment decreases relative to the price of uranium concentrates, the optimum tails assay decreases, so that customers may deliver less natural uranium feed to get the same amount of enriched uranium output.

The other market analyses do not appear to take these interactions into account.[53] DOE has carefully considered UxC's analysis. However, DOE does not believe UxC's consideration of the above-referenced interactions is a reason to place greater weight on UxC's modeling for the following reasons. Among other things, the contribution of enrichment price changes to the uranium price, in the conditions relevant here, is quite small, even compared to the effect of DOE's transfers, particularly in the short term. Assuming an enriched product assay of 4.5% and a tails assay of around 0.25%, applying one SWU of additional enrichment can generate roughly one kilogram of additional natural uranium. Thus, if the price for one SWU decreases by 4% and the price for one kilogram of uranium decreases by 7%, as UxC forecasts to be the average effect of continued transfers at current rates, the comparative value of using spare capacity to provide enrichment or for underfeeding would change by only 3%. ERI forecasts that underfeeding will supply about 8 million kg of natural uranium per year in the medium term, about 11–12% of predicted world requirements. Changing that supply by 3% would mean a change of about 200 MTU, much less than the 2,705 MTU of DOE transfers that UxC assumed.

Furthermore, UxC's forecast for the price effect attributed to DOE transfers in coming years is substantially higher than what any of the other reports predict. That difference may be a reason to scrutinize UxC's predictions. In addition, aspects of UxC's models, as explained below, appear to make them less reliable in this regard, especially for the task of attributing price effects to a discrete element of supply, specifically DOE's transfers. UxC uses several exogenous variables to account for subjective, unquantifiable phenomena such as ''market participants' general perception of the industry outlook'' and ''changes in market psychology.'' These exogenous variables appear to play key

[53] ERI's market clearing price analysis, for example, includes material from underfeeding as ''Secondary Supply.'' However, ERI does not consider how a change in uranium concentrate and/or conversion prices would affect the price of SWU or the level of underfeeding present in secondary supply. In effect, ERI assumes that secondary supply based on enrichment services has a marginal cost lower than any primary producer in the market, so that this source would contribute the same amount of supply at any price level among those likely to be attained. TradeTech's and NAC's reports do not mention accounting for enrichment-based secondary supply.

roles at certain steps in the models. UxC assigns values for the variables prior to running its model in order to define the scenario that the model will forecast. Thus, the outputs depend in part on UxC's subjective decisions about input factors such as ''market sentiment.'' Perhaps that characteristic does not impair UxC's ability to forecast prices in the near future, because it might be possible to choose appropriate values for these variables by finding those for which the model best reproduces the recent past. But to assign a price change to DOE's transfers, UxC necessarily ran its models with counterfactual scenarios, namely the markets without DOE transfers, and it made different assumptions about future markets. While UxC has not said whether it used the same values for its exogenous variables in running the model with and without DOE transfers, DOE must presume it used different values because the report stresses that DOE's transfers have a long-term effect on ''market perceptions,'' the type of unquantifiable factor the variables are meant to represent. For all these reasons, DOE concludes that a model reliant on subjective exogenous variables is likely to be less reliable than those used by the other reports.

e. Effect of DOE transfers on market price

In light of these market analyses and its review of them, DOE concludes that transfers under the assessed case will continue to exert some downward pressure on the market price for uranium concentrates. DOE believes $2.70 per pound is a reasonable estimate of how much downward price pressure transfers under the assessed case will contribute on average over the next decade. In 2016 and 2017, the price impact will be even lower, between $2.10 and $2.20 according to ERI's market clearing analysis, and approximately $1.90–$2.00 according to ERI and TradeTech's econometric forecasts. To be cautious, DOE will base its analysis on the full amount of $2.70.[54]

The significance of price suppression at this level depends, at least in part, on market price. Recent spot and term price indicators published by UxC on March 30, 2015, were $39.50 per pound U_3O_8 on the spot market and $49.00 per pound U_3O_8 on the term market. The forecast price effect reasonably attributable to DOE transfers represents 6.8% and 5.5% of these values, respectively. But comparing future price changes to current prices provides at most a sense of scale. DOE believes it is more appropriate to compare the price effect in future years to forecasted market prices in those years.

Several sources generally predict an increase in market prices over the next several years. ERI notes that term prices are expected to increase in the future, but does not provide a specific forecast. 2015 ERI Report, 46. ERI's econometric model, however, does show an increase in the spot price. Specifically, ERI forecasts that spot prices will recover over the course of 2015–2018 eventually settling in the $52–57 range after 2019. 2015 ERI Report, 52. TradeTech's Exchange Value spot-price forecast increases to approximately $50 as early as June 2016, even with DOE transfers. TradeTech Report, 20. UxC's estimates of the effect of DOE transfers assume that market conditions will improve in the medium term. [REDACTED]. Figures 5 & 6, UxC Report, 11. In its annual Uranium Market Outlook, UxC provides a more detailed explanation of its price forecast, which generally predicts an increase in price over the next 10 years. UxC Uranium Market Outlook—Q4 2014, 111–19 (2014). [REDACTED]. *Id.* at 119.[55]

Using these price forecasts, it is possible to project the estimated price effect in future years as a percentage of the expected market price. ERI's market clearing price model predicts that the price effect will remain relatively stable over the next years. As prices increase, this price effect will represent a smaller proportion of the then-prevailing market prices. As spot prices increase above $50, which DOE expects will happen by 2019 or 2020, the long-term price effect attributable to DOE transfers would represent approximately 5.4% of the spot price.

f. Effect on realized prices

A principal mechanism through which a change in market price could impact the domestic uranium mining industry is through the effect on the prices that various production companies actually receive for the uranium they sell—the ''realized price.'' The market prices published by TradeTech and UxC are based on information about recent offers, bids, and transactions. Thus, the market price is a snapshot of contracting activity at the time of the publication. It includes activity that does not involve the domestic uranium producers—*i.e.* transactions involving international producers, traders, and brokers. In addition, the current market prices do not reflect the fact that many uranium producers actually achieve prices well above the market prices due to the prevalence of long-term contracts that lock in pricing terms over a period of several years.

Most deliveries of uranium concentrates take place under term contracts. According to contracting data published by UxC, utilities made spot purchases of [REDACTED].[56] UxC Uranium Market Outlook—Q4 2014, 27 (2014). UxC projects that spot purchases in 2015 and 2016 [REDACTED]. *Id.* at 63.[57] These figures indicate that utilities met approximately [REDACTED] of their requirements in 2014 through contracts greater than one year in duration.[58]

It is also significant that long-term contracting volume has not been uniform in recent years. [REDACTED].[59] [REDACTED]. *Id.* at 29. [REDACTED]. *Id.* at 28, 61, 66. [REDACTED]. *Id.* at 28. Based on this information, DOE notes that the vast majority of current term contracts were entered into when market prices were significantly higher,

[54] Two commenters contended that DOE's forecast of the price effect is implausibly low because, they said, the spot price has in the past changed by almost $6 per pound in response to volume changes less than 2% of DOE's transfers. DOE notes that 2% of DOE's transfers would amount to around 54 MTU per year. It seems highly unlikely that a change in supply by 54 MTU per year would cause a price change of $6 per pound, and the commenters cited no specific examples.

[55] Commenters describe a variety of different market effects that will affect market prices in future years, including currency exchange rates, changes in demand due to Fukushima, high near-term production. UxC's appears to take these various factors into account in developing its price projections. Given these considerations, and given that UxC's projections of prices are in general agreement with the other models, DOE has noted UxC's price projections in the above discussion, although, for the reasons discussed above, DOE does not take the same view with respect to UxC's forecast of the price effect attributable to DOE transfers. Forecasts of the overall trend of prices ultimately reflect predictions about total requirements and total supply, which are less susceptible to some of the uncertainties that arise for the econometric models discussed in this analysis.

[56] As this figure was published in December 2014, it does not include contracting activity for the balance of 2014. UxC projects that spot purchases by utilities in the remainder of [REDACTED]. UxC Uranium Market Outlook—Q4 2014, 63 (2014).

[57] UxC also reports that purchases by traders, brokers, and entities other than utilities [REDACTED]. UxC Uranium Market Outlook—Q4 2014, 27 (2014). UxC projects that purchases by non-utilities [REDACTED]. *Id.* at 63.

[58] EIA defines the spot market to include contracts for delivery in less than one year. UxC appears to use the same definition.

[59] This figure refers to the aggregate volume purchased under all term contracts entered into during each year. However, actual deliveries would not take place for several years. For example, a hypothetical term contract entered into in 2010 might provide for a specified amount of U_3O_8—say 200,000 pounds—to be delivered in each year beginning in in 2012 and ending in 2019. The number included in the 2010 total volume figure for this contract would be 1.6 million pounds.

i.e. when term prices were above $60.00.

These observations are particularly significant because uranium prices have declined in recent years and only recently began to recover. In 2014, the spot price reached a low of $28.25, after decreasing from a high of $136.00 in 2007. Compared to the low of $28.25, a price effect from DOE transfers of $2.70 per pound would represent 9.6%. However, the actual effect experienced by a primary producer would be the proportionate change in its realized prices. As mentioned above, several of the market analyses that DOE reviewed forecast that prices will be increasing substantially in the next few years and should reach $50 by 2019 or 2020. Consistent with those forecasts, spot prices are currently 16–20% higher than they were one year ago. Because the low prices of 2013–2014 were only temporary, realized prices for most producers can be expected to be more in line with the longer-term trend of prices. Consequently, the price effect of DOE's transfers should be regarded in comparison to the longer-term trend rather than to the recent past of especially low prices. Furthermore, based on current trends in term contracting, there will be relatively few new term contracts entered into on the basis of current prices and they will likely have a shorter average duration than in years past. Thus, although the price effect attributable to DOE transfers in the term market would have an effect that would persist through the life of any new term contracts, this effect is likely to be limited in the near term.

ERI estimates the prices realized by U.S. producers by gathering information from public filings representing approximately 95% of U.S. production. 2015 ERI Report, 60–61. Realized prices declined for most primary producers in 2014, an outcome that presumably reflects the fact that market prices had, by 2014, been declining continually for several years. 2015 ERI Report, 61. Still, ERI estimates that several producers achieved realized prices in 2014 well above the average spot price over the course of the year. At least one producer achieved a realized price well above the average term price for 2014. 2015 ERI Report, 61.

ERI reports that some mining companies have negotiated contracts that base the price paid at least partially on a fixed or base-escalated pricing mechanism. As an example, Cameco has reported that the price sensitivity of its current contract portfolio is about 50% of any change in spot market price. ERI estimates that less than 30% of U.S. production currently comes from companies that are effectively unhedged against changes in spot price. 2015 ERI Report, 60–61.

TradeTech also provides its estimates of the decline in realized price for several producers—both U.S. and foreign. Although TradeTech does not provide specific figures, it provides information on several firms in chart form. It appears from the chart that among the firms for which TradeTech provides estimates, realized prices in 2013 varied from as low as about $38 to as high as about $57. For most producers, there was a decline in realized price between 2011 and 2013. The magnitude of that decline ranges from approximately $12 to as low as $2 or $3. TradeTech Report, 13. TradeTech notes that one reason for declining realized prices is the expiration of long-term contracts signed when prices were substantially higher. TradeTech Report, 12.

NAC similarly notes that some higher cost suppliers have locked in higher prices through fixed price contracts that allow them to realize prices greater than current market prices. NAC Report, 3–22. Although NAC estimates the effect of DOE transfers on market price, as described above, NAC does not provide specific estimates of the effect on the price realized by individual producers.

EIA reports several figures that are relevant to the prices realized by current producers. EIA reports that the weighted average price in sales directly from U.S. producers in 2013 was $44.65. EIA, 2013 Uranium Production Report, 7 (2014). Similarly, EIA reports that the weighted average price paid by U.S. reactor operators in 2013 was $51.99 per pound U_3O_8 equivalent. *Id.* at 4. Although EIA does not provide a complete range of prices paid by U.S. reactor operators, it does report that the bottom 7.1 million pounds U_3O_8 equivalent (approximately ⅛th of uranium delivered in 2013) purchased by U.S. operators had a weighted average price of $34.34. The top 7.1 million pounds had a weighted average price of $72.62.[60] *Id.* at 26. EIA also provides average prices broken down by origin—foreign vs. U.S.—and by seller—U.S. producer, U.S. brokers and traders, other U.S. suppliers (*i.e.* other reactor operators, converters, enrichers, or fabricators), and foreign suppliers. The weighted average price in 2013 for U.S. origin uranium was $56.37 per pound U_3O_8. The weighted average price in 2013 from U.S. brokers and traders was $50.44. For 2013, EIA does not report the weighted average price of uranium purchased by U.S. reactor operators directly from U.S. producers to avoid disclosure of individual company data. However, in recent years when that value is reported, it has been above the average price paid for U.S. origin uranium. *Id.* at 4. For comparison, DOE notes that the 2013 average spot price was around $39.00 and the average term price was around $54.00.[61]

EIA provides data about sales using different pricing mechanisms. EIA reports that of the approximately 23.3 million pounds U_3O_8 equivalent purchased by U.S. reactor operators from domestic sources[62] and delivered in 2013, 14.5 million pounds were purchased based on fixed or base-escalated pricing—approximately 62.3%—with a weighted-average price of $54.95. Approximately 3.6 million pounds were purchased based purely on spot-market pricing—approximately 15.6%—with a weighted-average price of $42.55. The remaining 5.1 million pounds—approximately 22%—was sold based on some other pricing mechanism with a weighted average price of $52.68. EIA, Uranium Marketing Report, 24 (2014).

Many companies report their realized prices in public filings. Based on average market prices over the time-frame these filings cover, this information can be used to infer the extent to which each firm is exposed to market price fluctuations. DOE has reviewed public filings with the SEC and other public financial information for several U.S. producers. This information is summarized in Table 10. Based on this information, it appears that only two producers sell U_3O_8 exclusively at the spot price. Although ERI estimates that less than 30% of U.S. producers are currently unhedged against changes in the spot price, data from public filings, many of which were released after publication of the 2015 ERI Report, indicate that producers selling exclusively at the spot price represented less than 15% of reported production in 2014.

[60] These two figures do not differentiate between U.S.-origin versus foreign material. However, EIA reports that the weighted average price of U.S. origin material is higher than the average for all foreign material. EIA, 2013 Uranium Marketing Report, 20 (2014).

[61] As calculated according to monthly price indicator data from UxC.

[62] Note that EIA's figure includes purchases of U.S.-origin uranium as well as purchases from a firm located in the United States. Therefore, this number includes uranium from sources other than the domestic uranium industry. EIA reports that approximately 9.5 million pounds of U.S. origin uranium was delivered to U.S. reactor operators in 2013. EIA, Uranium Marketing Report, 20 (2014).

TABLE 10—REPORTED SALES AND REALIZED PRICE BY U.S. PRODUCERS [69]

Information from public filings		
Producer	2014 Sales (lbs U_3O_8)	Realized price
Uranium One [63]	410,800	$32
Ur-Energy [64]	90,000	55
Cameco [65]	2,700,000	48
Uranerz [66]	175,000	57
Energy Fuels [67]	800,000	57
Uranium Energy Corp [68]	N/A	N/A

Contracting decisions are specific to the buyer and the particulars related to these decisions are not routinely made public. However, from the information that is available, DOE notes the following key points related to the effect of DOE transfers on realized prices in the domestic uranium mining industry. Most high cost suppliers hold fixed price contracts that allow them to realize prices significantly greater than current market prices. These fixed price contracts insulate the producers from changes in market price and tend to dampen the short-run effect of DOE transfers. To be sure, new long-term contracts expected to be signed in the next few years, would reflect any continued suppression of market prices resulting from DOE transfers. However, as mentioned above, term contract activity is expected to remain low in the near term. In addition, prices have already increased from recent lows and are expected to increase substantially in the next few years. Given that the vast majority of uranium is purchased from producers under term contracts,[70] DOE believes the effect on future term contracts will be small compared to the effect on existing contractual deliveries.

In light of all these factors, DOE concludes that the anticipated effect of its transfers on market prices will tend to overstate the effect on the domestic uranium mining industry in terms of actual realized price. Although public filings suggest that only 15% of producers are unhedged against fluctuations in the spot price, DOE will conservatively assume that 30% of the industry is not insulated from these fluctuations due to preexisting long-term contracts as ERI suggests. Further assuming that this insulation is equivalent to 50% exposure to the changes in market price, the average price effect on the domestic uranium industry's realized prices in the near term would be closer to $1.75. DOE notes that this price effect is relatively small when compared to the market prices forecasted for the next several years—between 3.5% and 4.5% of expected spot market prices. That said, consideration of the effect on realized prices on its own is not sufficient to determine whether the impacts will be material. The implications of transfers for the factors discussed in the next four sections have also been considered.

2. Production at Existing Facilities

DOE believes that primary producers consider a range of different inputs in determining whether to decrease, continue, or increase production at currently operating facilities. Market prices are certainly one element of this calculation, but producers also consider contractual obligations (and what these contracts may mean for realized prices), projections about future prices, and the various costs associated with changing production levels. In order to forecast how DOE transfers will affect production levels, DOE has considered how producers have responded to price changes in the past. Some of the primary inputs in these decisions are the relationship between market prices and production costs, and expectations about future price trends.

EIA reports data on production levels in the domestic uranium industry on a quarterly and annual basis. EIA's most recent quarterly report provides preliminary data for 2014. U.S. primary production in 2014 stood at 4.9 million pounds U_3O_8. This is about 5% higher than in 2013 and 15% higher than in 2012. In fact, this represents the highest production total in any calendar year since 1997. EIA, Domestic Uranium Production Report Q4 2014, 2 (January 2015). ERI also notes that U.S. production has risen since the recent program of DOE uranium transfers began in December 2009. In 2014, production was 5% higher compared to the previous year. However, ERI reports that production in 2015 is expected to decline to 2013 levels. 2015 ERI Report, 58.

Since 2009, four new operations have begun production in the United States: Willow Creek in 2010, Hobson/Palangana in late 2010/early 2011, Lost Creek in 2013, and Nichols Ranch in 2014. ERI also reports that one

[63] These figures represent sales only through Sept. 30, 2014. Uranium One operates the Willow Creek mine in Wyoming. Uranium One Inc., Management's Discussion and Analysis, Quarter Ending September 30, 2014, at 2, 17 (Nov. 14, 2014), *http://www.uranium1.com/index.php/en/component/docman/doc_download/926-q3-2014-managements-discussion-a-analysis.*

[64] UR-Energy operates the Lost Creek ISR mine in Wyoming. UR-Energy Inc. Form 10–K, Securities and Exchange Commission, at 50 (Mar. 2, 2015) *https://www.sec.gov/Archives/edgar/data/1375205/000155837015000251/urg-20141231x10k.htm* (accessed Mar. 27, 2015).

[65] Cameco operates the Smith Ranch-Highland (Wyoming) and Crow Butte (Nebraska) ISR mines. Cameco, Management's Discussion and Analysis, Quarter Ending December 31, 2014, at 40, 69–70 (Feb. 9, 2015), *http://s3-us-west-2.amazonaws.com/assets-us-west-2/quarterly/CCO_2014_Q4_MDA_and_Financial_Statements.pdf.*

[66] Uranerz Energy Corp., which operates the Nichols Ranch ISR mine in Wyoming, reports that it sold 175,000 pounds of uranium oxide in 2014 for a revenue of $10,006,673. Uranerz Energy Corp. Form 10–K, Securities and Exchange Commission, at 50 (Mar. 16, 2015) *https://www.sec.gov/Archives/edgar/data/1162324/000106299315001350/form10k.htm* (accessed Mar. 27, 2015).

[67] Energy Fuels, which operates the White Mesa conventional mill in Utah, reports that its realized price in 2014 averaged $57.19. Energy Fuels Inc., Management's Discussion and Analysis, Year Ending December 31, 2014, at 4 (Mar. 18, 2015), *https://www.sec.gov/Archives/edgar/data/1385849/000106299315001408/exhibit99-2.htm.*

[68] Uranium Energy Corp. (UEC) operates the Hobson/Palanga ISR mine in Texas. UEC reports that it had no sales during the fiscal year ending July 31, 2014, although it continued to produce uranium concentrates. UEC states that future uranium concentrates sale are expected to occur at the spot price. Uranium Energy Corp. Form 10–K, Securities and Exchange Commission, at 72 (Oct. 10, 2014) *https://www.sec.gov/Archives/edgar/data/1334933/000106299314005923/form10k.htm* (accessed Mar. 27, 2015).

[69] In addition to the companies listed in text, DOE's EIA also reports one additional operating mine at the end of Q4 2014: Alta Mesa in Texas. The parent company for this mine, Mestena Uranium LLC, is closely held and publishes little information publically. UxC reports [REDACTED]. UxC Uranium Suppliers Annual—December 2014, 225–26 (2014).

[70] For example in 2014—[REDACTED]—producers worldwide contracted to deliver [REDACTED] through term contracts, but only [REDACTED] on the spot market. UxC Uranium Market Outlook—Q4 2014, 126–127 (2014). In 2012, [REDACTED], producers contracted to deliver approximately [REDACTED] through term contracts, but only [REDACTED] on the spot market. *Id.*

additional production center is expected to begin operations in 2015. Despite these new operations, ERI notes that several conventional and in-situ leach operations have scaled back operations. 2015 ERI Report, 57. EIA reports that the same number of uranium concentrate processing facilities—seven—operated in 2014 as in 2013. Specifically, while the Nichols Ranch ISR plant began operation in the second quarter of 2014, the White Mesa conventional mill halted production in the fourth quarter of 2014. EIA Domestic Uranium Production Report Q4 2014, 3–6 (January 2015).

ERI presents a chart showing the price levels at the time cutbacks were announced at various U.S. suppliers. ERI reports price points for cutbacks at four operations: $45 per pound in the spot market for conventional mines in Utah; $40 per pound in the spot market for two in-situ-leach operations; and $35 per pound in the spot market for additional conventional mines and a uranium mill. 2015 ERI Report, 62.

ERI then estimates average production costs for existing mines by referring to EIA's published data on production expenditures across the uranium industry. Using a three year average to smooth out year-to-year differences, ERI notes that average production costs have remained fairly constant since 2009 at about $40 per pound. 2015 ERI Report, 63. ERI further reports that it estimates production costs at U.S. in-situ-leach facilities to range from the low $30s to the mid $40s per pound. ERI concludes that the pattern of cutbacks and estimated production costs ''do not seem to indicate that adding back the $3 per pound price effect attributed to all DOE inventory material for Scenario 1 would move current prices enough to cause U.S. producers to ramp well field development and production activities back up.'' 2015 ERI Report, 64. ERI further notes that the spot price would remain near $40 per pound and ''may still not be sufficient for higher cost ISL producers to restart well field development or higher cost conventional mines to resume mining activities, and likely would not have prevented the decisions to cut back when prices declined to $35/lb in mid 2013 and then below $30/lb in mid 2014.'' 2015 ERI Report, 64.

The UxC Report does not provide any specific estimates of production levels or costs at currently operating facilities. However, UxC has developed production cost data elsewhere in its annual report on uranium suppliers and a 2013 production cost study. UxC Uranium Suppliers Annual—December 2014 (2014); UxC Uranium Production Cost Study (2013). [REDACTED].[71]

The TradeTech Report predicts a ''potential reduction in the number of market participants.'' TradeTech Report, 21. It applies the price effect it estimates for DOE transfers to a hypothetical uranium producer with a production cost of $47.41 per pound. See Figure 15 of TradeTech Report, 22. TradeTech does not apply its estimate to any particular producer. TradeTech does, however, provide estimates for the production costs of several firms in both 2011 and 2013.[72] Although TradeTech does not provide numerical cost data, it does provide information on several firms in chart form. It appears from the chart that among the firms TradeTech provides estimates for, production costs in 2013 varied from as low as $30 to as high as $50. TradeTech also notes that many producers have been able to reduce or stabilize costs in recent years. This is also reflected in the difference between the producers' costs in 2011 and in 2013. TradeTech Report, 13.

NAC provides estimated production cost ranges for segments of current supply, but it does not directly estimate the effect of DOE transfers on production levels. NAC Report, 3–9 to 3–11. Specifically, NAC provides a chart showing the breakdown of worldwide operating production capacity [REDACTED]. NAC Report, 3–10. DOE notes that this chart does not provide separate estimates of production from U.S. facilities, although NAC does state that [REDACTED]. NAC Report, 3–11.

A commenter noted that production in the recent past is not an accurate indicator of how DOE's transfers affect the mining industry, because current production reflects conditions of three or four years ago when the investment decisions were made. This commenter suggested that exploration data would be a better guide for assessing how industry is responding to current conditions. In addition, the commenter submitted information it received from Cameco indicating that production at Cameco's two main areas will decline from 2.7 million pounds in 2014 to 1.7 million pounds in 2015. This information is generally consistent with the data provided by the various reports summarized above.

DOE recognizes that large-scale changes in production can take several years, and for that reason among others it does not base its analysis simply on the fact that current production is comparable to 2013 production. At the same time, DOE notes that declines in production in 2015 are not, in their entirety, reasonably attributable to DOE's transfers. According to the commenter, the effect of market conditions takes three to four years to be fully manifest in production levels. If so, then a decline in production in 2015 would presumably result primarily from the large-scale market changes in the second half of 2011 and then in 2012 as a result of the Fukushima disaster. To forecast the effects reasonably attributable to DOE's transfers, a more careful analysis like that described below is more appropriate.

As actual production levels and costs are usually proprietary information, DOE must generally rely on estimates. The production cost estimates from TradeTech, NAC, and UxC are all generally consistent with ERI's conclusions. Each market analysis describes production costs falling within a similar range.

As noted above, based on the current spot price of $39.50[73] and ERI's estimates of the price effect of DOE transfers, removing DOE-sourced material from the market altogether—including material already transferred in the past as well as the material to be transferred under the assessed case—could lead to spot prices around $42.50 and DOE transfers under the assessed case could lead to market prices between $39.70 and $40.10. Although UxC estimates [REDACTED].

To summarize, it does not appear that the price effect of DOE transfers would cause realized prices to be below production costs at any particular facility. DOE recognizes that receiving prices barely above production costs would not provide enough return to justify investing in production, and a producer needs to receive a certain amount of margin. The TradeTech Report suggests 10% is an appropriate margin. But elevating the threshold for these mines from production cost to production cost plus 10% would not alter the conclusions discussed above.[74]

[71] Information from this paragraph is collected from the two UxC studies mentioned above. The price bands come from UxC Uranium Production Cost Study, 80–84 (2013), and cost estimates in parentheses comes from UxC Uranium Suppliers Annual—December 2014 (2014) (except for data on [REDACTED] which comes from UxC Uranium Production Cost Study, 111–12 (2013).

[72] This figure includes information on some projects that are not part of the domestic uranium mining industry, such as Uranium One's Kazakh projects.

[73] UxC's monthly spot price as of March 30, 2015.

[74] One commenter suggests that DOE calculate the effect of its transfers on average margins, which it claims would be a straightforward calculation. The commenter cites as an example a hypothetical model included in the TradeTech report. In DOE's view, the TradeTech hypothetical, as discussed below, seems to bear little relation to any actual

Accordingly, DOE concludes that ceasing transfers entirely—which could cause prices to increase by up to $2.70 per pound—would not cause U.S. producers to increase production levels substantially in the near term.

The estimates in the preceding paragraph are based on a comparison of expected realized prices of specific mines and estimates of production cost at those mines. However, DOE notes that this is a somewhat oversimplified comparison. Decisions regarding whether to increase or decrease production are based on a number of considerations, of which the instantaneous market price is only one. Recent production data provides some evidence that market prices are not the sole consideration. Despite the fact that market prices were at their lowest levels in recent memory, EIA's most recent quarterly report states that U.S. primary production in 2014 was higher than in any calendar year since 1997. Even while production ceased at some facilities, production began for the first time at others. Meanwhile, producers with production costs above the average spot price in recent years have continued operations. One of those considerations is included in the above discussion, namely the difference between realized price and market price. In addition, DOE believes that this behavior is related to the significant cost and time lag involved in ceasing or slowing production at an existing facility. Due to these facts, DOE believes that production decisions are likely to be based on future expectations about market prices and contracting trends in addition to current market prices.

Given that removing the price effect associated with DOE transfers is not likely to be enough to materially change the relationship between price and cost for any particular producer and that production decisions are based on additional considerations that include future expectations about market prices and contracting trends, DOE agrees with ERI's conclusion that adding back the price effect of DOE transfers would not move current prices enough to cause U.S. producers to increase production at existing facilities.

Some commenters objected that this conclusion is irrelevant. However, it is an appropriate implementation of the analytical approach discussed above, in which DOE assesses the impact reasonably attributable to its transfers. To do so, DOE compares the likely state of affairs with transfers and without DOE transfers. The conclusion that continuing transfers under the assessed case would not result in U.S. production's being markedly lower than it would in the absence of DOE transfers constitutes such a comparison.

3. Employment Levels in the Industry

DOE has considered information from EIA reports relating to employment in the domestic uranium production industry. EIA's most recent Uranium Production Report states that employment stood at 1,156 person-years in 2013, 1,196 person-years in 2012, and 1,191 person-years in 2011. EIA, 2013 Uranium Production Report, 10 (May 2014).

In its analysis, ERI compared EIA's employment figures with changes in uranium spot and term prices. Based on a statistical correlation, ERI infers that employment responds to changes in price. 2015 ERI Report, 73. ERI then uses this correlation to estimate that the decrease in uranium prices over the course of 2014 resulted in a loss of 114 person-years from the 2013 value of 1,156. 2015 ERI Report, 55. ERI then estimates that the price effect it attributes to DOE transfers lowered employment by 41 person years in 2013, and 44 person years in 2014. 2015 ERI Report, 56. ERI further estimates that price effects due to DOE transfers at the levels described in Scenario 1 would result in an average employment loss of 42 person years over the next 10 years. For Scenario 2 and 3, ERI estimated that the average employment loss would be 39 and 21 person years, respectively. Again, it is important to note that this estimate is not a prediction that the uranium production industry under Scenario 1 would shed 42 jobs in 2015 and each subsequent year. Instead, this figure reflects ERI's estimate that total employment in the industry would be higher by an average of 42 person-years without DOE transfers compared to with DOE transfers.

Several commenters asserted that employment has decreased in recent years as a consequence of decreases in uranium prices. *E.g.,* RFI Comment of Mark S. Pelizza, at 1. Some commenters stated that the uranium production industry has lost half its workforce since May 2012. RFI Comment of UPA, at 2; RFI Comment of Uranerz, at 2.

Several uranium producers provided data regarding their employment. The combined figures from several producers come to employment of 845 in 2012 and 424 in 2014. NIPC Comment of UPA, at 7–8.

DOE nonetheless does not believe that employment in the uranium mining industry has decreased by half since May 2012. That claim runs contrary to reporting by EIA that employment was 1,191 in 2011, 1,196 in 2012, and 1,156 in 2013. EIA, 2013 Uranium Production Report, 10 (May 2014). This is only a 3% decline between 2011 and 2013. Although EIA has not yet reported uranium employment in 2014, DOE notes that production levels in 2014 were very close to levels in 2013 and that one new facility began operation in 2014. Thus it seems reasonable to assume that employment levels were similar as well. EIA Domestic Uranium Production Report Q4 2014, 3–6 (January 2015).

DOE believes the EIA reports on uranium-industry employment are more reliable than the commenter's submission on this point. In general, the EIA collects its data through a survey, responses to which are mandatory. The survey terms are well defined and, with respect to employment, should capture the relevant employment. By contrast, the commenter describes its data as counting ''current employment activities.'' It is not clear which employees are included in the count or whether the inclusion criteria are even uniform across companies. More significantly, the commenter's submission does not encompass the whole domestic industry. A number of the companies represented did decrease production, but the commenter's figures appear not to include some mines that have increased production.

Even if industry employment had decreased by half since 2012, for predicting the effect of DOE's transfers in the assessed case it is important to understand what portion of recent employment decreases is reasonably attributable to past transfers. No commenter attempted such an estimation. While it is difficult to infer causal connections between employment and any particular market phenomenon, DOE thinks it is likely that most if not all of the reduction in employment in the mining industry since 2011 can reasonably be attributed to the downturn in the demand for uranium, primarily due to the Fukushima events.

DOE believes that ERI's method for attributing an employment effect to DOE transfers is reasonable. ERI's method is based on an empirical observation that prices (particularly the two-year moving average of price) have been strongly correlated with employment over the last decade. This correlation exists despite the remarkable fluctuations in market conditions that have taken place

mine. To calculate margins, DOE would need to know actual realized prices, linked to production costs, on a mine-by-mine basis. Absent such details, DOE believes the estimation method described above is a sufficiently robust approach to forecasting the effect on production reasonably attributable to DOE's transfers.

in that period. The relatively small price effects likely to result from DOE's transfers—even the price effects that UxC forecasts—are much smaller than the variations of the past decade. Therefore, the correlation ERI observes should hold true for these small price effects. In addition, it is reasonable to expect that prices and employment will continue to correlate in such a way, because the correlation reflects persistent market phenomena. DOE expects that a producer increases or decreases employment in order to increase or decrease production, and it does so in response to increases or decreases in the price it will receive. For any given producer the relationship between employment and price will depend on multiple factors such as the producer's cost of production and its cost structure (*e.g.* what proportion of cost depends on employee numbers) and the producer's sales structure and realized prices. Aggregated over producers, the result would be the sort of correlation between prices and employment that ERI observes.

ERI forecasts that employment will be persistently lower by 42 person-years over the next decade if DOE transfers uranium at the rates specified in Scenario 1. While the assessed case involves significantly lower rates, DOE uses the Scenario 1 forecast in order to forecast employment effects conservatively. A decrease of 42 person-years is relatively small—approximately 4%—compared to overall employment. Notably, the industry has weathered significantly larger changes in employment in the past. Between 1998 and 2001, the industry went from employment at 1120 to 423. EIA, Domestic Uranium Production Report (2005). Similarly, from 2008–2009, the industry went from 1563 to 1096; a drop of 467 in a single year. EIA, 2013 Uranium Production Report, 10 (May 2014). Additionally, ERI points out that employment for 2014 likely declined by 114 person-years, even though DOE transfers did not change appreciably from 2013 to 2014. These comparisons indicate that the small change attributable to DOE's transfers will be well within the range of employment fluctuations that independent market conditions produce.

Some comments in response to the RFI, mentioned above, warn that employment losses may lead to a loss of intellectual capacity. The relevant employees have technical skills that can take time to acquire. If the lost employees have retired or moved into other fields, it may not be possible to restore them even as demand increases. While in principle replacements could be trained, these commenters argued that employment losses have been so severe that the industry is losing the capability to train replacements. Commenters provided no evidence to support these claims. Moreover, these commenters' suggestion is inconsistent with the industry experience of the past 20 years. The industry has more than once in the last 20 years experienced decreases in employment an order of magnitude above what ERI attributes to recent DOE transfers, and has maintained and, when appropriate, increased production. Thus, DOE does not expect its transfers in the assessed case will cause employment losses that threaten the intellectual reserves of the industry. DOE believes that the current levels of employment (and the expected future levels of employment) adequately protect against loss of this resource.

4. Changes in Capital Improvement Plans and Development of Future Facilities

As stated above, ERI reports that four new production centers began operation since 2009: One in 2010, one in late 2010/early 2011, one in 2013, and one in 2014. In addition, one new production center—Peninsula's Lance project—is expected to begin operations in 2015. 2015 ERI Report, 57. ERI explains that the new production centers may have been able to begin operations only because they were supported by fixed price term contracts that were signed when prices were substantially higher than they are currently—*i.e.* $55 to $70 per pound term price. At least one of these companies has directly stated that its project would not have been able to proceed at current price levels—$45 to $50 per pound term price. ERI also reports that some owners of proposed conventional mines outside the U.S. have stated that prices in the range of $60 to $70 per pound would be necessary for further development. 2015 ERI Report, 61.

Based on the above, ERI concludes, ''[i]t does not appear that removing the DOE inventory from the market and adding back the $2 to $3 per pound price effect attributed to the DOE inventory material . . . would necessarily increase current prices enough to change the situation regarding the viability of new production centers in the U.S.'' 2015 ERI Report, 62. However, ERI reports that some lower cost ISL projects in the U.S. may be able to move forward at current prices. 2015 ERI Report, 62.

NAC provides estimates of the site forward cost, including rate of return, for ten properties it considers to be under development.[75] [REDACTED]. NAC Report, 3–11. NAC does not directly apply its estimate of the price effect of DOE transfers to the production costs for these specific properties.

The UxC Report does not provide any specific estimates of production levels or costs at planned facilities. However, UxC has developed production cost data elsewhere in reports cited. UxC Uranium Suppliers Annual—December 2014 (2014); UxC Uranium Production Cost Study (2013). [REDACTED]. UxC Uranium Production Cost Study, 62, (2013). [REDACTED].

As with existing production centers, UxC [REDACTED].[76] [REDACTED]. *Id.* at 82–83.

EIA reports that production expenditures were $168.8 million in 2011, $187 million in 2012 and $168 million in 2013—when spread across annual production, these numbers represent approximately $41 per pound in 2011, $43 per pound in 2012, and $36 per pound in 2013. EIA, 2013 Domestic Uranium Production Report, 7, 11 (2014). Including costs related to drilling between 2011 and 2013 raises this figure by about $56 million per year per pound, and including land, exploration, and reclamation costs in those years increases these figures by a further $96 million per year. EIA, 2013 Domestic Uranium Production Report, 11 (2014). Some commenters argued that the average cost for a U.S. producer is $67.10 per pound—apparently the sum of the EIA figures for all costs, divided by the total of recent production. NIPC Comment of UPA, at 7. DOE is not convinced that this simple aggregation provides an accurate estimate of production costs. For one thing, some expenses, like reclamation, occur after production and therefore should be attributed to past production (sometimes long-past production) rather than current production. Some expenses, like exploration costs, relate to future production. U.S. production has varied over time, and will continue to do so. So accounting for past and future production costs as part of the cost of current production can lead to error. DOE believes a more reliable method for estimating the cost of

[75] NAC defines ''under development'' as a property for which ground breaking has begun. Note that NAC considers ten properties worldwide to be ''under development''; they are not limited to U.S. properties. NAC Report, 3–11.

[76] Information from this paragraph is collected from the two UxC studies mentioned above. The price bands come from UxC Uranium Production Cost Study, 80–84 (2013), and cost estimates in parentheses comes from UxC Uranium Suppliers Annual—December 2014 (2014) (except for data on [REDACTED], which come from UxC Uranium Production Cost Study, 111–12 (2013).

production, for purposes of forecasting the consequences of DOE uranium transfers, is to use industry reports such as UxC's, which provide data about the expected costs of actual projects.[77]

As with production at existing mines, DOE believes that production decisions are more likely to be based on future expectations about market prices and contracting trends than on a straightforward comparison of current market prices to production cost. The comments received were consistent with DOE's understanding. New production centers are a long-term investment, and new facilities require several years of lead-time before production can begin. Since market prices fluctuate over time, many producers are unwilling to bring a new facility into production without long-term supply contracts in place.

TradeTech's report included an estimate that DOE's transfers, at the 2,705 MTU per year rate, ''could be the deciding factor'' in whether a hypothetical miner continues production. TradeTech Report, at 22. The hypothetical mine has a marginal production cost of $47.41 per pound, a 50% exposure to the spot market price, and a long-term component to its realized price of $50. In addition, TradeTech assumes that the hypothetical mine requires a 10% margin to justify production. Observing that prices in the next couple years are forecast to range from $40 to $55 per pound, and that DOE transfers at 2,705 MTU per year would in TradeTech's estimate reduce prices by on average $2.43 per pound, TradeTech concludes that the $2.43 per pound difference ''could'' matter for the hypothetical mine.

Some commenters characterized the TradeTech report as ''overwhelming evidence'' that DOE's transfers are ''threatening the very existence of several U.S. producers.'' NIPC Comment of UPA, at 4. These commenters urged DOE to rely on TradeTech's hypothetical example for assessing the consequences of DOE transfers for future production. NIPC Comment of UPA, at 7. DOE does not consider this example appropriate for that purpose, and does not think it constitutes evidence that DOE's transfers actually threaten the viability of U.S. producers, for several reasons. The analysis appears to compare current production costs at the hypothetical mine to near-term spot prices. DOE believes a producer would actually make its long-term investment decisions on the basis of expectations about prices over the longer term and the availability of long-term contracts at an acceptable price. TradeTech's example does not reflect either of these factors. In addition, the hypothetical example uses assumptions that do not appear well justified. The hypothetical mine has average production costs of $47.41 per pound.[78] There also appear to be only one or two projects, out of the number being developed in the United States, that have expected production costs near the assumed figure. The hypothetical producer also has long-term contracts at an average price of $50 per pound, just 5.5% higher than the producer's assumed average cost. Yet, according to TradeTech's hypothetical, this producer needs a 10% margin to justify production. This hypothetical producer would have needed spot prices to be not just 10% higher than its costs, but even higher ($54.30 per pound) to compensate for the low price of its long-term contracts. It seems unlikely a producer would actually have developed such a speculative project. In short, the hypothetical example as a whole is inconsistent with DOE's understanding of how producers decide whether and when to invest in production resources.

Consistent with the analytical approach outlined above, DOE's task is to assess what the state of affairs would be with and without transfers in the assessed case. DOE agrees with ERI's conclusion that whether DOE makes these transfers is not likely to affect the economic viability of new U.S. production centers in development. The production cost estimates from NAC and UxC are consistent with ERI's conclusions. ERI reports that there may be some low-cost ISR production centers that can move forward at current market prices. This is consistent with estimates from NAC and UxC's of production costs at specific facilities that are currently under development. The only production center expected to begin operations in the near future is Peninsula's Lance. Both NAC and UxC estimate [REDACTED]. For such a project, DOE transfers may affect overall revenues but seem unlikely to change whether the project proceeds. [REDACTED]. Compared to current term market prices, one or two projects have production costs that are close to or just above the current market price, but in light of the low rate of term contracting activity in the next one or two years, these projects are unlikely to settle on contracts at the current term price.

DOE recognizes that, as some commenters explained, there has been limited investment in uranium projects in recent years. *E.g.,* RFI Comment of Uranerz, 4; RFI Comment of Energy Fuels, 4–5. However, although commenters attribute the decrease in investment to DOE's transfers of uranium, DOE believes that investment decisions reflect market conditions overall, primarily current market prices and expectations of future market price. The analysis described above identifies the amount of decrease that can reasonably be attributed to DOE's transfers. Ultimately, DOE must assess what the effect of future transfers will be. Prices have increased since the lows of the past two years, and future prices are now expected to be higher. As prices increase in the coming few years, term contracts will become available that would justify one or more additional projects with higher costs. A persistent $2–3 per pound price effect, as DOE forecasts for the assessed case, may delay investment on a given project for a time. But it does not appear that eliminating the effects of DOE transfers, would markedly change decisions whether to develop future production centers.

5. Long-Term Viability and Health of the Industry

As described above, ERI notes that U.S. industry production has risen since the start of DOE uranium inventory transfers for Portsmouth cleanup in December 2009. ERI also notes that four new operations began production since 2009, and one additional production center is expected to begin operations in 2015. 2015 ERI Report, 57.

ERI also presents its future expectations regarding demand for uranium. ERI's most recent Reference Nuclear Power Growth forecasts project global requirements to grow to approximately 182 million pounds annually between 2018 and 2020, approximately 15% higher than current requirements. Global requirements are expected to continue to rise to a level of 203 million pounds in 2025, approximately 28% higher than current

[77] UPA and others also stated that DOE should consider the fact that total drilling, exploration, and development expenditures decreased in 2013 compared to 2012 according to EIA. They also state that it is reasonable to expect that these expenditures were even lower in 2014. RFI Comment of UPA, at 3; RFI Comment of Uranerz, at 3. Since uranium prices decreased over this period, it is not surprising that producers reduced their activities to develop new resources. However, consistent with the analytical approach described above, the relevant question is what will be the effect on these activities of DOE transfers. DOE believes that a more reliable approach is to compare the expected market price with and without DOE transfers to estimated production costs at potential new production centers.

[78] That figure is well below what some commenters argued DOE should use—$67.10 per pound, based on the aggregate of EIA-reported costs and the amount of 2014 production.

requirements. 2015 ERI Report, 6–7. ERI presents a graph comparing global requirements, demand, and supply from 2013–2035. Global secondary supply and supply from current mines are expected to exceed global reactor demand until approximately 2018. However, if China's practice of purchasing amounts of uranium well in excess of its current reactor demand is included—what ERI terms ''Discretionary Strategic'' demand—global demand approximately equals supply from secondary supply and currently operating mines. 2015 ERI Report, 9–10. If planned expansions and new mines under development are included, supply is expected to exceed demand until approximately 2024, regardless of whether ''Discretionary Strategic'' demand is included.[79] In the time period following 2025, ERI forecasts that demand will significantly exceed supply. 2015 ERI Report, 9. In order to meet this demand, ERI anticipates that mines it terms ''planned'' and ''prospective'' will need to begin operations. 2015 ERI Report, 11.

A variety of other sources predict substantial increases in reactor requirements and/or demand.[80] TradeTech forecasts reactor-only growth at 3.52% per year through 2024. Total uranium requirements growth is much slower during this period due to stock building purchases which taper downward.[81] TradeTech Report, 34. The OECD and IAEA expect reactor requirements to grow by at least 35.4 million pounds[82] by 2025—representing approximately 21% of 2015 requirements.[83] OECD–IAEA, Uranium 2014: Resource, Production, and Demand, 105 (2014). In its Uranium Market Outlook for the 4th quarter of 2014, UxC similarly predicts significant increases in both requirements and demand in the long-term. UxC Uranium Market Outlook—Q4 2014, 56–60 (2014). Specifically, [REDACTED]. *Id.* at 60. [REDACTED]. *Id.* at 57.

Other sources also generally agree with ERI's forecast for supply. UxC's annual Uranium Market Outlook projects [REDACTED]. UxC Uranium Market Outlook—Q4 2014, 68 (2014). [REDACTED]. *Id.* at 69.

In addition to a predicted increase in demand, several sources predict a recovery in either spot or term uranium prices—or both. These forecasts are discussed above in Section IV.A.1, but they generally predict an increase in spot price to $50 by 2019 or 2020, and to $55.00 or $60.00 in the years thereafter.

Finally, DOE recognizes that the predictability of transfers from its excess uranium inventory over time is important to the long-term viability and health of the uranium industries. ERI has noted the importance of predictability ''for long-term planning and investment decisions by the domestic industry.'' 2015 ERI Report, 100; 2014 ERI Report, 60–61. Some commenters also stated that DOE transfers should be predictable. RFI Comment of UPA, at 2; RFI Comment of Cameco, at 2. Other comments stressed the importance of predictability to permit the industry to engage in long-term planning. NIPC Comment of Cameco, at 4; NIPC Comment of UPA, at 5. DOE notes that the upper scenario considered by ERI would represent continued transfers at rates consistent with the May 2014 determination and roughly similar to the May 2012 determination. Compare 2015 ERI Report, 25, with 2014 ERI Report, 28. Thus, DOE's section 3112(d) transfers have been stable for three years: DOE has transferred at essentially the rate identified in the May 2012 determination. The series of Secretarial Determinations has, DOE believes, made these transfers predictable. While the assessed case involves a lower rate of transfers, DOE does not believe a reduction of this magnitude will cause harmful uncertainty for the industry.

DOE recognizes that, as with any prediction, the future course of events may differ from forecasts. But section 3112(d) itself instructs DOE to predict the impact of its transfers, in that the statute requires a determination that a transfer ''will not'' have adverse material impacts on the domestic industries. Forecasts of reactor requirements should be fairly reliable, because constructing a nuclear reactor is a major investment requiring years to come to fruition and a reactor then operates for decades. A reactor that will need uranium in the next decade must either exist now or be at least in the planning stages now. Conversely, if a reactor is operating now, its operator has strong incentives to keep it running as long as possible, and the licensed lifetimes for reactors are known. Therefore, barring extreme events such as the Fukushima disaster and various large-scale policy responses to it, DOE believes it is possible to forecast reactor requirements with a fairly high degree of precision. The various sources DOE has consulted, including the ERI report, offer similar forecasts, and DOE concludes it is appropriate to rely on those forecasts.

Forecasts of production may be somewhat more uncertain, for several reasons. Developing a new mining project does not take as long as building a new reactor, and the process differs also in terms of when money is spent over the course of the development. If a new reactor would be running in 2020, a significant amount of investment will already have been made by this point. So it is likely that, while schedules might slip, the reactor would indeed begin operating. Mines that might be operating in 2020 include projects that are still in a more speculative phase of development. A producer might halt development for various reasons, including market conditions or a discovery that the uranium resource was smaller than expected. These factors could make the eventual supply smaller than forecasted.

Nonetheless, the rough course of future supply can be predicted with a reasonable degree of reliability. Producers know the amount of uranium available at their existing resources. Technology might improve to permit more uranium to be recovered at a given price—a phenomenon that has reshaped the oil industry. But DOE is not aware of any technology in development that would significantly alter mine economics in the next few years. Consequently, DOE believes it can rely on forecasts about the depletion of

[79] ERI assumes that China's discretionary strategic inventory building will taper off by 2023. 2015 ERI Report, 10. This is generally consistent with other projections regarding Chinese strategic inventory purchasing behavior. *See* TradeTech Report, 41–42; NAC Report, at 3–4.

[80] DOE notes that uranium ''demand'' and reactor ''requirements'' are different. Requirements refers to an estimate of the amount of uranium needed to support operating reactors in a particular year. Demand includes additional purchased quantities for strategic or discretionary purposes. For example, in recent years China has purchased quantities of uranium far in excess of its reactor requirements. 2015 ERI Report, 10–11; TradeTech Report, 41–42; NAC Report, 3–2 to 3–5.

[81] TradeTech also appears to assume China's stock building purchases will cease to outpace Chinese requirements around 2023. TradeTech Report, 41–42. TradeTech also notes that most Japanese reactors are expected to resume operation by 2020 while around 70% of contracted deliveries continue to be made. *Id.* at 35. TradeTech projects that this will lead to decreased demand from Japan after 2020 as Japanese reactors utilize excess stocks that were delivered while the reactors were not operating. *Id.* at 36. Despite decreased demand during this period from Japan, China, and other countries, TradeTech still predicts that uranium demand will grow by approximately one percent per year between 2015 and 2030. *Id.* at 33.

[82] Converted from metric tons uranium in U_3O_8 (MTU) using a conversion rate of 2,599.79 pounds U_3O_8 per MTU.

[83] This represents OECD–IAEA's low growth scenario. The high growth scenario anticipates growth of almost 90 million pounds, approximately 50% above the high-growth scenario for 2015. *Id.*

existing production centers. Forecasts about the amount of uranium available at a mine still in the planning phase are necessarily more uncertain. Any given mine might prove to have more or less capacity than currently forecasted. In aggregate, these differences should average out to some degree, so that overall forecasts of aggregate supply are appropriate predictions of the likeliest course of events. The various sources DOE has consulted offer similar forecasts on this point, and DOE concludes it is appropriate to rely on them.

Even if existing production centers continued producing uranium at their current rates, prices could be expected to increase because requirements will increase. Consistent with the ordinary operation of supply and demand, higher prices would be necessary to bring additional supplies into the market. In fact, as existing production centers are depleted, the predicted replacements will have slightly higher production costs. Thus, higher prices will be necessary in the future even to maintain production at current levels. For these reasons the price of uranium is likely to increase over the coming decade.

Most sources DOE has reviewed agree that there will be an increase, although the specific estimates of that increase vary. This price increase is expected to take place even with DOE transfers. *See* Figures 5 & 6, UxC Report, 11.

The effect of DOE transfers on this process is not certain. UxC projects that DOE transfers will essentially slow the rate of this price increase. For example, [REDACTED]. *Id.* Even if this projection is correct, DOE transfers would only have the effect of slightly delaying the development of future production facilities. Significantly, DOE transfers will not prevent new facilities from coming online, and is not expected to permanently affect the viability of any new production centers. At worst, the effect of DOE transfers in the long run is equivalent to the difference in present value based on earnings beginning later in time. DOE does not believe that this difference is significant enough to appreciably affect the long-term viability and health of the industry.

6. Russian HEU Agreement and Suspension Agreement

Section 3112(d) of the USEC Privatization Act requires DOE to ''take into account'' the sales of uranium under the Russian HEU Agreement and the Suspension Agreement. Consistent with this instruction, DOE believes this assessment should consider any sales under these two agreements that are ongoing at the time of DOE's transfers.

Under the Russian HEU Agreement, upon delivery of LEU derived from Russian HEU, the U.S. Executive Agent, USEC Inc., was to deliver to the Russian Executive Agent, Technabexport (Tenex), an amount of natural uranium hexafluoride equivalent to the natural uranium component of the LEU. The USEC Privatization Act limited the volume of that natural uranium hexafluoride that could be delivered to end users in the United States to no more than 20 million pounds U_3O_8 in each year after 2009. ERI has in the past analyzed material from the Russian HEU Agreement as part of worldwide secondary supply. DOE notes that the Russian HEU Agreement concluded in December 2013. Thus, there are no ongoing transfers under this agreement.[84]

The current iteration of the Suspension Agreement, described above in Section I.D.3.b, sets an annual export limit on natural uranium from Russia. 73 FR 7705 (Feb. 11, 2008). That agreement provides for the resumption of sales of natural uranium and SWU beginning in 2011. While the HEU Agreement remained active (*i.e.* 2011–2013), the annual export limits were relatively small—equivalent to between 0.4 and 1.1 million pounds U_3O_8. After the end of the Russian HEU Agreement, restrictions range between an amount equivalent to 11.9 and 13.4 million pounds U_3O_8 per year between 2014 and 2020. 73 FR 7705, at 7706 (Feb. 11, 2008). Material imported from Russia in accordance with the Suspension Agreement is not derived from down-blended HEU; thus, this material is part of worldwide primary supply as analyzed by ERI in the 2015 ERI Report. This material is also presumably accounted for in the various projections and models developed by TradeTech, UxC, and NAC International. Thus, DOE's analysis takes sales of uranium under the Suspension Agreement into account as part of overall supply available in the market.

7. Mining Industry Conclusion

After considering the factors discussed above, DOE concludes that transfers under the assessed case will not have an adverse material impact on the domestic uranium mining industry. As explained above, DOE transfers under the assessed case will continue to exert some downward pressure on the market price for uranium concentrates. DOE forecasts that about $2.70 of price suppression will be reasonably attributable to DOE transfers; this is somewhat smaller than the effect attributable to transfers in the past few years.

Because the vast majority of deliveries of uranium concentrates take place under long-term contracts that allow producers to realize prices based on term prices prevailing at the time the contracts were entered, DOE concludes that the average effect on the realized price of U.S. producers under current contracts is closer to $1.75. For future term contracts, price suppression associated with DOE transfers would decrease the base price for these contracts, potentially decreasing the average realized price over the life of each contract. However, DOE concludes that this type of effect will be minimal because term contracting activity is expected to remain low during the next few years.

DOE transfers are expected to have a small effect on employment in the domestic industry, but the magnitude of this effect is well within the range of employment fluctuations the industry has experienced in the past due to market conditions unrelated to DOE transfers.

Even focusing on the entities most likely to be impacted—*i.e.* producers that sell primarily on the spot market and are thus not protected from fluctuations in the spot price—it is not likely that removing the $2.70 price effect attributable to DOE transfers under the assessed case would be enough to materially change the relationship between price and cost for any producer with respect to production levels at currently operating facilities or decisions whether to proceed with developing new production centers. Both types of decisions involve considerations beyond current spot prices, and they likely will be based on expectations about future trends in market price. DOE concludes that, given the expected increases in future demand for uranium concentrates and, more importantly, the expected increases in market prices, the price effect attributable to DOE might delay decisions to expand or increase production capacity but would not change the eventual outcomes. DOE does not believe that these effects have the substantial importance that would make them ''adverse material impacts'' within the meaning of section 3112(d).

[84] Following the end of the Russian HEU Agreement, Tenex signed a commercial agreement to provide EUP to customers in the United States. Commenters appear to suggest that this material is equivalent to a continuation of the Russian HEU Agreement. NIPC Comment of ConverDyn, Enclosure, at 4. DOE notes that this material is not produced from down-blended HEU; it is from commercial primary supply. Thus, it is covered under the Suspension Agreement and included within ERI's estimates of worldwide supply, as described in text.

B. Uranium Conversion Industry

The domestic uranium conversion industry consists of a single facility, the Metropolis Works (MTW) in Metropolis, Illinois. This facility is owned and operated by Honeywell International Inc. MTW has a nameplate capacity of 15,000 MTU as UF_6. ConverDyn, Inc., (''ConverDyn'') is the exclusive marketing agent for MTW and submitted comments in response to DOE's notices. In what follows, DOE will refer to MTW or ConverDyn, interchangeably, because the two appear to have essentially the same interests in uranium markets.

1. Prices for Conversion Services

Like market prices for uranium concentrates, conversion market prices are generally described in terms of the spot price and the term price. This section discusses the potential impacts of DOE transfers on these two prices. For reference, as of March 30, 2015, UxC's spot price indicator was $7.50 per kgU as UF_6 and its term price indicator was $16.00 per kgU as UF_6.

Three of the market analyses discussed above—those by ERI, TradeTech, and UxC—contain estimates of the effect of DOE transfers on the market prices for conversion services: ERI, TradeTech, and UxC. This section begins with a summary of each report and then discusses DOE's review of the reports' methodologies and conclusions. This section concludes with a discussion of how a change in conversion market prices would affect the domestic uranium conversion industry. A principal mechanism through which such a change in market price could impact individual producers is through the effect on the realized price of primary converters.

a. Energy Resources International Report

DOE tasked ERI with estimating the effect of DOE transfers on the market prices for conversion services. To estimate this effect, ERI employed a market clearing price model very similar to what is described above for the uranium market. As with uranium concentrates, ERI constructed individual supply and demand curves for conversion services and estimated the clearing price with and without DOE transfers. 2015 ERI Report, 44.

DOE tasked ERI with estimating the effects of DOE transfers under the same three scenarios described in Section IV.A.1. The levels of the different scenarios are outlined above in Table 4 in terms of natural uranium equivalent.[85] All the transfers in the assessed case have the potential to displace conversion services. The natural uranium hexafluoride that DOE transfers could displace conversion services directly, in that this material is the ordinary output of a conversion facility. The low-enriched uranium that DOE transfers could also displace conversion services because natural uranium must be converted into uranium hexafluoride before it can be enriched. A purchaser of low-enriched uranium from DOE transfers would purchase correspondingly less conversion services.[86] As conversion services are denominated in kgU as UF_6, the figures reported in Table 4 also refer to the amount of conversion services embodied in the DOE inventory. As with uranium concentrates, the assessed case falls between Scenarios 1 and 2.

Using its market clearing approach, ERI estimates that DOE transfers will have the effects listed in Table 11. As with uranium concentrates, the relationship between the amount of transfers under each scenario and the price effect is essentially linear for each year ERI analyzed (2015–2024). Compare Table 3.7 to Table 4.2 of 2015 ERI Report, 25–26, 45. Therefore, the price effect of DOE transfers in the assessed case can be interpolated from ERI's estimates.

TABLE 11—ERI'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON CONVERSION PRICES IN $ PER kgU AS UF_6

[Market clearing approach]

2015 ERI Report				
	ERI Scenario 1	ERI Scenario 2	ERI Scenario 3	Assessed case (interpolated)
2015	$0.90	$0.70	$0.10	$0.90
2016	0.90	0.60	0.00	0.70
2017	0.80	0.60	0.00	0.70
2018	1.00	0.80	0.20	0.90
2019	0.80	0.90	0.40	1.00
2020	0.90	1.30	0.70	1.00
2021	1.00	1.00	0.80	1.00
2022	0.90	0.80	0.70	0.80
2023	1.00	0.90	0.80	0.90
2024	0.80	0.80	0.60	0.80
Average (2015–2024)	0.90	0.80	0.40	0.90

As with uranium concentrates, it is important to emphasize that this is not a prediction that prices will drop by the specified amount once DOE begins transfers following a new determination. A level of price suppression consistent with the estimate for Scenario 1 would, on ERI's analysis, already be reflected to some degree in the current market price because DOE is currently transferring uranium at that rate. 2015 ERI Report, 44. The price suppression that ERI estimates would persist under Scenario 3 is largely ERI's estimate of the consequence of past DOE transfers, from which some of the uranium is still expected to be entering the market in future years.

[85] As noted above, the transfer rates for these scenarios refer only to the level of uranium transfers for cleanup at Portsmouth and down-blending of LEU. The level of transfers for other DOE programs is the same in all three scenarios.

[86] The LEU that DOE transfers is in the form of uranyl nitrate, which must be converted to uranium oxide in the fuel fabrication process. Analogously, enriched uranium hexafluoride must also be transformed into uranium oxide. If there were a difference in cost between these two chemical processes, buyers might be willing to pay more (or less) for the enriched nitrate than for enriched hexafluoride, and the market effect of LEU transfers would be somewhat more complicated to predict. However, DOE is not aware of any substantial difference in these costs.

b. TradeTech Report

In addition to its estimate of the price effect of DOE transfers on the uranium concentrate market, TradeTech estimates the effect on the price of conversion services. A summary of TradeTech's estimates appears in Table 12. It appears that TradeTech developed this estimate using its econometric Dynamic Pricing Model. TradeTech Report, 14. Using its model, TradeTech estimates that DOE's transfer reduced the spot price by an average of $2.13 per kgU as UF_6 between January 2012 and December 2014. TradeTech Report, 17. TradeTech also forecasts that continued DOE transfers at current rates would reduce the spot price by an average of $0.91 per kgU as UF_6 between January 2015 and December 2016. TradeTech Report, 21.

TradeTech also provides predictions for the effect of DOE transfers at several decreased transfer rates. If DOE transfers decreased to 75% of current levels, TradeTech estimates that the spot price would increase by an average of $0.21 per kgU as UF_6 between January and 2015 and December 2016. TradeTech, 31.[87] Based on TradeTech's estimate of the price suppression caused by DOE transfers at current levels, it appears that TradeTech is forecasting that price suppression given transfers at 75% of current levels would be $0.70. If DOE transfers decreased to 50% of current levels, TradeTech predicts that the spot price would increase by an average of $0.43 per kgU as UF_6 between January and 2015 and December 2016. TradeTech, 30. This corresponds to a price suppression of $0.48. If DOE transfers decreased to 25% of current levels, TradeTech forecasts that the spot price would increase by an average of $0.66 per kgU as UF_6 between January and 2015 and December 2016. TradeTech, 29. This corresponds to a price suppression of $0.25. As with uranium concentrates, the TradeTech Report does not state the numerical volumes that correspond to these decreased transfer rates. However, DOE notes that the 2,100 MTU rate is slightly above 75% of the level included in the May 2014 Determination. Thus, DOE believes that TradeTech's ''75%'' figure is roughly equivalent, although slightly below, that level.

[87] Figures 21–24 of the TradeTech Report show TradeTech's estimates for the price impact at a range of different transfer rates. Although these charts and the related text refer to ''Transfers at [25, 50, or 75] Percent of Established 2014 Volumes,'' it appears that these charts actually reflect an estimate for a 25%, 50%, or 75% *decrease* relative to current levels, rather than transfers at the specified percentage of current levels.

TABLE 12—TRADETECH'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON CONVERSION SPOT PRICE IN $ PER kgU AS UF_6

TradeTech Report	
Transfer rate (compared to current)	Estimated price effect (2015–2016)
100%	$0.91
75%	0.70
50%	0.48
25%	0.25

c. UxC Report

UxC's U–PRICE and SWU–PRICE econometric models predict the markets' reaction to changes in supply for the uranium concentrate and enrichment industries. UxC does not directly model the conversion services market. Instead, UxC relies on other evidence to conclude that the price effect of DOE transfers on spot conversion prices have been ''at least equal to, if not greater than, the impact on spot uranium prices.'' Specifically, UxC notes that much of the world's spot conversion is sold in conjunction with uranium through contracts for UF_6. UxC also notes that over the past few years the UF_6 price has fallen as much as the U_3O_8 price has on a percentage basis. Finally, UxC notes that the Ux North American UF_6 Price has been below the Ux NA UF_6 value (*i.e.* the sum of spot uranium and spot conversion prices for a given quantity of UF_6) over most of the period of DOE transfers. UxC Report, 15. With respect to the future effect of DOE transfers, UxC expects that DOE transfers will continue to have a similar effect on spot conversion prices and a somewhat less but still ''noticeable'' effect on term conversion prices. UxC Report, 16.

d. Effect of DOE Transfers on Market Price

DOE has reviewed each of the market analyses described above. Each report uses a somewhat different methodology in estimating the effects of DOE's uranium sales. ERI's approach is likely to greatly overestimate the effect of DOE's transfers on term conversion prices because it rests on the assumption that conversion prices arise from a competitive market price-setting mechanism. While the analysis would be reasonable if the term price for conversion had a competitive price-setting mechanism, DOE believes that it does not. The market includes only five significant suppliers, one of which provides services almost exclusively to Chinese purchasers. This market structure could, on its own, make the market susceptible to parallel pricing in which rational pricing decisions by individual firms could lead the market price to be unresponsive to supply and demand changes.[88] Conversion services are also homogeneous from the market's point of view; converters take in uranium concentrates meeting industry standards and produce uranium hexafluoride meeting industry standards. The main buyers of conversion services, nuclear utilities, are relatively insensitive to the price of conversion. As noted above, medium-term demand is generally inelastic because a utility must supply fuel for its reactors and the price of fuel is a relatively small part of its generation cost. Conversion is an even smaller fraction of that cost, because (using current term prices) conversion accounts for only seven to nine percent of the total cost of enriched uranium product. Meanwhile, conversion is a necessary step in the fuel cycle, and conversion facilities operate with a relatively high degree of investment compared to their variable costs. To ensure that conversion capacity remains available, it could be rational for utilities to accept and commit to higher prices than a free price mechanism reflecting available supply and demand would produce. In short, the insensitivity of buyers to conversion prices in the medium term, combined with the market structure, would make it likely that market-based pricing mechanisms would not function freely in the medium-term conversion market.

Consistent with this expectation, the term price for conversion has not reacted to fairly large market shocks, much less changes in the rate of DOE's transfers. In 2010, when term prices were around $11–13 per kgU, ConverDyn announced that it would no longer enter long-term contracts for less than $15 per kgU. 2014 ERI Report, 12; Michael Schwartz & Julian Steyn, ''Supply Margins Erode,'' *Nuclear Engineering International* (Oct. 6, 2011), available at *http://www.neimagazine.com/features/featuresupply-margins-erode/.* This behavior would be surprising if the medium-term conversion market were a competitive market in which the lowest

[88] *See generally* DOJ/FTC Horizontal Merger Guidelines, chapter 7. Depending on the calculation basis, the Herfindahl–Hirschman Index of the conversion services market is between 1200 and 2800. The former is near the threshold of what, under the Guidelines, would be considered an unconcentrated market in which, absent additional circumstances, uncompetitive behavior would not likely be a concern. The latter figure would qualify the market as highly concentrated.

price attracts the most business. By contrast, it is consistent with the notion that this market is prone to parallel pricing decisions. Furthermore, the term market price increased shortly after ConverDyn's announcement to $15 per kgU, and then to $16.50 per kgU after ConverDyn made another announcement that it would not enter into long-term contracts for less than $16.50 per kgU. *See* Kevin P. Smith, *ConverDyn* v. *Moniz,* Case no. 1:14–cv–01012–RBW, Document 17–7, at ¶ 16 (July 7, 2014). It remained at $16.50 per kgU even as the Fukushima disaster led to a 25% decrease in demand for conversion, and while the uranium term price decreased by 50% and the conversion spot price decreased by 50%. The price also did not respond when DOE announced in May 2012 that it would increase transfers for Portsmouth cleanup to 2,400 MTU per year, or when the much larger-scale sales of Russian-origin uranium ceased in 2013.

In sum, the conversion term price has not responded in recent years to major market disruptions. It appears that conversion providers are able to command roughly $16 per kgU regardless of the level of demand or of secondary supply. While it remains conceivable that some very small price effect could be attributed to DOE's transfers, DOE concludes that ERI's forecast of $0.90 per kgU is a very substantial overestimate.

By contrast, the spot market in conversion would be more likely to have a competitive price-setting mechanism. In the spot market, conversion providers are in full competition with sources of secondary supply, many of which might not participate on the medium-term market. For example, enrichers that engage in underfeeding depending on spot prices of uranium and enrichment are unlikely to enter into long-term contracts to supply the resulting excess uranium. Meanwhile, demand on the spot market includes some buyers, like brokers, that purchase relatively little on the long-term market and may be more sensitive to price. Indeed, conversion spot prices do fluctuate by amounts comparable to the fluctuations in uranium concentrates spot prices. And conversion spot prices appear to respond to disruptions in supply or demand. For example, spot prices decreased by 50% in the months following the Fukushima disaster, and they also increased by 50% after MTW announced an extended shutdown in 2012. For these reasons, DOE concludes that market-based economic modeling like what ERI and TradeTech performed for uranium spot prices is also an appropriate method to forecast conversion spot prices in the near term.

TradeTech provides an econometric model that is based roughly on uncommitted supply and demand. For that reason, and reasons like those discussed above with respect to the analogous models for uranium prices, DOE relies on TradeTech's forecast for near-term conversion spot prices.[89] It bears emphasis that as with uranium prices, forecasts of conversion spot prices in the medium term are highly uncertain because uncommitted supply and demand are only a small portion of the overall market.[90]

As mentioned above, the assessed case is similar to the 75% scenario that TradeTech analyzed. TradeTech forecasts that in the near term, DOE transfers at that rate would produce a persistent price suppression of about $0.70 per kgU, on average, or about 8.7% of current spot prices. In addition, ERI employs its market clearing model to predict a very similar price effect, approximately $0.90 in 2015 and $0.70 in 2016 and 2017.[91] For these reasons, DOE concludes that $0.70–$0.80 is a reasonable, although somewhat conservative, estimate of the effect of DOE transfers in the spot market over the next several years and notes that, given that the market price currently reflects DOE transfers at a rate of 2,705 MTU, conversion spot prices will be subject to a smaller price suppression than at present. DOE concludes that its transfers have had essentially no effect on the term price for conversion and will continue not to affect the term price.

e. Effect on Realized Price

As with uranium concentrates, market prices would affect MTW chiefly through their effect on the price it actually realizes for its services. Since the domestic conversion industry consists of only one producer, the effect of DOE transfers depends on the mix of contracts on which MTW's services are sold: The proportion of spot and term contracts, and the extent to which these contracts lock in prices higher (or lower) than current market prices or conversely expose MTW to spot prices.

No commenter provides specific information about the current realized prices achieved in the conversion industry, and no commenter directly estimates the effect of DOE's transfers on realized prices. ConverDyn is not a publicly traded company, and neither it nor Honeywell routinely make public information about contracting strategies and realized prices for MTW.[92] However, DOE believes that the following information is relevant to ConverDyn's contracting practices and its realized price.

ConverDyn has stated in the past that the conversion market generally relies on long-term contracts. Declaration of Malcolm Critchley, *ConverDyn* v. *Moniz,* Case no. 1:14–cv–01012–RBW, Document 7–3, at ¶ 37 (June 23, 2014). ConverDyn has also stated that these long-term contracts are generally ''linked, at least in part, to market prices at the time of the contract.'' *Id.* ConverDyn's March 10, 2014 letter to DOE [REDACTED]. *See* Letter from Malcolm Critchley, ConverDyn, to Peter B. Lyons, DOE, 6 (Mar. 10, 2014). In that same letter, ConverDyn explained [REDACTED]. *Id.* at 7. ConverDyn then states, [REDACTED]. *Id.*

Traxys, a brokerage and trading firm active in the uranium markets, has stated that ConverDyn specifically sells conversion services ''almost exclusively'' on long-term contracts. Declaration of Kevin P. Smith, *ConverDyn* v. *Moniz,* Case no. 1:14–cv–01012–RBW, Document 17–7, at ¶ 16 (July 7, 2014). Because Traxys is a frequent participant in the markets in

[89] ConverDyn states that DOE should recognize the limits of an economic model in a market with low liquidity. TradeTech's forecast explicitly takes the liquidity of these markets into account in modeling active supply and active demand. TradeTech Report, at 2–4.

[90] DOE does not place much weight on UxC's rough estimate of conversion spot prices based on a premise that the effect of DOE transfers on spot prices should be about the same, proportionally, as the effect on uranium prices. UxC's U–PRICE and SWU–PRICE models appear not to be designed to forecast conversion prices, and UxC's premise is not well justified. The conversion and uranium markets are distinct in many ways. Uncommitted conversion supply is different from uncommitted uranium supply, among other reasons because conversion providers have much higher ratios of fixed to variable costs than do uranium producers.

[91] ConverDyn argues that DOE and ERI have confused sales on the ''term market'' with ''buy and hold'' or ''carry trade'' sales. NIPC Comment of ConverDyn, Enclosure, at 5. DOE notes that ERI's market clearing model does not depend on whether DOE sales are made under spot contracts, term contracts, or some other type of contract.

[92] ERI notes that ConverDyn's realized price has increased over the last decade. Even in the absence of publicly available data about ConverDyn's pricing, this conclusion seems nearly inevitable because term prices have increased from $10 to $16 per kgU. ERI also suggests that ConverDyn may have an average realized price, at present, of around $14 per kgU. While ConverDyn's average realized price is probably lower than current term prices because some proportion of its long-term contracts date from a time of lower prices, ERI's particular figure seems to be based mainly on ConverDyn's claim to be operating at a loss. It is thus not a very precise estimate. In any case, DOE's analytical task is to understand how ConverDyn's realized price would be different with and without transfers under the assessed case. As the discussion below indicates, DOE can perform that task without necessarily having a precise figure for ConverDyn's current average realized price.

which ConverDyn sells, and because this statement appeared in a declaration filed in court, DOE considers Traxys's observation reliable. Traxys has also stated that ConverDyn exercises significant pricing power in the market. Traxys refers to a 2011 letter from ConverDyn to its customers notifying them that it would not sell conversion services for less than $16.50 per kgU. *Id.* Since then, the term price indicator for conversion services has remained remarkably stable, even as spot prices for conversion have fluctuated. 2015 ERI Report, 12. UxC's annual conversion outlook [REDACTED]. UxC Conversion Market Outlook—December 2014 (2014). [REDACTED]. *Id.* at 32. [REDACTED]. *Id.* at 36.[93] UxC also estimates that primary production totaled approximately [REDACTED], about [REDACTED] of which was from MTW. *Id.* at 45. Assuming the spot contracting activity from primary producers was divided proportionately by production among the Western converters,[94] ConverDyn's share would be [REDACTED]. *Id.* Conducting the same calculation using [REDACTED]. *Id.*

To the extent that ConverDyn engages in spot sales, they represent no more than 5% of its total sales, and likely represent significantly less. Considering this in combination with ConverDyn's statements about its contracting practices, namely that ConverDyn's long-term contracts are priced at the prevailing term price (with some escalation for inflation), DOE concludes that ConverDyn has virtually no exposure to the spot price.

This conclusion is somewhat counterintuitive. ConverDyn evidently has a high proportion of fixed costs. If variable costs are low, then the marginal cost of an additional unit of production should be very low, likely below the current spot price. In addition, ConverDyn states that it has excess capacity at its facility. NIPC Comment of ConverDyn, Enclosure, at 7. One would expect a facility with low marginal cost and excess capacity to sell any additional capacity on the spot market. However, the conversion market is characterized by a very small number of primary producers, and ConverDyn has demonstrated that it has significant influence over the price. Furthermore, the vast majority of contracting activity in conversion services continues to take place on the term market. DOE believes that this can be explained by utilities' preference for security of long-term supply. As ConverDyn explains, the term price for conversion is set based on the price necessary to include all costs of operations, capital recovery, and a return on investment. NIPC Comment of ConverDyn, Enclosure, at 5. Although utilities obviously have an interest in keeping variable costs for fuel as low as possible, paying prices that are not sufficient to cover a conversion providers' costs may, over time, jeopardize the continued operation of primary conversion facilities. By paying the premium associated with the term price, utilities can help prevent this outcome by paying a price that allows these facilities to cover their full operation and capital costs. UxC's reports regarding industry concerns support this concept, reflecting [REDACTED]. UxC Conversion Market Outlook—December 2014, 73 (2014).

Based on the above, it is unsurprising that ConverDyn is unwilling to enter into contracts at the spot price. A rational producer of conversion services with high fixed cost may be willing to reduce production rather than sell conversion services at a price that is not sufficient to cover the set of forward costs described below, even if the market price is higher than its marginal cost per unit. UxC's estimates of current production provide evidence that some primary converters have in fact adopted this strategy. Specifically, [REDACTED]. UxC Conversion Market Outlook—December 2014, 46 (2014).

Given that ConverDyn sells conversion services almost exclusively through term contracts, it follows that the effect on ConverDyn's realized price depends on the effect of DOE transfers on the term price. However, as noted above, DOE concludes that its transfers have had, and will likely continue to have, essentially no effect on term prices for conversion. Consequently, DOE transfers under the assessed case will have very little effect, if any, on the pricing of ConverDyn's term contracts.

DOE recognizes that this conclusion is contrary to an assertion that ConverDyn has made. ConverDyn has claimed that price suppression due to DOE transfers has caused it to lose millions of dollars in revenue. ConverDyn's analysis apparently applied the supposed price suppression across all the company's sales. DOE does not find ConverDyn's analysis convincing. ConverDyn stated in its March 10, 2014 letter that price suppression [REDACTED]. Letter from Malcolm Critchley, ConverDyn, to Peter B. Lyons, DOE, 7 (Mar. 10, 2014). ConverDyn, citing to the 2012 ERI report, states that it developed these estimates by applying a 5.8% price impact to contracts awarded since the start of the DOE sales program in 2009, and to expected futures sales between 2014 and 2016. *Id.;* Supplemental Declaration of Malcolm Critchley, *ConverDyn* v. *Moniz,* Case no. 1:14–cv–01012–RBW, Document 21–2, at ¶ 8 (July 14, 2014). But in 2009, DOE transferred uranium at a rate closer to 1,200 MTU per year, and it did not begin transferring at 2,800 MTU per year until 2012. Even if DOE transfers beginning in May 2012 suppressed term prices by 5.8%—which DOE has concluded they did not—ConverDyn offers no explanation for why transfers at the prior, lower rate should also have had a 5.8% price impact. More importantly, as discussed in the previous section, the term conversion price appears to respond very weakly, if at all, to changes in supply and demand for conversion services. Given the stability of the term conversion price since 2010, in the face of major market shocks and also despite the May 2012 increase in DOE's transfers, DOE does not believe transfers under the assessed case will appreciably affect the price at which ConverDyn makes long-term contracts.

2. Production at Existing Facilities

As stated above, there is only one conversion facility in the United States, the Metropolis Works facility (MTW) operated by Honeywell International. ConverDyn is the exclusive marketing agent for conversion services from this facility. This section focuses on two types of potential effects of DOE transfers on production levels at MTW: Loss of sales volume for conversion services from MTW, and change in average production costs at MTW.

a. Sales Volume

The nominal capacity of the Metropolis Works facility is 15 million kgU as UF_6. However, the facility generally operates below that level and has consistently produced no more than 11–12 million kgU in recent years. Supplemental Declaration of Malcolm Critchley, *ConverDyn* v. *Moniz,* Case no. 1:14–cv–01012–RBW, Document 21–2, at ¶ 10 (July 14, 2014).

ERI estimated the effect of DOE transfers on production at MTW on a series of assumptions based in part, on

[93] [REDACTED]. UxC Conversion Market Outlook—December 2014, 34–36 (2014).

[94] The converters are typically divided into two groups, the ''Western'' converters and the ''non-Western'' converters in Russia and China. The Western converters consist of MTW, Cameco's Port Hope facility in Ontario, Canada, AREVA's Comurhex facility in France, and the former Springfield-Westinghouse plant in the UK (closed in 2014). There is also a very small conversion facility in Sao Paulo, Brazil, with a capacity of approximately 100,000 kgU as UF_6. For comparison, the nameplate capacity of MTW is 15 million kgU as UF_6.

various statements from ConverDyn.[95] ERI estimates that production at this facility was approximately 11 million kgU as UF_6 per year prior to the loss of sales associated with Fukushima. Because ConverDyn has stated that this volume loss was approximately 25%, ERI estimates current sales volume at 8.25 million kgU as UF_6. 2015 ERI Report, 65. Based on statements from Traxys, the entity that currently purchases the material that DOE transfers to Fluor B&W Portsmouth for cleanup work at the Portsmouth Gaseous Diffusion Plant, ERI assumes that 50% of the material used for cleanup at Portsmouth and 100% of all other DOE material enters the U.S. market. 2015 ERI Report, 65–66. To estimate ConverDyn's U.S. and worldwide market share, ERI refers to a statement from ConverDyn that its share of the U.S. market for conversion services is 25%. ERI uses this to calculate ConverDyn's share of the international market as 16% by subtracting an amount equivalent to 25% of the U.S. market from ERI's estimate of ConverDyn's total sales volume. 2015 ERI Report, 68.

A summary of ERI's estimates of the effect of DOE transfers on ConverDyn's sales volume appears in Table 13. Using the assumptions described above, ERI estimates that under Scenario 1, DOE transfers decrease ConverDyn's market volume by 0.7 million kgU, or 8%. Under Scenario 2, ERI estimates that DOE transfers decrease ConverDyn's market volume by 0.5 million kgU, or 6%. Under Scenario 3, ERI estimates that DOE transfers decrease ConverDyn's market volume by 0.1 million kgU, or 1%. 2015 ERI Report, 69–70. As with ERI's price estimates discussed above, these estimates do not suggest that were DOE to transfer uranium in accordance with Scenario 1, ConverDyn would lose the predicted volume of sales. DOE has been transferring at or above the rate of Scenario 1 for nearly three years. On ERI's analysis, to some degree the estimated effect has already occurred. Transfers in accordance with Scenario 1 would continue the effect, and transfers in accordance with Scenario 2 or 3 would lead to an increase in ConverDyn's sales volume in the long term by the amount ERI predicts.

TABLE 13—ERI'S ESTIMATE OF DECREASE IN CONVERDYN'S SALES VOLUME [96]

	Volume (million kgU)	Percent change
Scenario 1	0.7	8
Scenario 2	0.5	6
Scenario 3	0.1	1

ConverDyn's comments in response to the RFI and NIPC do not provide a separate estimate of the effect of DOE transfers on its sales volume.[97] ConverDyn's comments refer to the relevant sections of the 2014 ERI Report and 2015 ERI Report regarding its sales volume and production costs. RFI Comment of ConverDyn, Enclosure, at 5; NIPC Comment of ConverDyn, Enclosure, at 9. With respect to the ERI Reports, ConverDyn does not refute or confirm the assumptions ERI used in its analysis regarding ConverDyn's sales volume, market share, or production costs.[98] ConverDyn also incorporated by reference into its comments a document it submitted to DOE in March 2014. RFI Comment of ConverDyn, Enclosure, at 5 n.12; NIPC Comment of ConverDyn, Enclosure, at 1 n.1. That document provides estimates of the effect of DOE transfers on ConverDyn's sales volume and profits, but it does not provide financial information demonstrating that those effects have occurred or supporting analysis explaining why a given change in ConverDyn's sales or revenue should be attributed to DOE transfers. Letter from Malcolm Critchley, ConverDyn, to Peter B. Lyons, DOE (Mar. 10, 2014); *see also* Supplemental Declaration of Malcolm Critchley, *ConverDyn* v. *Moniz,* Case no. 1:14–cv–01012–RBW, Document 21–2, at ¶ 7 (July 14, 2014). Specifically, ConverDyn [REDACTED] and that the lost sales associated with DOE transfers would be equally distributed among itself, Areva and Cameco. This amounts to 933 MTU per year, [REDACTED]. *Id.* at 5 n.3. ConverDyn then provides a table asserting that it would experience [REDACTED]. *Id.* at 4–5.

In addition to the above, ConverDyn notes in its RFI comment that the Metropolis Works facility ceased production beginning in January 2015 for a period of approximately three months. The facility apparently stops operating on an annual basis for maintenance and upgrades, but ConverDyn states that the pause is ordinarily only one month long. ConverDyn states that the longer shutdown was necessitated by ''the continued depressed state of the conversion market.'' Although ConverDyn refers to the displacement of conversion sales by DOE's transfers, it acknowledges that DOE's transfers are not the sole cause of the lengthening of Metropolis Works facility's annual shutdown. ConverDyn does not include supporting data or otherwise provide a proportionate breakdown of the impact of DOE material versus other factors in causing this shutdown. RFI Comment of ConverDyn, Enclosure, at 4.

The UxC Report does not provide estimates for production levels or production costs at individual facilities, but its report does note that the cost for primary producers is ''known to be in the range of $10–$15/kgU.'' UxC Report, 15. In a separate publication, UxC provides more detailed estimates of both current production levels and projected future production for individual facilities. Market share can be determined by comparing production levels to those of other primary producers and secondary sources. UxC Conversion Market Outlook—December 2014, 45–47 (2014). Notably, UxC's estimates of production at MTW [REDACTED]. *Id.* at 47. [REDACTED].[99] *Id.* at 46. [REDACTED]. *Id.* at 48.

[95] The analysis below differs from the discussion above regarding production by the domestic mining industry. The two industries and markets have different characteristics. With respect to mining, the presence or absence of DOE transfers is expected to result in a small change in uranium prices. The result of a price increase or decrease would be to motivate a production increase or decrease, respectively, by the producers with marginal costs in the relevant range. By contrast, as discussed below, converters generally have relatively low variable costs. DOE estimates that ConverDyn's marginal cost is substantially lower than the current spot price for conversion. Thus, changes in price do not motivate production in the same way as in the uranium markets, and a different approach is warranted for estimating production changes.

[96] A version of this table appeared as Table 7 in Section III.B.3 of the Department's March 18, 2015, Notice of Issues for Public Comment. 80 FR 14,119. The figures in that table and accompanying text were slightly different from those found in the 2015 ERI Report. This version of the table includes the correct figures from page 68–70 of the 2015 ERI Report. This difference between the two sets of figures is minimal.

[97] ConverDyn states that any economic model should analyze actual sales data including both historic and forward sales. RFI Comment of ConverDyn, Enclosure, at 2. To the extent that such data has been provided to DOE through responses to the RFI, NIPC, and ConverDyn's March 10, 2014 letter, this analysis considers those data. However, if the suggestion is that no economic model constructed without such data is reasonable, DOE does not agree.

[98] ConverDyn suggests that it believes DOE is requesting or requiring it to submit specific information. NIPC Comment of ConverDyn, Enclosure, at 1–2. To the contrary, DOE is merely describing its assumptions and its reasoning. In some respects DOE has made use of information that ConverDyn provided, and on some points DOE has used other inputs. It is appropriate for DOE to consider, in making factual inferences, whether a given inference is consistent with information provided by ConverDyn, conflicts with a submission, or is made in the absence of information from ConverDyn.

[99] UxC's figures for worldwide supply include both primary production and secondary supplies from sources such as re-enrichment of tails and

Traxys provides some information relevant to DOE's assessment of the likely impact its transfers will have on production by the domestic conversion industry. Traxys explains that in selling material obtained from Fluor-B&W Portsmouth, it pursues a goal to sell at least 50% of the material to non-U.S. customers. Traxys states that it has consistently met this goal. RFI Comment of Traxys, at 1. Traxys further explains that in 2014 no more than 40% of DOE-derived material was sold in the U.S. market. RFI Comment of Traxys, at 2.[100] This is similar to the amount of conversion that Traxys has separately stated went to the U.S. market in prior years. Traxys stated in July 2014 that 42% of DOE-derived conversion entered the U.S. marketplace during calendar year 2013. Declaration of Kevin P. Smith, *ConverDyn* v. *Moniz,* Case no. 1:14–cv–01012–RBW, Document 17–7 at ¶11 (July 7, 2014).

MTW's actual production has fluctuated dramatically in recent years, ranging from 4.5 to 11 million kgU, for a number of reasons including work stoppages due to labor disputes, shutdowns imposed by MTW's safety regulator, and plant upgrades as well as possibly competition with other sources of conversion. The scale of those fluctuations, and of the associated financial consequences, makes it difficult to identify an amount of reduced production that could reasonably be attributed to DOE's past transfers—an analytical step that would otherwise help inform DOE's forecast of the effect of future transfers on MTW's production. In what follows, DOE will apply basic economic principles to information gleaned from ConverDyn and other sources to make that evaluation.

ConverDyn offers a scenario in which DOE transfers at 2,800 MTU per year would cause ConverDyn to lose sales of 933 MTU per year. Letter from Malcolm Critchley, ConverDyn, to Peter B. Lyons, DOE, 4–5 (Mar. 10, 2014); *see also* Supplemental Declaration of Malcolm Critchley, *ConverDyn* v. *Moniz,* Case no. 1:14–cv–01012–RBW, Document 21–2, at ¶ 7 (July 14, 2014). DOE does not believe that ConverDyn's estimate that it would lose volume of 933 MTU per year is accurate. ConverDyn estimated that loss by reasoning that each of three Western conversion providers—*i.e.* not those providers in Russia or China—would experience volume losses equal to one third of the amount of DOE transfers (at the old 2,800 MTU per year rate). That analysis is overly simplistic. As ERI explains, approximately one third of DOE-sourced uranium is distributed in the world outside the United States, whereas ConverDyn's U.S. sales generally represent more than a third of its recent production. Assuming that ConverDyn's domestic market share is 25%, or 4.5 million kgU, data from UxC indicate that approximately [REDACTED] would be devoted to U.S. sales. UxC Conversion Market Outlook—December 2014, 45–46 (2014). The relative volume loss to the different converters should depend on the relative proportions of each converter's production that ends up on the U.S. versus world market. It seems unlikely that the three converters have identical market shares in the various world markets. Thus, all else being equal, one would not expect ConverDyn to have the same volume loss as its peers elsewhere.

ERI's analysis takes account of this difference in market share between the U.S. and the rest of the world. DOE believes that ERI's approach to estimating lost sales volume based on market share is reasonable.[101] However, ERI's estimate assumes that ConverDyn's production volume will be 8.25 million kgU in 2015. Based on other available information, DOE believes that that both sales and production at MTW are significantly higher. Specifically, ConverDyn has provided information about sales, and UxC estimates and forecasts MTW's production. ConverDyn's March 10, 2014 Letter suggested [REDACTED]. Letter from Malcolm Critchley, ConverDyn, to Peter B. Lyons, DOE, 5 n.3 (Mar. 10, 2014). Similarly, UxC estimates [REDACTED]. UxC Conversion Market Outlook—December 2014, 46 (2014). Applying ERI's approach to this higher estimate of MTW production, DOE concludes that as a consequence of DOE transfers under the assessed case, MTW can be expected to experience a reduction in production volume of about 700,000 kgU in 2015, and 600,000 kgU in 2016 and 2017.[102]

In addition to the above effects, ConverDyn's March 10, 2014, letter also refers to [REDACTED]. Letter from Malcolm Critchley, ConverDyn, to Peter B. Lyons, DOE, 5–6 (Mar. 10, 2014). DOE believes that these [REDACTED]. ConverDyn acknowledges that this may be the case [REDACTED]. *Id.* at 5 n.3. [REDACTED]. [REDACTED] on the basis of the total price gap between term and spot prices, which is about $8.50 per kgU. As discussed above, DOE's best estimate of the price effect under the assessed case is a suppression of about $0.80. That amount represents about 9% of the current gap between the spot and term prices.

b. Production Costs

Based on the estimates of the effect of DOE transfers on ConverDyn's production volume, ERI also estimated the change in average per unit production costs that a volume decrease would cause. ERI's approach to calculating this effect is straightforward. Average per unit production cost can be calculated by dividing the total production cost by the number of units produced. If MTW's costs were 100% variable, then average production costs would not change, regardless of the volume produced. However, if some portion of MTW's costs are fixed, then a decrease in the number of units produced would lead to increased production costs, and vice versa. If the proportion of fixed costs, current production volume, and current per unit production cost are all known, the change in average production cost can be easily calculated. ERI looked to various public sources and estimates to provide a basis for its assumptions. DOE believes that this a reasonable approach for estimating the effect of DOE transfers on production cost at MTW.

As discussed above, ERI estimates that ConverDyn's current sales volume is 8.25 million kgU. This estimate is based on ConverDyn's statements about prior production levels at MTW and a stated 25% decrease in volume associated with the Fukushima accident. 2015 ERI Report, 65. ERI then estimates that MTW's current average per unit production cost is $15 kgU. This cost is primarily based on ConverDyn's claim that it has lost more than $100 million in the past decade. Finally, ERI analyzed two scenarios

underfeeding. [REDACTED]. UxC Conversion Market Outlook—December 2014, 46 (2014).

[100] Traxys also states that it purchased additional conversion in 2014 above and beyond what it purchased from Fluor B&W Portsmouth. Traxys suggests that these purchases ''offset'' an equivalent of DOE-introduced quantities. RFI Comment of Traxys, at 1. As far as DOE is aware, these purchases are unrelated to its transfers of natural uranium hexafluoride to FBP. Thus, DOE does not treat these purchases as ''offsetting.''

[101] ConverDyn urges DOE to consider the effects of prior uranium inventory transfers in assessing the reduction in demand and sales volume. DOE believes that for transfers for Portsmouth cleanup and down-blending services, any displaced sales volume will take place in the year of transfer. However, DOE agrees that certain prior transfers have effects in the market several years after the actual transfer, and it has taken these effects into account.

[102] This calculation assumes MTW production volumes in line with UxC's base case primary conversion supply estimate for 2015, 2016, and 2016. UxC Conversion Market Outlook—December 2014, 46 (2014). Specifically, UxC estimates [REDACTED]. *Id.*

assuming fixed costs make up 80% or 100% of MTW's total production costs. ERI states that these assumptions are based on the fact that conversion facilities in general have fairly high fixed costs relative to variable costs. 2015 ERI Report, 71.

DOE believes that ERI's estimate of production cost at $15 per kgU is reasonable. This appears to be a conservative estimate because it falls at the upper end of UxC's estimate, and because it is about as high as production costs could be for ConverDyn to have a viable business at the price point it set by its own announcement in 2010 and 2011. In addition, ConverDyn has not disputed ERI's estimate of MTW's production costs.

However, as stated above, based on ConverDyn's statements and estimates from UxC, DOE believes MTW's current production volume is higher than 8.25 million kgU. Thus, ERI's estimate of MTW production volume appears to be an underestimate. In addition, DOE believes that ConverDyn's fixed costs are somewhat lower than 80%. ConverDyn has not provided details of its cost structure, but it has provided information that is consistent with ERI's analysis while suggesting that ERI overestimated ConverDyn's fixed costs. ConverDyn offers a scenario in which DOE transfers at 2,800 MTU per year would cause ConverDyn to lose sales of 933 MTU per year. The company says that decrease in volume would result in [REDACTED]. Letter from Malcolm Critchley, ConverDyn, to Peter B. Lyons, DOE, 4–5 (Mar. 10, 2014). ConverDyn's fixed costs would not change if ConverDyn lost sales, so the change in profit would be due to the decrease in revenues, offset by the elimination of the variable costs that would have been incurred to produce the lost volume. *See* Supplemental Declaration of Malcolm Critchley, *ConverDyn* v. *Moniz,* Case no. 1:14–cv–01012–RBW, Document 21–2, at ¶ 7 (July 14, 2014). The revenue decrease from losing 933 MTU in volume would be about $14.9 million. [REDACTED].[103] Assuming MTW has production costs of $15 per kgU and MTW's variable costs are [REDACTED], then fixed costs at MTW should be [REDACTED]. This represents about [REDACTED] of total costs. DOE adopts this estimate of ConverDyn's variable costs, because it is based on information ConverDyn has provided.

DOE has performed an analysis like ERI's, using the different assumptions discussed above. Specifically, this calculation uses $15 per kgU as MTW's current production cost, [REDACTED] as the proportion of fixed cost, and UxC's base case primary conversion supply estimate of MTW's production volume as MTW's production volume with DOE transfers [104]—namely[REDACTED]. UxC Conversion Market Outlook—December 2014, 46 (2014). Based on these inputs, DOE concludes that transfers in the assessed case would increase MTW's average production cost by $0.63 in 2015, $0.49 in 2016, and $0.45 in 2017.

DOE does not believe this increase indicates an adverse material impact. In recent years MTW has experienced several significant disruptions in its business that are not attributable to DOE transfers. These disruptions have caused MTW's annual production to vary significantly—from as high as 11 million kgU to as low as 4.5 million kgU, the latter figure representing less than a third of MTW's nameplate capacity. DOE notes that the predicted decrease in volume reasonably attributable to DOE—*i.e.* 700,000 kgU in 2015 and 600,000 kgU in 2016 and 2017—and the associated decrease in MTW's average production cost, are substantially smaller than the production decreases at MTW from these other disruptions. The production swings experienced at MTW in recent years have been as much as seven times the magnitude of the sales volume decreases attributable to DOE.

Moreover, the conversion industry has maintained term prices at around $16 per kgU notwithstanding those fluctuations. As discussed above, converters seem able to demand, and conversion purchasers seem willing to accept, prices high enough to cover production costs and justify the investment to maintain conversion capacity. As average production costs increase over time—which they will do even absent DOE's transfers—it seems likely the prices of term contracts will keep pace.

3. Employment Levels in the Industry

ERI notes that Metropolis Works restarted after an extended shutdown in summer 2013 with approximately 270 employees. Prior to the 2012–2013 shutdown, ERI estimates that the facility employed approximately 334 people. As this change coincided with a change in long-term production volume, ERI concludes that it is unlikely that 100% of Metropolis Works' production costs are fixed. 2015 ERI Report, 72–73. Although it does not provide specific estimates, ERI states that ''[a] portion of the reduction in work force at Metropolis Works may be associated with the introduction of DOE inventory into the market.'' However, ERI also notes that several other factors likely played a part as well. 2015 ERI Report, 73. ConverDyn does not provide a separate estimate of decreased employment levels due to DOE transfers; instead ConverDyn referred to the relevant sections of the 2014 ERI Report, which reaches conclusions similar to those in the 2015 ERI Report. RFI Comment of ConverDyn, Enclosure, at 5.

The Department recognizes that employment at the MTW facility is lower than in prior years. Little of this decrease can reasonably be attributed to DOE transfers. While some portion of MTW's labor force is a fixed cost that does not depend on volume, DOE estimates the maximum amount of decrease attributable to DOE transfers by assuming all employment at ConverDyn and MTW varies directly with production. As discussed above, DOE forecasts that transfers under the assessed case will reduce MTW's production by 700,000 kgU in 2015 and 600,000 kgU in 2016 and 2017, or 7% of expected 2015 production and 5% expected production in 2016 and 2017. Assuming all of ConverDyn's current labor force is fully variable with production, the employment decrease reasonably attributable to DOE transfers in futures years would be approximately 19 person-years in 2015, 14 person-years in 2016, and 13 person-years in 2017. Of course, the assumption that labor is fully variable is likely to be quite conservative, and it is more likely that a substantial portion of the labor force is a fixed cost. If 50% of labor costs are variable, this would result in a reduction of 9 lost person-years in 2015 and 7 lost person-years in 2016 and 2017. As with comparable analyses discussed above, these figures represent a persistently lower employee count; DOE is not forecasting that every year ConverDyn will lose an additional 7 to 19 employees.

[103] DOE assumes that ConverDyn's calculation is based on the loss of sales at the prevailing term price in March 2014, *i.e.* $16.00 per kgU. DOE recognizes that there are actually two mechanisms by which ConverDyn may lose sales. [REDACTED] Letter from Malcolm Critchley, ConverDyn, to Peter B. Lyons, DOE, 5 n.3 (Mar. 10, 2014). To the extent that some reduced sales come from this latter category, [REDACTED]. Given that term prices have remained relatively steady for the past several years, DOE does not believe the difference would be significant for the purposes of this analysis.

[104] UxC's conversion market outlook bases these estimates based on current market conditions. As described above, DOE believes that the ConverDyn's current sales volume should reflect a level of transfers at 2,705 MTU per year. DOE notes that this is somewhat higher than the assessed case. Thus, MTW's production volume in future years should be slightly higher due to this reduction. DOE does not believe this difference is significant enough to markedly change this calculation.

A reduction in employment of 7 or even 19 person-years is relatively small, particularly in comparison to MTW's reduction of approximately 64 after the 2012–2013 shutdown. The industry has been able to weather employment losses much larger than any that could reasonably be attributed to DOE transfers.

4. Changes in Capital Improvement Plans and Development of Future Facilities

Although there are several large-scale development projects currently planned or underway outside the United States—namely AREVA's COMURHEX II modernization project and TVEL's plan for a new facility at SCC—DOE is not aware of any such plans in the United States. *See* Eileen Supko & Thomas Meade, ''New facilities are on the horizon,'' *Nuclear Engineering International* (Oct. 6, 2014), available at *http://www.neimagazine.com/features/featurenew-facilities-are-on-the-horizon-4394892*; UxC Conversion Market Outlook—December 2014, 50, 56–57, 73 (2014).[105]

Metropolis Works has, however, undertaken substantial capital expenditures at its existing facility in recent years. Honeywell has stated that it has invested ''nearly $177 million over the past 10 years in capital improvements, including $50 million in safety projects.'' ''About Us,'' Honeywell, *http://www.honeywell-metropolisworks.com/about-us.*[106] Some of these upgrades came during an extended shutdown in 2012 and 2013, in which Metropolis Works made upgrades to ensure the facility could withstand extreme natural disasters. These changes were made under an agreement with the U.S. Nuclear Regulatory Commission (''NRC'') in response to an inspection NRC conducted in the wake of the Fukushima disaster in Japan. ''Honeywell and U.S. Nuclear Regulatory Commission Reach Agreement on Necessary Upgrades to Metropolis Nuclear Conversion Facility,'' News Release (Oct. 16, 2012), available at *http://www.honeywell-metropolisworks.com/?document=oct-16-2012-press-release-honeywell-and-u-s-nuclear-regulatory-commission-reach-agreement-on-necessary-upgrades-to-metropolis-nuclear-conversion-facility&download=1.*

In terms of current plans, Metropolis Works announced in November 2014 that it would be shutting down for approximately 90 days beginning in early January 2015. Honeywell noted that it would use the extended shutdown to make updates and capital improvements. Jim Pritchett, Honeywell Metropolis Works, Letter to Employees (Nov. 20, 2014), available at *http://www.honeywell-metropolisworks.com/?document=letter-to-employees-23&download=1*; *see also* Comment of ConverDyn, Enclosure, at 4. Honeywell has further stated that the company plans to spend $17.5 million in improvements during 2015. Jim Pritchett, Honeywell Metropolis Works, Letter to Employees (Jan. 30, 2014), available at *http://www.honeywell-metropolisworks.com/?document=letter-to-employees-24&download=1.* Honeywell recently announced that MTW would restart production on or about April 1, 2015. Honeywell Metropolis Works, News Item (Mar. 27, 2015), *http://www.honeywell-metropolisworks.com/news/* (accessed Mar. 31, 2015).

With the expected increase in demand for conversion services worldwide, DOE believes that it is likely that MTW will continue to make capital improvements and refurbishments necessary to maintain current capacity. Honeywell has invested a substantial amount in such capital improvements in recent years. UxC reports that [REDACTED]. UxC Conversion Market Outlook—December 2014, 70 (2014). ConverDyn's comments agree with that proposition; ConverDyn indicates that it is not planning to expand capacity but does intend to maintain its capacity. NIPC Comment of ConverDyn, Enclosure, at 7.

DOE does not believe that the price effect associated with DOE transfers would make a significant difference in plans for new facilities or other capital improvements at existing facilities. As described above, the term price, at which the vast majority of capacity is transacted, appears to respond weakly to changes in supply. DOE transfers are expected to decrease ConverDyn's sales volume, but even without DOE transfers, ConverDyn's total sales would still be below MTW's current maximum nameplate capacity. In addition, transfers under the assessed case will represent only about 3% of total supply in coming years, and about 11% of secondary supply. In light of forecasts of supply and demand by ERI and UxC, DOE concludes that eliminating this amount of conversion would not make a difference to the assessment that new capacity is not warranted.

5. Long-Term Viability and Health of the Industry

ERI's most recent Reference Nuclear Power Growth forecast predicts global requirements for conversion services will grow to approximately 67.2 million kgU by 2020, approximately 20% higher than current requirements. Global requirements are expected to continue to rise to a level of 91.4 million kgU by 2035, approximately 63% higher than current requirements. 2015 ERI Report, 13.[107] ERI presents a graph comparing global requirements, demand, and supply from 2013–2035. Global secondary supply and supply from primary converters are expected to exceed global demand until at least 2025. Beyond that point, supply is forecast generally to keep pace with growth in requirements. 2015 ERI Report, 14.

Although not focused on conversion, the requirements forecasts noted above in Section IV.A.5 are also relevant to the conversion industry. In general, requirements and/or uranium concentrate demand forecasts should also apply to demand for conversion services.[108] However, there may be some small differences due to strategic and discretionary inventory building. For example, China has been purchasing strategic supply well in excess of its requirements. Those purchases have come in the form of U_3O_8. 2015 ERI Report, 13. Thus, these purchases affect near-term uranium concentrate demand, but do not affect near-term conversion demand.

In its December 2014 Conversion Market Outlook, UxC predicts significant increases in both

[105] ConverDyn states that large-scale projects outside the United States are immaterial. NIPC Comment of ConverDyn, Enclosure, at 7. Consistent with the analytical approach described above, DOE's task is to forecast the state of the domestic uranium conversion industry with and without DOE transfers under the assessed case. However, DOE believes activities in the global conversion industry may in some cases be relevant for predicting how DOE transfers will affect the domestic conversion industry.

[106] Letters from Honeywell management include similar numbers. A November 20, 2014, letter included identical figures. Jim Pritchett, Honeywell Metropolis Works, Letter to Employees (Nov. 20, 2014), available at *http://www.honeywell-metropolisworks.com/?document=letter-to-employees-23&download=1.* Older letters provided slightly different figures. Jim Pritchett, Honeywell Metropolis Works, Letter to Community (Dec. 19, 2013), available at *http://www.honeywell-metropolisworks.com/?document=letter-to-the-community-from-new-metropolis-works-plant-manager&download=1.*

[107] ERI's reference requirements include anticipated future reactor shutdowns, both in the United States and elsewhere, due to reasons such as competition with natural gas and other energy sources.

[108] ConverDyn suggests that forward demand from Japanese reactors should be assumed to be zero until at least 2018. As stated above, the requirements and demand outlooks of TradeTech predict growth in demand despite planned reactor shutdowns in Germany and decreased demand from Japan. It also appears that UxC projections account for decreased demand from Japan as well.

requirements and demand in the long-term. UxC Conversion Market Outlook—December 2014, 40, 44 (2014). Specifically, [REDACTED]. *Id.* at 44. In the longer term, [REDACTED]. *Id.* UxC projects that conversion supply [REDACTED]. *Id.* at 46. [REDACTED]. *Id.* at 47.

UxC also provides a more detailed explanation of its price forecast, which generally predicts an increase in price over the next 10 years. UxC Conversion Market Outlook—December 2014, 82, 85 (2014). [REDACTED]. *Id.* at 82. [REDACTED]. *Id.* at 75. UxC provides a separate forecast for the term price. [REDACTED]. *Id.* at 85. UxC also notes that some market participants [REDACTED]. *Id.* at 73.

Finally, as with uranium concentrates, DOE recognizes that the predictability of transfers from its excess uranium inventory over time is important to the long-term viability and health of the uranium conversion industry. Again, DOE notes that the upper scenario considered by ERI would represent continued transfers at rates consistent with the May 2012 and May 2014 determinations. Compare 2015 ERI Report, 25, with 2014 ERI Report, 28.

As described above, demand is expected to increase substantially in the next several years. Along with it, as the existing conversion facilities age, additional capital improvement for refurbishments will be required. Even with these refurbishments, eventually, new conversion capacity will be necessary to match increasing demand. Given that demand in North America is not expected to decrease substantially and that enrichment capacity is expected to increase, it is likely that the domestic uranium conversion industry will retain its capacity, either through continuing refurbishments at MTW or through the development of one or more new conversion facilities.[109]

Although DOE transfers may not have a large effect on the conversion term price, displaced production volume increases average production costs for primary producers. DOE does not believe this effect will be large enough to significantly alter planned decisions about conversion capacity in the United States. At worst, as with the uranium mining industry, the effect of DOE transfers would be to shift major capital improvements later in time. DOE does not believe that this difference is significant enough to appreciably affect the long-term viability and health of the domestic uranium conversion industry.

ConverDyn has submitted, on several occasions, figures for losses it says it has suffered in the recent past. These figures vary. ConverDyn stated in its March 10, 2014 letter that [REDACTED]. Letter from Malcolm Critchley, ConverDyn, to Peter B. Lyons, DOE, 1 (Mar. 10, 2014). In addition, ConverDyn asserts that it is a marginal business, by which it appears to mean that it is only barely viable. There is some tension between these assertions, together with the fact that MTW has continued to invest substantial amounts of money to maintain and upgrade the facility, most recently in the beginning of 2015. In any case, many causes have contributed to ConverDyn's financial results. Those causes include, among others, the consequences of the Fukushima disaster[110] and the various production stoppages MTW has experienced. Indeed, some of the losses ConverDyn has cited predate any substantial DOE transfers of uranium hexafluoride. As explained above, DOE bases its determination on an analysis of what the state of an industry would be with DOE transfers as compared to its state without transfers, and an assessment of what impacts can reasonably be attributed to the transfers. ConverDyn's submissions do not include such an analysis that would attribute some portion of the losses to DOE's transfers. They therefore do not call into question the economic analysis described above.

6. Russian HEU Agreement and Suspension Agreement

Section 3112(d) of the USEC Privatization Act requires DOE to ''take into account'' the sales of uranium under the Russian HEU Agreement and the Suspension Agreement. As discussed above, DOE believes this assessment should consider any transfers under these two agreements that are ongoing at the time of DOE's transfers.

Under the Russian HEU Agreement, upon delivery of LEU derived from Russian HEU, the U.S. Executive Agent, USEC Inc., was to deliver to the Russian Executive Agent, Technabexport (Tenex), an amount of natural uranium hexafluoride equivalent to the natural uranium component of the LEU. DOE notes that the Russian HEU Agreement concluded in December 2013. Thus, there are no ongoing transfers under this agreement.

The current iteration of the Suspension Agreement, described above in Section I.D.3.b, sets an annual export limit on natural uranium from Russia. 73 FR 7705 (Feb. 11, 2008). That agreement provides for the resumption of sales of natural uranium and SWU beginning in 2011. While the HEU Agreement remained active (*i.e.* 2011–2013), the annual export limits were relatively small— equivalent to between 170,000 and 410,000 kgU as UF_6. After the end of the Russian HEU Agreement, restrictions range between an amount equivalent to 4,540,000 and 5,140,000 kgU as UF_6 per year between 2014 and 2020. 73 FR 7705, at 7706 (Feb. 11, 2008). Material imported from Russia in accordance with the Suspension Agreement is not derived from down-blended HEU; thus, this material is part of worldwide primary supply as analyzed by ERI in the 2015 ERI Report.[111] This material is also presumably accounted for in the various projections and models developed by TradeTech and UxC. Thus, DOE's analysis takes those sales that have a conversion component under the Suspension Agreement into account as part of overall supply available in the market.

7. Conversion Industry Conclusion

After considering the six factors as discussed above, DOE concludes that transfers under the assessed case will not have an adverse material impact on the domestic uranium conversion industry. MTW and ConverDyn, together the sole conversion provider in the United States, sell nearly exclusively on term contracts. As explained above, DOE transfers will not affect the term price at which those contracts are transacted. DOE transfers under the assessed case will contribute to the spot price a continued $0.70–$0.80 suppression, a somewhat smaller effect than transfers in the past few years have had. Because only a very small proportion—if any—of MTW's sales take place at the spot price, that price suppression will not be material for the domestic industry.

In addition, DOE forecasts that over time, MTW's production will be smaller

[109] ConverDyn suggests that Russian, Chinese, and Indian demand should be excluded because these markets are closed to sales from the domestic conversion industry. DOE notes that even if North American converters lack access to these markets, converters in those countries have access to markets worldwide. ConverDyn does not contest the notion that conversion is essentially a global commodity. Thus, increased demand in Russia, China, and India will consume capacity with which ConverDyn would otherwise compete in markets that it can access.

[110] ConverDyn further states [REDACTED]. Letter from Malcolm Critchley, ConverDyn, to Peter B. Lyons, DOE, 4 (Mar. 10, 2014). [REDACTED].

[111] ERI states that it assumes 80% of the material supplied under the Suspension Agreement includes a conversion component. ERI further states that it believes Rosatom would not have a market for these included conversion sales without the Suspension Agreement. 2015 ERI Report, 83. In any case, it appears that ERI's analysis includes this material as part of the overall conversion supply.

than it would have been in the absence of DOE transfers by 700,000 kgU in 2015 and 600,000 kgU in 2016 and 2017. DOE conservatively estimates such a reduction would increase MTW's average production costs by about $0.63 in 2015, $0.49 in 2016, and $0.45 in 2016. DOE does not believe this change would constitute an adverse material impact, within the meaning of section 3112(d), because it is well within the range of production changes that MTW has experienced in recent years independent of DOE transfers. The reduced production may also lead to a decrease in employment, but DOE expects that decrease to be no more than a persistent 19 person-years in 2015 and 14 person-years thereafter, a smaller change than what MTW has implemented on its own in ordinary business decisions.

Honeywell, the owner and operator of MTW, continues to invest in maintaining and refurbishing the MTW facility, and DOE transfers seem unlikely to change those plans. ConverDyn claims that MTW is on the verge of collapse. If that is so, DOE does not believe that MTW's state is reasonably attributable to DOE's recent transfers or that the dire outcomes ConverDyn predicts will reasonably be attributable to transfers under the assessed case.

DOE does not believe that any of the effects described for the domestic uranium conversion industry have the substantial importance that would make them ''adverse material impacts'' within the meaning of section 3112(d).

C. Uranium Enrichment Industry

The domestic uranium enrichment industry consists of a relatively small number of companies, one of which operates a currently operating enrichment facility and several of which are developing facilities expected to begin production in the near future. The Paducah Gaseous Diffusion Plant, which was operated by USEC Inc.—since restructured as Centrus Energy Corp.—closed in 2013. Centrus may still be selling SWU from its inventory of uranium enriched at that facility, but this material is finite. Thus, there is only one currently operating enrichment facility in the United States, the URENCO USA (UUSA) gas centrifuge facility in New Mexico.[112] DOE is also aware of three other planned enrichment facilities in Idaho, Ohio, and North Carolina.

The current capacity of the UUSA facility is 3.7 million SWU. For comparison, the World Nuclear Association reports that worldwide capacity in 2015 is approximately 61 million SWU. *See* WNA, ''Uranium Enrichment'' (Jan. 2015), *http://www.world-nuclear.org/info/Nuclear-Fuel-Cycle/Conversion-Enrichment-and-Fabrication/Uranium-Enrichment/* (accessed Mar. 31, 2015).

1. Prices for Enrichment Services

Like market prices for uranium concentrates and conversion, enrichment market prices are generally described in terms of the spot price and the term price. This section discusses the potential impacts of DOE transfers on these two prices. For reference, as of March 30, 2015, UxC's spot price indicator is $79.00 per separative work unit (SWU) and its term price indicator is $90.00 per SWU.

Two of the market analyses discussed above contain estimates of the effect of DOE transfers on the market prices for conversion services: ERI and UxC. This section begins with a summary of each report and then discusses DOE's review of the reports' methodologies and conclusions. This section concludes with a discussion of how a change in conversion market prices would affect the domestic uranium enrichment industry. A principal mechanism through which such a change in market price could impact individual producers is through the effect on the realized price of primary enrichers.

a. Energy Resources International Report

In its analysis, ERI estimates the effect of DOE transfers on the market prices for enrichment services. To estimate this effect, ERI employed a market clearing price model similar to what is described above for the uranium and conversion markets. As with uranium concentrates and conversion, ERI constructed individual supply and demand curves for enrichment services and estimated the clearing price with and without DOE transfers. 2015 ERI Report, 44. The discussion in Section IV.A.1 regarding DOE's analysis of ERI's market clearing approach analysis also applies to ERI's estimates of the effect of DOE transfers on market prices for enrichment services. A summary of ERI's estimates of the effect of DOE transfers on the market price for SWU appears in Table 15.

As with uranium concentrates, DOE tasked ERI with estimating the effects of DOE transfers under the same three scenarios described in Section IV.A.1. The amounts of uranium entering the market at various times in different scenarios are outlined above in Table 4 in terms of MTU natural uranium equivalent.[113] Not all of the uranium under these scenarios includes an enrichment component—denominated in SWU. The amount of SWU that is necessary to produce the volumes contemplated under the different scenarios are listed in Table 14. For the LEU transferred for down-blending services, these figures are calculated assuming natural uranium feed, a tails assay of 0.20 wt-% U–235, and a product assay of 4.95 wt-% U235.[114] As with uranium concentrates, the assessed case falls somewhere between Scenarios 1 and 2 when calculated in terms of SWU.

TABLE 14—ENRICHMENT COMPONENT OF SCENARIOS CONSIDERED IN THIS ANALYSIS

Enrichment component of transfers for Portsmouth cleanup and down-blending in SWU			
	Portsmouth cleanup	Down-blending	Total
ERI Scenario 1	0	680,000	680,000
ERI Scenario 2	0	470,000	470,000
ERI Scenario 3	0	0	0
Assessed Case	0	520,000	520,000

[112] This facility is operated through Louisiana Energy Services, LLC, a subsidiary of Urenco Limited.

[113] As noted above, the transfer rates for these scenarios refer only to the level of uranium transfers for cleanup at Portsmouth and down-blending of LEU. Uranium transfers under other programs—*i.e.* blended LEU to TVA, depleted uranium hexafluoride to Energy Northwest, and the possible future transfer of depleted uranium hexafluoride to GE-Hitachi Global Laser Enrichment—are the same in all three scenarios.

[114] The ''natural uranium equivalent'' figures for material from down-blending listed in Table 4 are also based on these assumptions. The natural uranium equivalent is then adjusted to take account of the natural uranium required as diluent as part of the down-blending process—typically 10% of the total natural uranium equivalent.

Table 15 summarizes ERI's results. As with uranium concentrates, the relationship between the amount of transfers under each scenario and the price effect is essentially linear for each year ERI analyzed (2015–2024). Compare Table 3.8 to Table 4.3 of 2015 ERI Report, 25–26, 45. Thus, it possible to interpolate the price effect that ERI's analysis would predict for other levels of transfers. The estimated price effect for the assessed case is approximately $0.20 higher than ERI's estimates for Scenario 2. These interpolated values are included in Table 15.

TABLE 15—ERI'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON URANIUM ENRICHMENT PRICES IN $ PER SWU

[Market clearing approach]

2015 ERI Report				
	ERI Scenario 1	ERI Scenario 2	ERI Scenario 3	Assessed case (interpolated)
2015	$5.90	$5.10	$3.20	$5.30
2016	3.80	3.00	1.10	3.20
2017	3.50	2.60	0.70	2.80
2018	4.70	3.90	2.00	4.10
2019	5.10	4.20	2.30	4.40
2020	4.90	4.00	2.10	4.20
2021	5.20	4.30	2.40	4.50
2022	4.60	3.70	1.80	3.90
2023	4.40	3.50	1.60	3.70
2024	2.80	1.90	0.00	2.10
Average (2015–2024)	4.50	3.60	1.70	3.80

As with uranium concentrates and conversion, it is important to emphasize that this is not a prediction that prices will drop by the specified amount once DOE begins transfers following a new determination. A level of price suppression consistent with the estimate for Scenario 1 would, on ERI's analysis, already be reflected to some extent in the current market price because DOE has been transferring uranium at that rate for some time. 2015 ERI Report, 44. The price suppression that ERI estimates would persist under Scenario 3 is largely ERI's estimate of the consequence of past DOE transfers, from which some of the uranium is still expected to be entering the market in future years.

b. UxC Report

UxC estimates past effects of DOE uranium transfers on the price of enrichment services using its proprietary U–PRICE and SWU–PRICE models and then uses those models to forecast the effects of continued transfers at the rates described in the May 2014 Determination. UxC Report, 5. As with its uranium concentrate estimates discussed above, UxC provides ''incremental'' and ''total impact'' figures. In UxC's models, continued transfers at a given rate have a cumulative effect, so that the change to prices increases over time. UxC's ''incremental approach'' estimates the effect of DOE transfers beginning in 2012. The ''total impact approach'' estimates the effect of DOE transfers beginning in 2008, so as, in UxC's view, to take full account of the cumulative effect of all transfers.

Using its incremental approach, UxC estimates that between 2012 and 2014 DOE's transfers reduced the spot price by an average of $7.49 per SWU and the term price by an average of $5.37 per SWU. Using its total impact approach, UxC estimates that DOE's transfers between 2008 and 2014 reduced the spot price in the period from 2012 to 2014 by an average of $9.19 per SWU and the term price by an average of $6.96 per SWU. UxC Report, 8–9.

UxC also forecasts the effect of DOE's continuing transfers at current rates for the period 2015 to 2030. A summary of UxC's estimates of the effect of DOE transfers on future enrichment prices appears in Table 16. UxC estimates that DOE transfers in the near and medium terms would reduce the spot price by an average of $5.31 per SWU. UxC projects that this effect will change slightly in the medium term as market prices start to recover. Specifically, DOE transfers would reduce the spot price between 2018 and 2030 by an average of $4.86 per SWU. UxC also notes that the former number is larger relative to the expected price of enrichment than the latter number (5.9% versus 3.8%)—both, DOE surmises, because the longer-term price effect is smaller, and because the longer-term price is higher. UxC Report, 12. UxC forecasts that DOE transfers in the near and medium terms would reduce the term price by an average of $5.50 per SWU. Between 2018 and 2030, UxC forecasts that DOE transfers would reduce the term price by an average of $5.00 per SWU. Again, the near and medium term impact is larger in relation to the expected price (5.6% versus 3.6%). UxC Report, 11.

TABLE 16—UXC'S ESTIMATE OF EFFECT OF DOE TRANSFERS ON ENRICHMENT SPOT AND TERM PRICES IN $ PER SWU

UxC Report		
	Near- & mid-term price effect	Long-term price effect
Spot Price	$5.31	$4.86
Term Price	5.50	5.00

c. Effect of DOE Transfers on Market Price

After reviewing the market analyses described above, and other information including other comments received, DOE concludes that ERI's method for estimating and forecasting the price effects reasonably attributable to DOE's transfers is reasonable. As explained above, the market-clearing price analysis is consistent with basic economic principles and should be a reasonable way to estimate relatively small changes in price, assuming the market has a competitive price-setting mechanism. It is not clear whether the enrichment market functions in that way. The market is even more concentrated than the conversion market: Only four companies worldwide provide enrichment services, and one provides services essentially exclusively to Chinese purchasers. Unlike uranium and conversion, the enrichment market does not include significant sources of secondary supply.[115] On the other hand, buyers may be more sensitive to enrichment prices, both because enrichment constitutes a larger portion of the total cost of enriched uranium product and because natural uranium can be substituted, in the ''underfeeding'' sense described above, with uranium.[116] DOE observes that enrichment prices have been more variable than conversion prices and nearly as variable as uranium prices. For example, while enrichment prices did not drop immediately after the Fukushima incident, as uranium spot prices did, they have decreased by about 45% since 2011. Finally, there is not a large gap between spot and term prices for enrichment, as there is for conversion.

To be conservative, DOE will assume that a competitive price-setting mechanism does determine enrichment prices. On that assumption, ERI's market-clearing analysis should provide an appropriate forecast for the effects of DOE's transfers. To the extent that enrichment prices are uncompetitive, the price effect will tend to be smaller than what ERI forecasts.

Also, DOE notes that ERI's analysis assumes demand for enrichment to be perfectly inelastic. This assumption is a reasonable approximation, because, as discussed above, nuclear utilities have predictable requirements that must be filled. In reality, demand may have some small degree of elasticity. That elasticity would also tend to make the price effect smaller than what ERI forecasts.

However, as noted above, ERI's model does not take account of the interplay between uranium concentrates and enrichment prices. As explained above, for the uranium concentrates market, DOE expects that this interplay is not large enough to make a significant difference to this analysis. With respect to the enrichment market, DOE notes that only about one quarter of DOE's future transfers under the assessed case will displace enrichment services. Consequently, the effect of DOE's transfers on uranium hexafluoride prices should generally be larger than the effect on enrichment prices. Both ERI and UxC forecast such a relative difference—about 7% for concentrates for a rate of 2,705 MTU per year, compared to about 4% for enrichment. The amount of enrichment currently devoted to underfeeding depends in part on the relative prices of natural uranium hexafluoride and enrichment. If uranium prices decrease by a relative 3%, enrichers can be expected to devote less primary supply to underfeeding—on the order of 3% less, or about 200,000 SWU given that enrichers currently use about 8 million SWU for underfeeding. This is close to 40% of the total amount of SWU from DOE transfers under the assessed case.

UxC's model takes these interactions into account. DOE further notes that UxC's forecast of the effect on SWU prices is quite similar to ERI's, although it predicts a slightly larger effect on the price. UxC analyzed transfers that are equivalent to ERI's Scenario 1. Whereas ERI forecasts a price effect in the near term (2015–2017) of $4.40 for Scenario 1, UxC forecasts a near-term price effect of $5.31 (spot) or $5.50 (term). ERI forecasts a longer-term effect averaging $4.50 over the next decade. By comparison, UxC forecasts an effect of $4.86 (spot) or $5.00 (term).

While UxC did not provide forecasts for other possible transfer rates, it is reasonable to assume the price change would be proportional to the market displacement for supply changes that, like DOE's, constitute small proportions of total supply and have small effects on price. Accordingly, DOE concludes that UxC's model would forecast, for transfers under the assessed case, price effects of $4.55 (spot) or $4.70 (term) in the near-term and $4.15 (spot) or $4.30 (term) in the longer term.[117] DOE does not place much weight on UxC's forecast because, as discussed above, UxC's model relies on subjective exogenous variables such as ''market participants' general perception of the industry outlook'' and ''changes in market psychology'' that UxC sets prior to running its model in order to define the scenario that the model will predict.

However, DOE does believe that the consistency between UxC's forecast and ERI's indicates that the effect of interactions between the uranium and enrichment markets is unlikely to be larger than what DOE estimates here. Because the forecast price effects are only estimates, not precise to the penny, and because the underlying assumptions of ERI's model are reasonable, DOE concludes it is appropriate to rely on ERI's model with a revision to account for underfeeding. Accordingly, DOE adjusts the resulting estimate upward by 40% to reflect the additional enrichment supply that may become available due to the relative changes in uranium and enrichment prices.[118] Based on the above, DOE forecasts that transfers under the assessed case will continue to exert some downward pressure on the market prices for enrichment services, ranging from around $5.25 in the near term and $5.40 over the longer term.

The significance of price suppression at this level depends, at least in part, on market price. The 2015 ERI Report relies on the price indicators for SWU published by TradeTech on January 31, 2015. The spot price for SWU has decreased by about $9.00 since that date. The current price indicators, as published by UxC, are $79.00 per SWU in the spot market and $90.00 per SWU in the term market.[119] Thus, the estimated near-term price effect attributable to DOE transfers represents 6.7% and 5.9% of the spot and term

[115] In principle, overfeeding could generate surplus enrichment services just as underfeeding generates surplus natural uranium. At the prices prevailing in the recent past and anticipated in the near future, overfeeding would not be economical. Other sources of secondary supply in the uranium and conversion markets provide natural uranium, not enriched uranium. DOE's transfers for down-blending are secondary supply, but they constitute a much smaller portion of overall supply than total transfers do relative to uranium and conversion supplies.

[116] As noted elsewhere in this analysis, DOE believes the magnitude of any effect of DOE transfers on the uranium or enrichment price that is transmitted through the interaction with the enrichment or uranium price, respectively, is small. It is not inconsistent with that conclusion to believe that the interaction of the two prices could help limit the market's susceptibility to parallel pricing conduct.

[117] Transfers under the assessed case contain, on average, about 14% less SWU per year than the prior transfer rate.

[118] DOE notes that the additional suppression in enrichment prices would itself affect the interaction between the enrichment and uranium markets. Because that effect would tend push more enrichment capacity back to underfeeding, DOE believes it would at worst cause DOE's 40% adjustment to be an overestimate.

[119] URENCO states that the term enrichment price is currently $87.00 per SWU. NIPC Comment of URENCO, at 2. The most recent data available to DOE do not support this figure.

prices, respectively. Although it may be useful to compare the estimated price effect to current market prices for a sense of scale, comparing a longer term price effect to current market prices can be somewhat misleading; it is more appropriate to compare the price effect in future years to forecasted market prices in those years.

In its annual Enrichment Market Outlook, UxC provides a detailed explanation of its price forecast, which generally predicts an increase in term prices over the next 10 years. UxC Enrichment Market Outlook—Q4 2014, 91–94 (2014). [REDACTED]. *Id.* at 94. UxC reports [REDACTED]. *Id.* at 74. In the mid-term, UxC projects that the term price for SWU [REDACTED]. *Id.* at 94. UxC does not provide a separate forecast for the spot price. *Id.* at 79.

Using these price forecasts, it is possible to project the estimated price effect in future years as a percentage of the expected market price. DOE predicts that the price effect reasonably attributable to DOE transfers under the assessed case will be around $5.25 in the near term, and then average approximately $5.40 between 2018 and 2024. As prices increase, this price effect will represent a smaller proportion of the then-prevailing market prices. Based on UxC forecasts, which DOE believes to be a reasonable expectation for future prices, the price effect will average approximately [REDACTED] of the term price in 2015–2017, and [REDACTED] between 2018 and 2024.

d. Effect on Realized Price

As with uranium concentrates and conversion, the principal mechanism through which a change in market price would impact the domestic uranium enrichment industry is through the effect on what prices an enricher actually receives for its services. The market prices published by TradeTech and UxC are based on information about recent offers, bids, and transactions, and are thus a snapshot of contracting activity at the time of the publication. Enrichment, like uranium concentrates and conversion, is primarily sold on long-term contracts. Consequently an enricher's actual revenues are somewhat insulated from short-run fluctuations in price.

There is only one currently operating enrichment facility in the United States, the UUSA gas centrifuge facility in New Mexico. No commenter provides information about the realized price achieved by URENCO or the effect of DOE transfers on that price. However, other sources provide some relevant information.

In recent years, the vast majority of SWU has been sold on the term market. UxC Enrichment Market Outlook—Q4 2014, 17, 20 (2014). UxC reports that approximately [REDACTED] SWU were sold through spot contracts in 2014. *Id.* at 19. UxC estimates that 2014 enrichment demand stood at approximately [REDACTED]. *Id.* at 38. Based on these figures, spot sales in 2014 accounted for [REDACTED] of total SWU demand. ERI estimates that more than 95% of enrichment requirements are covered under long-term contracts. 2015 ERI Report, 74. Long-term contracts for SWU typically last for 10 or more years, in some cases and in some cases 15 or more years. UxC Enrichment Market Outlook—Q4 2014, 100 (2014).

Current term contracting volume is much smaller than pre-2010 volumes. *Id.* at 9, 21. UxC reports that long-term contracting activity [REDACTED]. *Id.* at 20. [REDACTED]. *Id.* at 20. UxC also projects that term contracting activity will [REDACTED]. *Id.* at 21. Therefore, DOE concludes that only 10–20% of term sales will reflect current prices. For the next few years, most sales will be on contracts concluded several years ago when prices were higher. More contracting will take place when those contracts expire, and those contracts will reflect the relevant future term prices.

Consistent with DOE's analysis, EIA reports that in 2013, the average price paid for SWU was $142.22. EIA, Uranium Marketing Report, 7 (2014). This is well above the average market prices for 2013, approximately $110 in the spot market and $120 in the term market according to UxC.

URENCO's most recent financial statements indicate that at least a portion of its contract portfolio ''extend[s] beyond 2025.'' URENCO Limited, Interim Financial Statements for the 6 Months Ended 30 June 2014, at 6, available at *http://www.urenco.com/_/uploads/content-files/Urenco_Group_Interim_Accounts_to_30_June_2014-final-02092014.pdf.*[120] URENCO has also stated that its enrichment contracts are usually fixed base price with escalation, leaving URENCO with ''no direct exposure to uranium prices.'' URENCO Investor Update, 4 (Sept. 9, 2014), available at *http://www.urenco.com/_/uploads/results-and-presentations/URENCO_Bond_Investor_Presentation_2014.pdf.* These statements reflect all enrichment activity at URENCO, not just production at the UUSA facility. But URENCO has controlled the U.S. facility since the beginning of planning, and it is unlikely U.S. sales depart from the company's overall practices. Because UUSA began operating in 2010, its contract terms will only have begun at that time. And it is likely that the vast majority of the facility's capacity was under long-term contracts at inception, because an enrichment plant operator ordinarily does not construct a plant before having contractual commitments for virtually the entire capacity. That approach would also be consistent with what URENCO reports for its overall contracting approach.

Therefore, DOE concludes that URENCO USA has essentially zero exposure to current term prices. Transfers under the assessed case will eventually affect URENCO's realized price, because URENCO's contracts will expire and URENCO will enter new contracts at the prevailing future term prices. Therefore, DOE concludes that the effect of DOE transfers on URENCO's prices will be through the effect on longer-term, rather than near-term, prices. As noted above, the longer-term price effect forecast for transfers under the assessed case is $5.40 per SWU.

As noted above, URENCO has stated that a small amount of its capacity is devoted to underfeeding. RFI Comment of URENCO, at 3.[121] ERI notes that URENCO estimates it is using 10–15% of its capacity for underfeeding. 2015 ERI Report, 75. To the extent that URENCO sells the natural uranium hexafluoride yielded from underfeeding, DOE transfers could affect its revenues to the extent the transfers cause decreases in the prices for uranium concentrates and conversion services. Using the price effects forecast above for the uranium and conversion spot prices, transfers under the assessed case would affect the price for that amount of material by 7.1%.

2. Production at Existing Facilities

URENCO reports that the nameplate capacity for the UUSA facility is 3.7 million SWU. RFI Comment of URENCO, at 1. URENCO has also stated

[120] DOE notes that URENCO's financial statements have referred to its order book as ''extending up to and beyond 2025'' at least since 2010. *See* URENCO, Annual Report & Accounts 2010, at 3 (2010), available at *http://media.urenco.com/corp-Web site/298/annualreportandaccounts2010_1.pdf.*

[121] On May 22, 2014, URENCO submitted an application to the U.S. NRC to amend its license for the facility to allow it to use high assay tails (approximately 0.4 wt-% U–235) as feed material. *See* 79 FR 43099 (July 24, 2014); ''Redacted—Supplement to License Amendment Request for Capacity Expansion of URENCO USA Facility (LAR–12–10),'' Letter from URENCO to U.S. NRC, LES–14–00071–NRC (June 17, 2014).

that construction of additional centrifuges will continue until the facility reaches 5.7 million SWU. ''About Us, URENCO USA,'' URENCO, *http://www.urenco.com/about-us/company-structure/urenco-usa* (accessed Feb. 21, 2015).

Due to the nature of gas centrifuges, it is highly unlikely that UUSA will decrease production of SWU. As URENCO states, due to the low level of electricity required to run the centrifuges, slowing production would have almost no effect on operating expenses. Furthermore, stopping and restarting a centrifuge may damage the equipment. RFI Comment of URENCO, at 3. That said, there is a possibility that URENCO will divert capacity currently used to produce LEU to underfeeding or tails re-enrichment. Specifically, UxC notes [REDACTED]. UxC Enrichment Market Outlook—Q4 2014, 42 (2014). Given how little spot contracting activity there has been in recent years, DOE believes that this effect will be small.

3. Employment Levels in the Industry

ERI does not provide an estimate of the change in employment due to DOE transfers in the enrichment industry. No commenter references changes in employment in the enrichment industry. URENCO states that its business is essentially fixed-cost and makes no reference to changes in employment.

Although DOE notes that there have been changes in employment in the enrichment industry in recent years, mostly related to the closure of the Paducah Gaseous Diffusion Plant, DOE does not believe that its transfers will have any significant effect on employment levels in the enrichment industry.

4. Changes in Capital Improvement Plans and Development of Future Facilities

URENCO recently completed ''Phase II'' of its expansion plans, bringing the capacity of its facility to 3.7 million SWU. ''Phase II Completion,'' URENCO (Apr. 9, 2014), *http://www.urenco.com/news/detail/phase-ii-completion* (accessed Feb. 22, 2014). URENCO is continuing to move forward with ''Phase III'' expansion, which will bring plant capacity to approximately 5.7 million SWU. URENCO notes that it has slowed its plan for construction of additional capacity. RFI Comment of URENCO, at 3. URENCO expects to reach 5.7 million SWU capacity by 2023. URENCO Investor Update, 31 (Sept. 9, 2014). Although the company recently received a license amendment that would allow it to expand capacity to 10 million SWU per year, URENCO states that this move is ''to provide for future licensing flexibility should the market recover.'' URENCO notes that it cancelled construction of ''Phase IV'' in 2013. RFI Comment of URENCO, at 3.

DOE is aware of several other planned or proposed enrichment facilities in the U.S., namely, AREVA's Eagle Rock Enrichment Facility in Idaho, Centrus Energy's—formerly USEC Inc.—American Centrifuge Plant in Piketon, OH, and Global Laser Enrichment's facility in Wilmington, NC.[122] Development of each of these facilities has been put on hold or slowed until market prices improve.

The Eagle Rock Enrichment Facility would use gas centrifuge technology and would have a capacity of approximately 3.3 million SWU. ''Eagle Rock Enrichment Facility,'' AREVA, *http://us.areva.com/EN/home-203/eagle-rock-enrichment-facility.html* (accessed Feb. 21, 2015). After announcing several delays in construction, AREVA stated in May 2013 that it was no longer projecting a start date for building the facility. ''French company won't set date for Idaho nuclear facility,'' The Oregonian (May 23, 2013), *http://www.oregonlive.com/pacific-northwest-news/index.ssf/2013/05/french_company_wont_set_date_f.html* (accessed Feb. 21, 2015). At the time of this announcement, the term market price for SWU was approximately $130, according to UxC's monthly price indicator.

The proposed American Centrifuge Plant would use gas centrifuge technology and would have a capacity of approximately 3.8 million SWU. ''USEC Inc. Gas Centrifuge,'' U.S. NRC, *http://www.nrc.gov/materials/fuel-cycle-fac/usecfacility.html* (accessed Feb. 22, 2015). Active construction of new centrifuges has ceased. In a November 2013 quarterly filing with the SEC, Centrus Energy, then known as USEC, stated, ''[a]t current market prices USEC does not believe that its plans for American Centrifuge commercialization are economically viable without additional government support.'' USEC Form 10–Q, Securities and Exchange Commission, at 10 (Nov. 5, 2013) *https://www.sec.gov/Archives/edgar/data/1065059/000106505913000049/usu-2013930x10q.htm* (accessed Feb. 22, 2015). When this form was submitted to the SEC, the term market price for SWU was approximately $115, according to UxC's monthly price indicator.

Global Laser Enrichment, a venture of GE-Hitachi and Cameco, has proposed an enrichment plant that would use laser enrichment technology developed by Silex Systems, an Australian company. The proposed facility in Wilmington, NC, would have a capacity of about 6 million SWU. GLE License Application, Rev. 7, U.S. NRC, Docket 70–7016, at 1–16 (August 20, 2012), available at *http://pbadupws.nrc.gov/docs/ML1224/ML12242A227.pdf*. In July 2014, GLE announced that it would slow continued development of the facility ''in line with current and future market realities.'' ''Global Laser Enrichment,'' GE-Hitachi, *https://nuclear.gepower.com/fuel-a-plant/products/gle.html* (accessed Feb. 22, 2015). At the time of GLE's announcement, the term market price for SWU was approximately $95, according to UxC's monthly price indicator.

Based on ERI's estimate, as adjusted to account for underfeeding, eliminating all DOE–transferred material from the market—including material already transferred in the past as well as the material to be transferred under the assessed case—could cause prices to rise by no more than $7.40 in 2015 and less than $4.50 in 2016 and 2017, which could result in a term price of around $97.00 in 2015 and just under $95.00 in 2016 and 2017.

The timing of the above announcements suggests that enrichers would require a substantially higher price signal in order to move forward with adding new capacity. Specifically, the American Centrifuge project was put on hold when term prices were close to $115 and the Eagle Rock facility was put on hold when prices were close to $130. Although GLE's announcement came at a time when prices were $95, the level of near-term uncovered requirements is low—[REDACTED], UxC Enrichment Market Outlook—Q4 2014, 39 (2014)—and it is not clear that GLE would be able secure the necessary long-term contracts even at that price. Because the developers stopped the projects just discussed on the basis of prices at or above $95, DOE concludes that DOE transfers in the near term will not change the decisions whether to complete those projects. In the longer term, as prices improve, there may come a point for each of these projects at which its owner is willing to invest to complete the project. The price effect forecast for transfers under the assessed

[122] Although not the subject of this determination, DOE notes that ERI analyzed the possible future transfer to GLE of high-assay depleted uranium. 2015 ERI Report, 27–28. As this transaction would involve re-enrichment of depleted tails, it would tend to support additional demand for enrichment services.

case may delay that point, but given the forecasts and the announced decisions, DOE does not believe it would change the long-term outcome for these projects. Meanwhile, although URENCO is still moving forward with a capacity expansion from 3.7 million SWU to 5.7 million SWU, it has slowed the pace of expansion and stated that it does not expect to reach this capacity until 2023. Even though URENCO has announced expansion plans for UUSA, it presumably still intends to secure long-term contracts prior to construction. It appears that URENCO has decided to slow expansion to await higher prices that it expects will prevail in a few years—UxC's [REDACTED]. *Id.* at 114. Thus, DOE believes that a term price of $95.00–$97.00 would likely not be sufficient to support URENCO's planned price expansion.[123]

As a result, DOE believes that transfers under the assessed case will not have a significant effect on capacity expansion at UUSA or at other planned facilities.

5. Long-Term Viability and Health of the Industry

ERI's most recent Reference Nuclear Power Growth forecast projects global requirements for enrichment services to grow to approximately 59 million SWU between 2021 and 2025, approximately 31% higher than current requirements. Global requirements are expected to continue to rise to a level of 74 million SWU between 2031 and 2035, approximately 64% higher than current requirements. 2015 ERI Report, 13. ERI presents a graph comparing global requirements, demand, and supply from 2013–2035. Global supply is expected to continue to significantly exceed global demand over the long term. 2015 ERI Report, 16.

Although not focused on enrichment, the requirements forecasts noted above in Section IV.A.5 are also somewhat relevant to the enrichment industry. In general, requirements and/or uranium concentrate demand forecasts should also apply to demand for low enriched uranium. As with conversion, there may be some small differences due to strategic and discretionary inventory building. For example, China has been purchasing strategic supply well in excess of its requirements. Those purchases have come in the form of U_3O_8. 2015 ERI Report, 13. Thus, these purchases affect near-term uranium concentrate demand, but do not affect near-term demand for LEU.

In addition to demand for LEU, higher demand for uranium concentrates can affect demand for enrichment because of the relationship described above between natural uranium and enrichment as inputs for producing enriched uranium product. In the medium to long term, supply from current mines will cease to exceed demand. Meanwhile, enrichment supply will continue to exceed requirements for LEU. As prices for uranium concentrates and conversion increase relative to SWU prices, it may become more economical to re-enrich high-assay tails. In this vein, ERI suggests that enrichers will continue to redirect capacity to underfeeding and that Rosatom will continue to re-enrich tails. 2015 ERI Report, 16.[124]

In its Uranium Enrichment Outlook for the 4th quarter of 2014, UxC predicts significant increases in both requirements and demand in the long-term. UxC Enrichment Market Outlook—Q4 2014, 36, 38 (2014). Specifically, [REDACTED]. *Id.* at 38. In the longer term, UxC estimates that enrichment demand [REDACTED]. *Id.* UxC's base case supply outlook projects that supply [REDACTED]. *Id.* at 46. UxC's projected base case supply [REDACTED]. *Id.* at 50. DOE recognizes that a significant amount of the forecast increase in demand will be in China (and to a lesser extent in Russia), markets that URENCO asserts it cannot access. But enrichers in those countries do currently have access to markets elsewhere in the world, and enrichment is fungible. URENCO does not contest the notion that enrichment is essentially a global commodity with a single world price. Thus, increased demand in China and Russia will consume capacity with which URENCO would otherwise compete in markets that it can access.[125]

As discussed above in Section IV.C.1, UxC also predicts a significant increase in enrichment prices over the next ten years.

Finally, as with uranium concentrates and conversion services, DOE recognizes that the predictability of transfers from its excess uranium inventory over time is important to the long-term viability and health of the uranium enrichment industries. Again, DOE notes that the upper scenario considered by ERI would represent continued transfers at rates consistent with the May 2012 and May 2014 determinations. Compare 2015 ERI Report, 25, with 2014 ERI Report, 28.

DOE notes that enrichment market prices are at levels not seen in the past decade. There is also tremendous uncertainty in the market regarding future production. Centrus Energy Corp. (formerly USEC, Inc.) emerged from bankruptcy in the past year and has been forced to rethink its business model since the closure of the Paducah Gaseous Diffusion Plant. A significant source of business for Centrus and URENCO in recent years has been from the Asian markets, specifically Japan, Taiwan, and South Korea. Demand in these markets has been directly affected by the Fukushima Daiichi accident. In addition, the enrichment market faces uncertainty related to Areva's finances and the potential for GLE to build and operate a new facility utilizing the Silex technology. DOE is cognizant of these uncertainties facing the market.

However, as described above, enrichment capacity is expected to shift over time toward a trajectory that more closely tracks demand. The moves in recent years by several enrichers to curtail or postpone planned capacity increases contributes to this. As a result, prices are expected to recover over the next ten years. DOE does not believe that the price effect attributable to DOE transfers is large enough to cause a significant change to production and development plans at existing or planned facilities. At worst, as with the uranium mining industry, the effect of DOE transfers would be to shift major capital investments later in time. DOE does not believe that this difference is significant enough to appreciably affect the long-term viability and health of the domestic uranium enrichment industry.

6. Russian HEU Agreement and Suspension Agreement

Section 3112(d) of the USEC Privatization Act requires DOE to ''take into account'' the sales of uranium

[123] URENCO similarly notes that uncovered requirements are low. URENCO further notes that DOE transfers are equivalent to about 72% of unfilled global demand in 2015. RFI Comment of URENCO, at 4. As noted in the NIPC, DOE believes that figures for unfilled enrichment demand or uncovered enrichment requirements likely already reflect DOE uranium transfers at recent rates. Even if this were not true, the prediction above for the price effect of DOE transfers does not depend on an estimate of uncovered requirements. Thus, changing this input would not alter DOE's forecast. URENCO may also be suggesting that the lack of uncovered requirements means that DOE is directly displacing its own sales. However, as described above, even if DOE transfers were removed from the market, it does not appear that prices would rise enough to justify UUSA's increasing capacity substantially.

[124] Again, DOE notes that although it is not included in ERI's chart of enrichment supply, GLE's proposed Paducah Laser Enrichment Facility would represent additional enrichment supply that is not intended to be devoted to producing LEU. Compare 2015 ERI Report, 16, with 2015 ERI Report, 27–28.

[125] DOE also notes that the Russian Suspension Agreement places limits on EUP imported into the United States from Russia. Thus, URENCO is somewhat protected from the effects of competition with Russian enrichers for domestic demand.

under the Russian HEU Agreement and the Suspension Agreement. As discussed above, DOE believes this assessment should consider any transfers under these two agreements that are ongoing at the time of DOE's transfers.

Under the Russian HEU Agreement, Russian HEU was down-blended to LEU and then delivered to USEC Inc. for sale to end users in the United States. DOE notes that the Russian HEU Agreement concluded in December 2013. Thus, there are no ongoing transfers under this agreement.

The current iteration of the Suspension Agreement, described above in Section I.D.3.b, sets an annual export limit on natural uranium from Russia. 73 FR 7705 (Feb. 11, 2008). That agreement provides for the resumption of sales of natural uranium and SWU beginning in 2011. While the HEU Agreement remained active (*i.e.* 2011–2013), the annual export limits were relatively small—equivalent to between 100,000 and 250,000 SWU. After the end of the Russian HEU Agreement, restrictions range between an amount equivalent to 2,750,000 and 3,110,000 SWU per year between 2014 and 2020. 73 FR 7705, at 7706 (Feb. 11, 2008). Material having a SWU component imported from Russia in accordance with the Suspension Agreement is not derived from down-blended HEU; thus, this material is part of worldwide primary enrichment supply as analyzed by ERI in the 2015 ERI Report. This material is also presumably accounted for in the various projections and models developed by UxC. Thus, DOE's analysis takes those sales that have an enrichment component under the Suspension Agreement into account as part of overall supply available in the market.

7. Enrichment Industry Conclusion

After considering the six factors as discussed above, DOE concludes that transfers under the assessed case will not have an adverse material impact on the domestic uranium enrichment industry. As explained above, DOE transfers under the assessed case will continue to exert some downward pressure on the market price for enrichment services. DOE believes that $5.25 per SWU in the near-term and $5.40 per SWU over the longer term is a reasonable estimate of the price effect attributable to DOE transfers; this is somewhat smaller than the effect transfers in the past few years have had. Sales from UUSA, the sole operating enrichment facility in the United States, are almost exclusively under term contracts with no exposure to the spot price. Thus, the effect of DOE transfers on realized price for enrichment from UUSA will come through the effect on new term contracts that URENCO will enter into in the longer term, *i.e.* $5.40 per SWU. DOE transfers may also affect the price realized for natural uranium hexafluoride from underfeeding at UUSA by about 7%. Because DOE believes that less than 15% of UUSA's capacity is devoted to underfeeding, this effect is expected to be small. Due to technical constraints, DOE concludes that the price effect attributable to DOE transfers under the assessed case will not cause URENCO to decrease capacity or change employment levels at UUSA.

DOE believes that decisions to expand capacity at UUSA or at other planned enrichment facilities require prices significantly higher than current prices. This would be true with or without DOE transfers. Thus, DOE concludes that transfers under the assessed case will not have a significant effect on near-term decisions to build future enrichment capacity in the United States. DOE expects that SWU prices will increase in the medium- to long-term enough to support these expansion plans. DOE transfers would, at worst, have the effect of slightly delaying the development of such future capacity without preventing these new facilities from coming online. As such, DOE concludes that transfers under the assessed case would not significantly affect the long-term viability or financial health of the domestic uranium enrichment industry. DOE does not believe that any of these effects has the substantial importance that would make it an ''adverse material impact'' within the meaning of section 3112(d).

V. Other Comments

DOE received a number of comments in response to the NIPC and RFI that warrant additional discussion. Many comments included suggestions for how DOE might mitigate any potential adverse impacts.

Several commenters asserted that for a given amount of transferred uranium, introducing the material into the spot market is particularly harmful to industry. These commenters contend that DOE should analyze its transfers on the assumption that the material is primarily appearing on the spot market. They also urge DOE to take steps to ensure that the uranium it transfers is sold through term contracts, rather than through spot contracts or through future-delivery contracts that commenters say are little different from future spot contracts. Some of these commenters, representing members of the domestic mining industry, suggest that DOE could achieve this goal by distributing its material through uranium concentrate producers. These producers, the commenters say, have incentives to place DOE-sourced uranium into long-term deliveries, in order to mitigate the effect on spot prices. To the extent such an arrangement led to higher spot prices, DOE would also receive greater value for the uranium.

With respect to the impacts caused by DOE transfers, the foregoing analysis has, in almost all respects, assumed the material contributes to the spot markets over time.[126] DOE therefore believes its analysis has comported with commenters' suggestion. Assuming the commenters are correct that spot sales of DOE-sourced uranium are the most harmful way for the material to enter the markets, DOE has assessed the consequences.

DOE recognizes that if some or all of its transfers entered the markets through term contracts, the effects on spot prices could be smaller.[127] However, for DOE itself to make transfers on the equivalent of traditional term contracts would not serve the purposes for which, in the main, DOE transfers uranium. In DOE's understanding, a buyer on a term contract has a right to receive material at various future delivery dates; and it ordinarily pays for the material at or near the time of delivery, at a price determined by the contract. By contrast, DOE transfers uranium in exchange for services provided substantially contemporaneously with the transactions, not years in the future.

At least one commenter says that some utility buyers have the financial capacity to buy uranium and hold it for a few years before using it. According to the commenter, the price curve for uranium, coupled with the financial environment in which interest rates have remained very low, makes such transactions advantageous for utilities. DOE notes, however, that holding the

[126] As noted above, one exception to this approach is ERI's econometric model for the spot price of uranium concentrates, for which the difference between term sales and spot sales of DOE-sourced uranium could influence the model's medium- and long-term forecasts. Because DOE considers those forecasts fairly uncertain anyway, the possibility that less DOE-sourced uranium is delivered on term contracts than ERI assumed would not alter DOE's conclusions.

[127] Assessing whether the effects would actually be smaller, and by how much, would require additional analysis. For example, if a term sale of DOE-sourced uranium displaced a corresponding amount of supply onto the spot market, the overall effect could be the same as if the DOE-sourced uranium were sold directly on the spot market. The likelihood of such a direct displacement differs among the uranium concentrates, conversion, and enrichment markets.

material for a few years would not, apparently, serve the purpose of commenters who seek to remove DOE-sourced material from the spot markets. These commenters stress that what they consider the true term market involves deliveries five to ten years in the future. No commenter identified a person or group of persons that would have the financial wherewithal to pay the spot price for DOE-sourced uranium in the present and then retain the uranium for delivery that far in the future.

Commenters from the mining industry did indicate that they would be interested in managing the distribution of DOE-sourced uranium. However, DOE notes that the commenters appear to contemplate that DOE would receive in such an arrangement substantially less than the prevailing spot market price for the uranium. If, on the other hand, the commenters expect to pay prevailing spot market prices, DOE believes they could in principle already undertake to manage how the material enters the markets. DOE transfers uranium to commercial businesses; and one of them, DOE believes, sells its uranium to Traxys, a uranium trading firm. A person that wanted to buy uranium from DOE to transfer it from the spot market to the term market could buy the equivalent amount of material from Traxys instead.

For these reasons, while DOE is willing to explore whether it would be feasible for some persons, such as uranium concentrate producers, to manage the appearance of DOE-sourced uranium on the markets, DOE does not consider it appropriate to incorporate this suggestion in today's determination.

Commenters also suggested a variety of other actions that could help to mitigate the impact of DOE transfers. Several suggested that DOE consider a matched sales arrangement similar to the arrangement used during an earlier iteration of the Suspension Agreement with Russia. Under that program, Russian-origin natural uranium (U_3O_8 or UF_6) or SWU could only be imported into the U.S. if it was ''matched'' to an equal portion of newly-produced U.S. origin natural uranium or SWU and the two quantities were sold together as a unit. *See generally* 59 FR 15,373 (Apr. 1, 1994). Commenters suggest that an arrangement of this type for DOE-sourced uranium would incentivize new production capacity that is not already committed to long-term contracts. DOE acknowledges that a matching program could benefit domestic producers, but it is concerned that it would not serve the purposes for which DOE transfers uranium. In general, domestic producers already participate in domestic and global spot markets for uranium. A new sale that would not have occurred absent the matching program will tend to be from production that would not have been economic at current prices. The effect of a matching program would be to secure a viable, somewhat above-market price for the new sale. Because buyers will presumably be unwilling to pay more than the relevant market prices overall, the DOE-sourced uranium would have to be transferred at a lower price to compensate. The net effect would be for DOE to receive less value for its uranium in exchange for an additional monetary benefit to producers. For these reasons, DOE declines to incorporate a matched sales approach into today's determination.

One commenter suggested several alternatives to DOE's exchanging LEU for down-blending services. First, the commenter suggested that DOE down-blend only to an assay of 19.75 wt-% U–235, an assay that commercial enrichers do not provide and therefore will not compete with commercial supply. However, because there is very little demand for LEU at this assay—which is predominantly used in research reactors—the resulting LEU would have little value to a contractor receiving it in exchange for services. Granted, the contractor could down-blend the LEU further to assays of 5 wt-% or below; but that outcome would affect markets the same as if DOE itself transferred the low-assay LEU. Further, DOE allocates the portion of the down-blended LEU that is not transferred to the down-blending contractor to various programmatic needs, many of which require LEU with an assay of 5 wt-% or below. The commenter also suggests that DOE devote the LEU resulting from down-blending to either the U.S. nuclear fuel bank, the American Assured Fuel Supply, or to the IAEA's nuclear fuel bank. Both proposals amount to a request that DOE cease exchanging LEU for down-blending services altogether. The second proposal suggests that the difference in funding could be made up by decreasing U.S. financial contributions to the IAEA by an amount equivalent to the value of the LEU. The Agency currently plans to purchase LEU from the market to stock its fuel bank. If the United States provided LEU, the IAEA would need to purchase less LEU from the market. Thus, it appears that this type of transaction would not decrease the impacts on the domestic enrichment industry because it would displace purchases of LEU on the open market that the IAEA would have otherwise made. In any case, DOE believes that it can meet its purpose of exchanging 4.95 wt-% LEU for down-blending services without causing an adverse material impact on the domestic uranium industries; thus, DOE declines to incorporate these alternatives into today's determination.

One commenter suggested that DOE should consider as a mitigating strategy implementing regulations that limit the amount of secondary supply obtained from underfeeding that enrichers can sell in the United States. Doing so would mean protecting producers from competition with underfeeding by enrichers, at enrichers' expense. DOE is not inclined to engage in such capacity controls.

With respect to the domestic conversion industry, one commenter suggested stopping transfers of conversion services would have a positive effect. DOE does not transfer conversion services; it transfers natural uranium hexafluoride. This displaces primary conversion because in order to obtain natural uranium hexafluoride from primary production, one would need to buy uranium concentrates and then pay for that material to be converted into uranium hexafluoride. The commenter is presumably suggesting that DOE should accept in exchange for its uranium an amount of services equivalent to the value of the uranium concentrates and ''credits'' for the amount of conversion services necessary to produce the material from primary production. These ''credits'' would be in the form of a tradeable contract for conversion services from a primary supplier. This process would mean that DOE would receive less services in exchange for its uranium while making the individual transfers substantially more complicated. DOE further notes that this would decrease the impacts on the domestic conversion industry, but it would have no effect on the impacts to the domestic uranium mining or enrichment industries. For these reasons, DOE declines to engage in this type of transaction.

One commenter also suggested that DOE could establish price bands below which DOE would not transfer uranium. The commenter presented this proposal specifically for conversion services. Thus, this would require DOE to accept conversion ''credits'' as described in the preceding paragraph if the conversion price fell below a given threshold. However, DOE recognizes that this approach could in principle apply to any uranium transfers. As DOE has concluded that its transfers will not have an adverse material impact on the domestic uranium industries in market conditions that are expected to occur,

DOE declines to establish price thresholds below which DOE will transfer less uranium. However, DOE expects to reassess its transfers at least every two years, consistent with the statutory limit on the validity of section 3112(d)(2) determinations. Such reassessments are, among other things, an opportunity to ensure that DOE evaluates its transfers in light of changing market conditions.

In addition to comments regarding potential ways to mitigate any impacts caused by DOE transfers, DOE received a number of comments that are related to DOE's current plans, but do not directly implicate how DOE conducts its analysis of whether DOE transfers will cause adverse material impacts.

One commenter suggested that DOE should prepare two separate Secretarial Determinations—one for Portsmouth cleanup, and one for down-blending services. DOE agrees that it could conceivably prepare separate determinations for these two programs. However, DOE believes it is more informative to analyze these transfers together, to assess their cumulative impacts on the domestic uranium industries. Thus, DOE declines to adopt separate determinations for these programs at this time. This commenter also suggests that DOE could potentially conduct transfers for down-blending under section 3112(e)(2) of the USEC Privatization Act, which allows certain transfers for national security purposes. DOE recognizes that certain programs may potentially fall under more than one subsection of the Act. DOE believes it is unnecessary to determine whether these transfers could be conducted under section 3112(e)(2) because DOE has concluded that these transfers will not have an adverse material impact on the domestic uranium industries.

Several commenters suggested that DOE is not getting fair market value for its uranium—as section 3112(d)(2)(C) of the USEC Privatization Act requires—because DOE values the material at the spot price rather than the term price. This assessment does not analyze whether DOE will receive fair market value for its transfers. DOE evaluates whether it receives fair market value prior to each transfer through a separate process. With respect to this analysis, DOE has assumed that in its uranium transfers it will receive roughly the prevailing spot price for its material. That assumption is reasonable because it is consistent with DOE's past experience and with the contracts under which DOE transfers uranium.

DOE received a number of comments requesting that it publish a draft Secretarial Determination for notice and comment. DOE notes that notice and comment is not required for determinations pursuant to section 3112(d)(2). However, DOE has solicited public comment on two occasions in preparation for this determination, through a December 2014 Request for Information and a March 2015 Notice of Issues for Public Comment. DOE received substantial input, described above, in response to those two notices, and it has carefully considered these comments.[128]

VI. Conclusion

For the reasons discussed above, DOE concludes that transfers under the assessed case will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industries, taking into account the Russian HEU Agreement and Suspension Agreement.

[FR Doc. 2015–11035 Filed 5–6–15; 8:45 am]

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[128] One commenter suggested that DOE subject each Secretarial Determination to an analysis under the National Environmental Policy Act. DOE notes that the actual uranium transfers—as opposed to the Secretarial Determination—are already covered under other NEPA processes. Thus, it is unnecessary to conduct further NEPA analysis for today's determination.

FEDERAL REGISTER

Vol. 80 Thursday,
No. 88 May 7, 2015

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 Chapter 1
Federal Acquisition Regulations; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2015–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–82; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–82. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–82 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULES LISTED IN FAC 2005–82

Item	Subject	FAR Case	Analyst
I	Equal Employment and Affirmative Action for Veterans and Individuals with Disabilities	2014–013	Loeb.
II	Review and Justification of Pass-Through Contracts	2013–012	Hopkins.
III	Enhancements to Past Performance Evaluation Systems	2014–010	Glover.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–82 amends the FAR as specified below:

Item I—Equal Employment and Affirmative Action for Veterans and Individuals With Disabilities (FAR Case 2014–013)

DoD, GSA, and NASA are issuing a final rule adopting the interim rule published July 25, 2014, without change. The interim rule amended the FAR to implement final rules issued on September 24, 2013, by the Office of Federal Contract Compliance Programs at the Department of Labor (DOL) relating to equal opportunity and affirmative action for veterans and individuals with disabilities. The DOL rules provide clarification of mandatory listing of employment openings, the posting of notices, making notices accessible to persons with disabilities, and requiring nondiscrimination statements in contractor solicitations or advertisements for employees. The FAR clauses were restructured in the interim rule to provide a citation to the applicable clause in the DOL regulations and include a statement that summarizes contractors' top level obligations under each clause. There is no significant impact on small entities imposed by the FAR rule.

Item II—Review and Justification of Pass-Through Contracts (FAR Case 2013–012)

This final rule amends the FAR to implement section 802 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), which provided for additional requirements relative to the review and justification of pass-through contracts. In those instances where an offeror for a contract, task order, or delivery order informs the agency pursuant to FAR 52.215–22 of their intention to award subcontracts for more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, section 802 requires the contracting officer to (1) consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work; (2) make a written determination that the contracting approach selected is in the best interest of the Government; and (3) document the basis for such determination. These statutory requirements are being implemented in FAR 15.404–1(h) and for consistency purposes are applicable to all of the agencies subject to the FAR even though section 802 only applied to the Department of Defense, the Department of State, and the United States Agency for International Development.

Because the rule augments the current responsibilities of contracting officers relative to the review and justification of pass-through contracts and does not initiate or impose any new administrative or performance requirements on contractors, and specifically exempts contract actions awarded pursuant to FAR subparts 19.5, 19.8, 19.13, 19.14, or 19.15, there is no impact on small businesses.

Item III—Enhancements to Past Performance Evaluation Systems (FAR Case 2014–010)

This final rule changes the language at FAR 42.1502 to accommodate the recent merger of the Architect-Engineer Contract Administration Support System (ACASS) and the Construction Contractor Appraisal Support System (CCASS) as modules within the Contractor Performance Assessment Reporting System (CPARS) database. This action will standardize the past performance reporting requirements under the CPARS database. The ACASS and CCASS modules were merged into CPARS on July 1, 2014.

This change does not place any new requirements on small entities.

Item IV—Technical Amendments

Editorial changes are made at FAR 4.905(a), 22.102–2(a), 39.101(a)(1)(ii), 52.212–4(v), 52.212–5(b)(36)(i), (b)(36)(ii), (b)(39)(ii), and (e)(1)(v), 52.213–4(a) and (b), and 52.223–16.

Dated: April 30, 2015.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2005–82 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–82 is effective May 7, 2015 except for items II and III, which are effective June 8, 2015.

Dated: April 29, 2015.

RADM Althea H. Coetzee,

Acting Director of Defense Procurement and Acquisition Policy

Dated: May 1, 2015.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: April 28, 2015.

William P. McNally,

Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2015–11027 Filed 5–6–15; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 22, and 52

[FAC 2005–82; FAR Case 2014–013; Item I; Docket 2014–0013, Sequence 1]

RIN 9000–AM76

Federal Acquisition Regulation: Equal Employment and Affirmative Action for Veterans and Individuals With Disabilities

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement final rules issued by the Office of Federal Contract Compliance Programs at the Department of Labor (DOL) relating to equal opportunity and affirmative action for veterans and individuals with disabilities.

DATES: *Effective:* May 7, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–82, FAR Case 2014–013.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 79 FR 43575 on July 25, 2014, to implement two DOL final rules that were published in the **Federal Register** on September 24, 2013, at 78 FR 58614 and at 78 FR 58682 as follows:

- ''Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans,'' which amended DOL regulations at 41 CFR parts 60–250 and 60–300 (78 FR 58614).
- ''Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities,'' which amended DOL regulations at 41 CFR part 60–741 (78 FR 58682).

II. Discussion and Analysis

No public comments were submitted, and no changes have been made to the interim rule.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Both rules issued by the DOL were determined to be economically significant under E.O. 12866, and major rules under 5 U.S.C. 804. The Regulatory Impact Analysis for these rules was published in the **Federal Register** on September 24, 2013 at 78 FR 59643 and at 78 FR 58714. The FAR rule adds no new information collections, recordkeeping, or other compliance burdens. The FAR rule cites to the DOL Office of Management and Budget (OMB) Control numbers 1250–0004 and 1250–0005 for OMB approval under the Paperwork Reduction Act for any information collection requirements associated with revised FAR 52.222–35 (Equal Opportunity for Veterans) and 52.222–36 (Equal Opportunity for Workers with Disabilities). The FAR clauses, to be incorporated in solicitations and contracts in full text, include the required summary statement (paragraph (b) and (a) of each of the FAR clauses, respectively) and then reference to the DOL clauses. There is no economic impact arising from the FAR rule, since the FAR rule only informs the contractors of the requirements of the DOL rules. Further, each DOL rule states that ''By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract. . .'' (41 CFR 60–300.5(e) and 60–741.5(e)). The FAR is not imposing requirements; it is incorporating the requirements into contracts to inform contractors.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 604, *et seq.* The FRFA is summarized as follows:

This final rule is being issued to implement changes to 41 CFR 60–25, 60–300, and 60–741, as published in the **Federal Register** on September 24, 2013 (78 FR 58614 and 58682), by the Office of Federal Contract Compliance Programs of the Department of Labor (DOL). The DOL rules revise the current regulations implementing 38 U.S.C. 4211 and 4212, and the nondiscrimination and affirmative action regulations of section 503 of the Rehabilitation Act of 1973, as amended. The DOL rules add requirements on mandatory job listings, data collection, and establishing hiring benchmarks.

There were no public comments submitted in response to the initial regulatory flexibility analysis.

With regard to equal opportunity for veterans, DOL estimated that the approximate number of small entities that would be subject to its rule would be 20,490 Federal contractors with between 50 and 500 employees (approximately 44% of Federal contractors may be impacted).

With regard to equal opportunity for individuals with disabilities, DOL estimated that its rule impacts 20,490 Federal contractors with between 50 and 500 employees (approximately 44% of Federal contractors may be impacted).

This FAR rule does not add any new reporting, recordkeeping, or other compliance burdens. The FAR rule makes contracting officers and contractors aware of the DOL requirements.

DoD, GSA, and NASA are not aware of any significant alternatives which would accomplish the stated objectives of implementing the DOL final rules, while minimizing impact on small entities. DoD, GSA, and NASA do not have the flexibility of changing the DOL rules, which have been published for public comment and are in effect as final rules. There is no significant impact on small entities imposed by the FAR rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved for the DOL regulations under OMB Control Numbers 1250–0004, OFCCP Recordkeeping and Reporting Requirements—38 U.S.C. 4212, Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; 1250–0005, OFCCP Recordkeeping and Reporting Requirements—Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 703; and 1293–0005, Federal Contractor Veterans' Employment Report, VETS–100/VETS–100A.

List of Subjects in 48 CFR Parts 1, 22, and 52

Government procurement.

Dated: April 30, 2015.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 1, 22, and 52, which was published in the **Federal Register** at 79 FR 43575 on July 25, 2014, is adopted as a final rule without change.

[FR Doc. 2015–11028 Filed 5–6–15; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2005–82; FAR Case 2013–012; Item II; Docket No. 2013–0012; Sequence No. 1]

RIN 9000–AM57

Federal Acquisition Regulation; Review and Justification of Pass-Through Contracts

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement section 802 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013. This section provides additional requirements relative to the review and justification of pass-through contracts.

DATES: *Effective:* June 8, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy J. Hopkins, Procurement Analyst, at 202–969–7226 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2005–82, FAR Case 2013–012.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 79 FR 39361 on July 10, 2014 to implement section 802 of the NDAA for FY 2013 (Pub. L. 112–239) which provided for additional requirements relative to the review and justification of pass-through contracts. Specifically, in those instances where an offeror for a contract, task order, or delivery order informs the agency pursuant to FAR 52.215–22 of its intention to award subcontracts for more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, section 802 requires the contracting officer to (1) consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work; (2) make a written determination that the contracting approach selected is in the best interest of the Government; and (3) document the basis for such determination. These statutory requirements are being implemented in FAR 15.404–1(h). For consistency, this rule is applicable to all of the agencies subject to the FAR, even though section 802 only applied to the Department of Defense, the Department of State, and the United States Agency for International Development. Contract actions under section 46 of the Small Business Act (15 U.S.C. 657s) are exempt from the requirements under section 802 of the NDAA for FY 2013.

Two respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

This final rule makes two changes from the proposed rule. The first change revises FAR 15.404–1(h)(2) to make clear that competition requirements still apply if the contracting officer selects alternative approaches. The second change revises FAR 15.404–1(h)(3) to clarify that the requirements of this rule do not apply to small business set-aside contracts.

B. Analysis of Public Comments

The Regulatory Secretariat Division received responses from two respondents to the proposed rule which are discussed below:

1. Application of Rule to FAR Part 36

Comment: One respondent requested that the final rule ensure that this new requirement take into consideration the requirements found in FAR 36.501, which addresses performance of work by prime construction contractors.

Response: The statute does not exempt the contracting officer from making a written determination that the contracting approach selected is in the best interest of the Government under FAR part 36 acquisitions. The contracting officer shall take into consideration industry practices in making this determination.

2. Conflict With FAR 52.219–14

Comment: One respondent stated that FAR clause 52.219–14, Limitations on Subcontracting, could also conflict with the new requirements of this rule.

Response: FAR clause 52.219–14, Limitations on Subcontracting, applies only to contracts that have been set aside for small business concerns or 8(a) concerns. Section 1615 of the NDAA for FY 2014 (Pub. L. 113–66) exempts contract actions subject to Section 46 of the Small Business Act (15 U.S.C. 657s). The text at FAR 15.404–1(h)(3) has been revised to clarify that contract actions awarded pursuant to FAR subparts 19.5, 19.8, 19.13, 19.14, or 19.15 are exempt from the requirements of this rule. Therefore, the requirements of this rule do not conflict with FAR clause 52.219–14.

3. Potential Increase in Bid Protests

Comment: One respondent stated that by requiring contracting officers to consider direct award to a subcontractor that will perform more than 70 percent of the work, those subcontractors could become interested parties for bid protest purposes. This could open the door to a substantial number of bid protests and significantly impact the ability of agencies to make timely awards.

Response: The statute requires that the contracting officer consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work, make a determination that the contracting approach selected is in the best interest of the Government, and document the basis for such determination. By following these requirements and adhering to the established solicitation procedures in the FAR, contracting officers will mitigate the risk of protests. This rule does not change existing competition requirements, nor does it change the status of subcontractors in the bid protest process.

4. Subcontractors Lacking Prime Contractor Experience

Comment: One respondent stated that direct award to subcontractors that do not have sufficient prime experience can severely impact procurements and result in a substantial increase in workload for both the contractor and the Government (*i.e.* additional audits and business system reviews).

Response: The statute requires that contracting officers consider direct award to subcontractors and the purpose of this rule is to amend the FAR to implement that requirement. However, it should be noted that both the statute and the rule only require that the contracting officer consider direct award. Contracting officers shall continue to ensure that purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only, in accordance with FAR 9.103.

5. Subcontractors Contracting Directly With the Government

Comment: One respondent opined that prime contractors will try to avoid the impact of this rule by using contract provisions that prohibit subcontractors from entering into a direct contract with the agency. So, if this rule is going to work, a clause preventing primes from including a restrictive provision in a teaming arrangement and/or subcontract needs to be included in the rule.

Response: FAR clause 52.203–6 ''Restrictions on Subcontractor Sales to the Government'' precludes prime contractors from including such restrictions in their agreements with actual or prospective subcontractors. For acquisitions of commercial items, the prohibition applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s).

6. Subcontractor Pricing and Participation in Negotiations

Comment: One respondent stated that in many cases, the prime contractors do not allow subcontractors to see the final version of the prime's proposal sent in response to the Government's RFP or allow subcontractors to participate in negotiations. As such, the subcontractor pricing that the Government sees in the prime contractor's proposal or during negotiations may not be accurate. This issue can be resolved by revising the proposed clause in the rule to require the prime contractor to obtain the signed approval of the subcontractor's portion of the final offer submitted to the Government and allowing subcontractors that will perform 70 percent or more work to participate in negotiations.

Response: FAR 15.404–3 already provides requirements for evaluating subcontractor pricing and obtaining certified cost or pricing data as required. Prime contractors are responsible for managing their subcontractors and appropriately evaluating subcontractor cost or pricing data in accordance with FAR subpart 15.4.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule augments the current responsibilities of contracting officers relative to the review and justification of pass-through contracts and does not initiate or impose any new administrative or performance requirements on contractors. In addition, contract actions awarded pursuant to FAR subparts 19.5, 19.8, 19.13, 19.14, or 19.15 are exempt from the requirements of this rule.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subject in 48 CFR Part 15

Government procurement.

Dated: April 30, 2015.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 15.404–1 by adding paragraph (h) to read as follows:

15.404–1 Proposal analysis techniques.

* * * * *

(h) *Review and justification of pass-through contracts.* (1) The requirements of this paragraph (h) are applicable to all agencies. The requirements apply by law to the Department of Defense, the Department of State, and the United States Agency for International Development, per section 802 of the National Defense Authorization Act (NDAA) for Fiscal Year 2013. The requirements apply as a matter of policy to other Federal agencies.

(2) Except as provided in paragraph (h)(3) of this section, when an offeror for a contract or a task or delivery order informs the contracting officer pursuant to 52.215–22 that it intends to award subcontracts for more than 70 percent of the total cost of work to be performed under the contract, task or delivery order, the contracting officer shall—

(i) Consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work. If such alternative approaches are selected, any resulting solicitations shall be issued in accordance with the competition requirements under FAR part 6;

(ii) Make a written determination that the contracting approach selected is in the best interest of the Government; and

(iii) Document the basis for such determination.

(3) Contract actions awarded pursuant to subparts 19.5, 19.8, 19.13, 19.14, or 19.15 are exempt from the requirements of this paragraph (h) (see section 1615 of the National Defense Authorization Act for Fiscal Year 2014 (Pub. L. 113–66)).

[FR Doc. 2015–11029 Filed 5–6–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 42

[FAC 2005–82; FAR Case 2014–010; Item III; Docket No. 2014–0010, Sequence No. 1]

RIN 9000–AM79

Federal Acquisition Regulation; Enhancements to Past Performance Evaluation Systems

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to accommodate the recent merger of the Architect-Engineer Contract Administration Support System (ACASS) and the Construction Contractor Appraisal Support System (CCASS) modules within the Contractor Performance Assessment Reporting System (CPARS) database.

DATES: *Effective:* June 8, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202–501–1448, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–82, FAR Case 2014–010.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 79 FR 54949 on September 15, 2014, to standardize the past performance reporting requirements under the CPARS database in FAR subpart 42.15. One respondent submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Changes

There are no changes made in the final rule as a result of the public comments.

B. Public Comments

1. Continue To Use ACASS

Comment: The respondent requests that ACASS continue to be utilized because the ratings are more descriptive and appropriate to the design professionals than those in CPARS.

Response: ACASS will not continue to be utilized since the ACASS module was merged into CPARS on July 1, 2014. Appendix 3 of the ''Guidance for Contractor Performance Assessment Reporting System (CPARS),'' dated July 2014, provides specific instructions on describing the different aspects of the quality of the contractor's work and the contractor's management of a quality control program in the narrative of a CPARS evaluation for an Architect-Engineer contract or order. This guidance is accessible electronically at *https://www.cpars.gov/cparsfiles/pdfs/CPARS-Guidance.pdf.*

2. ''Overall Rating'' Added to CPARS

Comment: The respondent requests an ''Overall Rating'' be added to the CPARS rating system, similar to the ACASS system.

Response: An overall rating of contractor performance in CPARS is not advantageous, because the weight of the specific evaluation areas (quality, schedule, cost control, management, utilization of small business and regulatory compliance) is different for each contract being evaluated and each solicitation in which the offeror's past performance is being evaluated.

3. Interim Evaluations

Comment: The respondent suggests that the interim evaluation in CPARS be superseded by the final evaluation.

Response: The final evaluation is the last rating provided to date on a contract. Interim evaluations, combined with the final evaluation (or last evaluation to date), remain available in order to provide the entire picture of contractor performance under the contract for future source selection purposes.

C. Other Changes

For clarity, the final rule adds a reference to the past performance thresholds at paragraphs (b) through (f) of section 42.1502.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA certify that this final rule will not have a significant economic impact on a substantial number of small entities within the

meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule removes references to the ACASS and CCASS modules since these modules were merged into CPARS on July 1, 2014. This action will standardize the past performance reporting requirements for architect-engineer contracts and construction contracts under the CPARS database. This change does not impose any new requirements on small entities.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subject in 48 CFR Part 42

Government procurement.

Dated: April 30, 2015.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 42 as set forth below:

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR part 42 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 42.1502 by revising paragraph (a) to read as follows:

42.1502 Policy.

(a) *General.* Past performance evaluations shall be prepared at least annually and at the time the work under a contract or order is completed. Past performance evaluations are required for contracts and orders as specified in paragraphs (b) through (f) of this section, including contracts and orders performed outside the United States. These evaluations are generally for the entity, division, or unit that performed the contract or order. Past performance information shall be entered into CPARS, the Governmentwide evaluation reporting tool for all past performance reports on contracts and orders. Instructions for submitting evaluations into CPARS are available at *http://www.cpars.gov/.*

* * * * *

[FR Doc. 2015–11030 Filed 5–6–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 22, 39, and 52

[FAC 2005–82; Item IV; Docket No. 2015–0052; Sequence No. 1]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: *Effective:* May 7, 2015.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat Division (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405, 202–501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–82, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR parts 4, 22, 39, and 52 this document makes editorial changes to the FAR.

List of Subject in 48 CFR Parts 4, 22, 39, and 52

Government procurement.

Dated: April 30, 2015.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 22, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 22, 39, and 52 continues to read as follow:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE MATTERS

4.905 [Amended]

■ 2. Amend section 4.905 by removing from paragraph (a) ''provisionat'' and adding ''provision at'' in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 3. Amend section 22.102–2 by revising the first sentence of paragraph (a) to read as follows:

22.102–2 Administration.

(a) Agencies shall cooperate with, and encourage contractors to use to the fullest extent practicable, the DOL Employment and Training Administration (DOLETA) at *http://www.doleta.gov,* and its affiliated local offices in meeting contractors' labor requirements. * * *

* * * * *

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

39.101 [Amended]

■ 4. Amend section 39.101 by removing from paragraph (a)(1)(ii) ''(EPEAT)'' and adding ''(EPEAT®)'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.212–4 by revising the date of the clause and adding paragraph (v) to read as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (May 2015)

* * * * *

(v) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

* * * * *

■ 6. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b)(36)(i) ''(Jun 2014)+(E.O.s'' and adding ''(JUN 2014) (E.O.s'' in its place;

■ c. Removing from paragraph (b)(36)(ii) ''(ii) Alternate I'' and adding and ''_____ (ii) Alternate I'' in its place;

■ d. Removing from paragraph (b)(39)(ii) ''(ii) Alternate I'' and adding ''_____ (ii) Alternate I'' in its place; and

■ e. Revising paragraph (e)(1)(v).

The revision reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (May 2015)

* * * * *

(e) * * *

(1) * * *

(v) 52.222–26, Equal Opportunity (APR 2015) (E.O. 11246).

* * * * *

■ 7. Amend section 52.213–4 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

Terms and Conditions—Simplified Acquisitions (Other than Commercial Items)(May 2015)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222–3, Convict Labor (JUN 2003) (E.O. 11755).

(ii) 52.222–21, Prohibition of Segregated Facilities (APR 2015).

(iii) 52.222–26, Equal Opportunity (APR 2015) (E.O. 11246).

(iv) 52.225–13, Restrictions on Certain Foreign Purchases (JUN 2008) (E.O.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(v) 52.233–3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(vi) 52.233–4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108–77, 108–78 (19 U.S.C. 3805 note).

(2) Listed below are additional clauses that apply:

(i) 52.232–1, Payments (APR 1984).

(ii) 52.232–8, Discounts for Prompt Payment (FEB 2002).

(iii) 52.232–11, Extras (APR 1984).

(iv) 52.232–25, Prompt Payment (JUL 2013).

(v) 52.232–39, Unenforceability of Unauthorized Obligations (JUN 2013).

(vi) 52.232–40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013).

(vii) 52.233–1, Disputes (MAY 2014).

(viii) 52.244–6, Subcontracts for Commercial Items (APR 2015).

(ix) 52.253–1, Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2013) (Pub. L. 109–282) (31 U.S.C. 6101 note) (Applies to contracts valued at $25,000 or more).

(ii) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (JAN 2014) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold).

(iii) 52.222–20, Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000 (MAY 2014) (41 U.S.C. chapter 65) (Applies to supply contracts over $15,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iv) 52.222–35, Equal Opportunity for Veterans (JUL 2014) (38 U.S.C. 4212) (Applies to contracts of $100,000 or more).

(v) 52.222–36, Equal Employment for Workers with Disabilities (JUL 2014) (29 U.S.C. 793) (Applies to contracts over $15,000, unless the work is to be performed outside the United States by employees recruited outside the United States). (For purposes of this clause, ''United States'' includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(vi) 52.222–37, Employment Reports on Veterans (JUL 2014) (38 U.S.C. 4212) (Applies to contracts of $100,000 or more).

(vii) 52.222–41, Service Contract Labor Standards (MAY 2014) (41 U.S.C. chapter 67) (Applies to service contracts over $2,500 that are subject to the Service Contract Labor Standards statute and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer Continental Shelf).

(viii)(A) 52.222–50, Combating Trafficking in Persons (MAR 2015) (22 U.S.C. chapter 78 and E.O 13627) (Applies to all solicitations and contracts).

(B) Alternate I (MAR 2015) (Applies if the Contracting Officer has filled in the following information with regard to applicable directives or notices: Document title(s), source for obtaining document(s), and contract performance location outside the United States to which the document applies).

(ix) 52.222–55, Minimum Wages Under Executive Order 13658 (DEC 2014) (Executive Order 13658) (Applies when 52.222–6 or 52.222–41 are in the contract and performance in whole or in part is in the United States the 50 States and the District of Columbia).

(x) 52.223–5, Pollution Prevention and Right-to-Know Information (MAY 2011) (E.O. 13423) (Applies to services performed on Federal facilities).

(xi) 52.223–15, Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 8259b) (Unless exempt pursuant to 23.204, applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP) will be—

(A) Delivered;

(B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(C) Furnished by the Contractor for use by the Government; or

(D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance).

(xii) 52.225–1, Buy American—Supplies (MAY 2014) (41 U.S.C. chapter 67) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see 19.502–2), and does not exceed $25,000).

(xiii) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) (42 U.S.C. 1792) (Applies to contracts greater than $25,000 that provide for the provision, the service, or the sale of food in the United States).

(xiv) 52.232–33, Payment by Electronic Funds Transfer—System for Award Management (JUL 2013) (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the System for Award Management (SAM) database as its source of EFT information.)

(xv) 52.232–34, Payment by Electronic Funds Transfer—Other than System for Award Management (JUL 2013) (Applies when the payment will be made by EFT and the payment office does not use the SAM database as its source of EFT information.)

(xvi) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. App. 1241) (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).)

(2) Listed below are additional clauses that may apply:

(i) 52.209–6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (AUG 2013) (Applies to contracts over $30,000).

(ii) 52.211–17, Delivery of Excess Quantities (SEP 1989) (Applies to fixed-price supplies).

(iii) 52.247–29, F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(iv) 52.247–34, F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

* * * * *

■ 8. Amend section 52.223–16 by revising the section heading to read as follows:

52.223–16 Acquisition of EPEAT®-Registered Personal Computer Products.

* * * * *

[FR Doc. 2015–11031 Filed 5–6–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2015–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–82; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005–82, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–82, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

DATES: May 7, 2015.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–82 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULES LISTED IN FAC 2005–82

List	Subject	FAR Case	Analyst
*I	Equal Employment and Affirmative Action for Veterans and Individuals with Disabilities	2014–013	Loeb.
II	Review and Justification of Pass-Through Contracts	2013–012	Hopkins.
III	Enhancements to Past Performance Evaluation Systems	2014–010	Glover.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–82 amends the FAR as specified below:

Item I—Equal Employment and Affirmative Action for Veterans and Individuals with Disabilities (FAR Case 2014–013)

DoD, GSA, and NASA are issuing a final rule adopting the interim rule published July 25, 2014, without change. The interim rule amended the FAR to implement final rules issued on September 24, 2013, by the Office of Federal Contract Compliance Programs at the Department of Labor (DOL) relating to equal opportunity and affirmative action for veterans and individuals with disabilities. The DOL rules provide clarification of mandatory listing of employment openings, the posting of notices, making notices accessible to persons with disabilities, and requiring nondiscrimination statements in contractor solicitations or advertisements for employees. The FAR clauses were restructured in the interim rule to provide a citation to the applicable clause in the DOL regulations and include a statement that summarizes contractors' top level obligations under each clause. There is no significant impact on small entities imposed by the FAR rule.

Item II—Review and Justification of Pass-Through Contracts (FAR Case 2013–012)

This final rule amends the FAR to implement section 802 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), which provided for additional requirements relative to the review and justification of pass-through contracts. In those instances where an offeror for a contract, task order, or delivery order informs the agency pursuant to FAR 52.215–22 of their intention to award subcontracts for more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, section 802 requires the contracting officer to (1) consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work; (2) make a written determination that the contracting approach selected is in the best interest of the Government; and (3) document the basis for such determination. These statutory requirements are being implemented in FAR 15.404–1(h) and for consistency purposes are applicable to all of the agencies subject to the FAR even though section 802 only applied to the Department of Defense, the Department of State, and the United States Agency for International Development.

Because the rule augments the current responsibilities of contracting officers relative to the review and justification of pass-through contracts and does not initiate or impose any new administrative or performance requirements on contractors, and specifically exempts contract actions awarded pursuant to FAR subparts 19.5, 19.8, 19.13, 19.14, or 19.15, there is no impact on small businesses.

Item III—Enhancements to Past Performance Evaluation Systems (FAR Case 2014–010)

This final rule changes the language at FAR 42.1502 to accommodate the recent merger of the Architect-Engineer Contract Administration Support System (ACASS) and the Construction Contractor Appraisal Support System (CCASS) as modules within the Contractor Performance Assessment Reporting System (CPARS) database. This action will standardize the past performance reporting requirements under the CPARS database. The ACASS and CCASS modules were merged into CPARS on July 1, 2014.

This change does not place any new requirements on small entities.

Item IV—Technical Amendments

Editorial changes are made at FAR 4.905(a), 22.102–2(a), 39.101(a)(1)(ii), 52.212–4(v), 52.212–5(b)(36)(i), (b)(36)(ii), (b)(39)(ii), and (e)(1)(v), 52.213–4(a) and (b), and 52.223–16.

Dated: April 30, 2015.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–11032 Filed 5–6–15; 8:45 am]

BILLING CODE 6820–EP–P

FEDERAL REGISTER

Vol. 80 Thursday,

No. 88 May 7, 2015

Part V

The President

Proclamation 9272—National Charter Schools Week, 2015

Proclamation 9273—National Teacher Appreciation Day and National Teacher Appreciation Week, 2015

Federal Register
Vol. 80, No. 88
Thursday, May 7, 2015

Presidential Documents

Title 3—

The President

Proclamation 9272 of May 4, 2015

National Charter Schools Week, 2015

By the President of the United States of America

A Proclamation

In today's global economy, a high-quality education is one of the best investments we can make in a child's future, and it is central to the promise that in America, where you start should not determine how far you can go. No matter who they are or where they come from, all children deserve the best education possible. During National Charter Schools Week, we recognize the role public charter schools play in providing America's daughters and sons with a chance to reach their fullest potential, and we recommit to strengthening our Nation's classrooms for all.

Innovation and experimentation are essential to bolstering our education system for the 21st century. As independent public schools, charter schools are able to try new models of learning and methods that encourage academic excellence and set students on a path to success. They are laboratories of learning and incubators for the ideas of tomorrow, but this flexibility comes with high standards and accountability. When a charter school does not measure up—when one is underperforming and not improving—we must make the tough decision to shut it down. But when charter schools are successful, they can help spur systemic reform, and their approaches can be replicated in classrooms across America. Today, especially in some of our Nation's most disadvantaged communities, successful charter schools are an important partner in increasing access to a high-quality education and closing the achievement gap.

I am dedicated to providing every child access to a complete and competitive education, and harnessing the power of American ingenuity has been vital to this commitment. My Administration has challenged States to raise education standards, improve teacher effectiveness, and adopt new strategies to help struggling schools. As part of this unprecedented effort, we have expanded support for high-performing public charter schools and given States the opportunity to embrace new ideas that improve all our Nation's classrooms. Our comprehensive approach to education reform has demonstrated that innovation yields results that benefit all students, that progress is possible, and that a world-class education can be within reach for all our young people. As President, I will continue to build on this success and work to ensure all children receive an education worthy of their potential.

Today, our Nation's very best charter schools are gateways to higher education and endless possibilities, lifting up students of all backgrounds and empowering them to achieve a brighter future. This week, we honor the parents, educators, and civic leaders who make the vision of charter schools a reality, and we continue our work to safeguard the promise that an education—one that expands horizons, challenges minds, and inspires a new generation of thinkers, doers, and dreamers—is within the reach of every girl and boy.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 3 through May 9, 2015, as National Charter Schools Week. I commend our Nation's

charter schools, teachers, and administrators, and I call on States and communities to support high quality public schools, including charter schools, and the students they serve.

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

[FR Doc. 2015–11294
Filed 5–6–15; 11:15 am]
Billing code 3295–F5

Presidential Documents

Proclamation 9273 of May 4, 2015

National Teacher Appreciation Day and National Teacher Appreciation Week, 2015

By the President of the United States of America

A Proclamation

In America, every child is born with limitless promise, and each deserves a chance to achieve their dreams. A world-class education can unlock a young person's full potential and empower them with the knowledge and skills to reach their highest aspirations. As a Nation, we must provide every girl and boy in America with such an opportunity, and this cannot happen without great teachers. On National Teacher Appreciation Day and during National Teacher Appreciation Week, we honor America's outstanding teachers and the vital role they play in the lives of our children and the success of our country.

In classrooms across America, talented and hardworking teachers are nurturing a new generation of thinkers, doers, and dreamers. They teach the subjects and skills that will fuel the next century of growth and innovation, as well as the virtues and values—like character, compassion, creativity, and resilience—that will prepare their students to take on the challenges of the future. Our best teachers are role models who show our kids how to work hard and pursue a brighter tomorrow. They encourage our children's passions, inspire their imaginations, and help them realize the best versions of themselves.

Teaching is an all-encompassing commitment, and teachers make enormous sacrifices to support their students. My Administration is dedicated to promoting excellence in teaching and ensuring all teachers have the resources, support, and tools necessary to succeed in their classrooms. We are working to strengthen the ways we prepare, develop, support, and advance America's teachers. And as part of this effort, I have called for an all-hands-on-deck approach to prepare an additional 100,000 teachers in the important fields of science, math, engineering, and technology—a STEM Master Teacher Corps—to serve as beacons of excellence in teaching as well as leaders and mentors for their colleagues. Additionally, through the Teach to Lead initiative, the Department of Education is empowering teachers to have a voice in what happens in their schools and their profession without leaving the classroom. And we are working with States to implement best practices that will help more of our best teachers—across all disciplines—reach the communities and children who are most in need.

Great teachers make a lasting impact on their students' lives. When a young person learns from an exceptional teacher, they are more likely to graduate, attend college, and succeed later in life. Teachers lift up the next generation and enrich our Nation, and they deserve our gratitude and thanks. This week, as we remember the teachers who touched our lives and shaped our futures, let us recommit to supporting those who serve in America's classrooms. By investing in our Nation's teachers, we can build a world where every girl and boy can dream big, hope deeply, and realize a brighter future.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 5, 2015, as

National Teacher Appreciation Day and May 3 through May 9, 2015, as National Teacher Appreciation Week. I call upon students, parents, and all Americans to recognize the hard work and dedication of our Nation's teachers and to observe this day and this week by supporting teachers through appropriate activities, events, and programs.

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

[FR Doc. 2015–11295
Filed 5–6–15; 11:15 am]
Billing code 3295–F5

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